

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas
The Honorable Heath P. Taylor, Circuit Court Judge

Probate Court
Carolyn Woodruff, Probate Judge

RECEIVED
FEB 27 2025
SC Court of Appeals

Appellate No. 2024-000912

Probate Case Number 2021ES4601533
Common Pleas Case Number 2022CP4603359

In re: Estate of Larry Joe Hasian

Pamela C. Hasian, Appellant,

v.

Kellie Queen; Kamilla Warren; Brandy Gibson, Respondents.

Record on Appeal

Volume 7

COUNSEL OF RECORD

Malissa P. Church
Malissa Church Law
514 Oakland Ave.
Ste. 100
Rock Hill, SC 29730
(803) 327-4600

John P. Gettys, Jr. SC Bar No. 8673
Daniel J. Ballou, SC Bar No. 5935
Morton & Gettys, LLC
P.O. Box 707
Rock Hill, SC 29731
(803) 366-3388

Attorney for Pamela C. Hasian

Attorney for Kellie Queen, Kamilla
Warren, and Brandy Gibson

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Court Judge

Appellate Case No. 2022CP4603359

Probate Case No. 2021ES4601533

Pamela Hasian.....Appellant,

versus

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

REPLY BRIEF OF APPELLANT

Malissa P. Church
Malissa Church Law, LLC
Attorney for Appellant
514 Oakland Avenue, First Floor
Rock Hill SC 29730
malissa@malissachurchlaw.com
Phone 803-327-4600

Contents

TABLE OF AUTHORITIES.....	3
RESPONSE TO STATEMENT OF THE CASE	4
RESPONSE TO ARGUMENTS.....	5
CERTIFICATE OF COUNSEL	10

TABLE OF AUTHORITIES

Cases

<i>Gamble v. Stevenson</i> , 305 S.C. 104, 111, 112, 406 S.E. 2d 350 (1991)	7
<i>James v. Horace Mann Ins. Co.</i> , 371 S.C. 187, 638 S.E. 2d 667 (2006).....	7
<i>Judy v. Judy</i> , 393 S.C. 160, 174, 712 S.E. 2d 408,415 (2011).....	6

Statutes

S.C. Code Ann. § 62-1-111.....	10
S.C. Code Ann. § 62-2-102.....	7
S.C. Code Ann. § 62-2-103.....	7

RESPONSE TO STATEMENT OF THE CASE

The appellant responds to the following information provided in the

Respondents' Statement of the Case:

- “Appellant claims she and the Decedent, her husband, decided to draft Decedent’s Will after discussing Covid-related deaths.”
 - This is incorrect. The Appellant stated Covid had nothing to do with the Will her researching Wills. The research was prompted by a general discussion about what would happen if the Decedent died before the Appellant.¹
- “Appellant could not recall whether she witnessed the Decedent signing the Handwritten Will.”
 - Appellant admitted she did not see the Decedent sign the Will. She repeatedly testified that she believed the Decedent signed the Will.²

¹“ Q: So you and Larry started having a discussion about Covid deaths and that precipitated you to start researching Wills online? A: That’s not exactly how I said it. Covid has nothing to do with me researching Wills. Q: Covid deaths prompted you and Larry— A: A discussion about what if he were to die. Just to know, there was no discussion about me because mine is all in beneficiaries.” Hasian Deposition, pg. 126, Lines 15 – 23, Trial Exhibit.

² Merits Trial, pg. 145, 22 – 25; pg. 146, lines 1 -7; Hasian Deposition, pg. 137, lines 13 – 25.

RESPONSE TO ARGUMENTS

I (a) – Statutory basis for the award of attorney fees.

Respondents state that their pre-litigation demand letter was a basis the trial court used in granting its attorney fees. Nowhere, in the Merits Order or Amended Order, does it state that this was any basis for awarding attorney fees.

III – The Trial Court did not err in finding it was not authorized to award punitive damages.

The Petitioners object to any argument in the Respondents’ brief which implies that the Trial Court would have awarded them punitive damages but failed to do so because they lacked the statutory authority. This is incorrect.

In the Merit’s Order, the Trial Judge stated the following:

“The Respondents have not shown a sufficient basis for an award of punitive damages and have not demonstrated how an award of punitive damages would deter the Petitioner in the future, as is required.”³

The Respondents did not identify this part of the ruling as an issue on appeal, and thus it is outside of the scope of this appeal. The Respondents seek to amend the Trial Court’s Order substantively without showing a basis for doing so. They also mischaracterize their expert’s findings on (1) whether the decedent signed the will (believed it was highly probable that the document was not signed by the

³ Merits Order, Page 7, Paragraph 38.

decedent)⁴, and (2) whether the Appellant forged the decedent's name (probably, which is a lower standard of certainty).⁵

The Petitioner also objects to any assertion that the Respondents be given leave to file their torts in Common Pleas to seek punitive damages.⁶ The Trial Court addressed their substantive claims regarding the ruling on the merits, the substance of which they failed to appeal or raise on a Motion to Alter or Amend. The Respondents are barred by *res judicata* from bringing these causes of action in Common Pleas Court. The Petitioner's response is solely limited to addressing whether the Probate Court can award punitive damages.

The Petitioner agrees that the Probate Code and statutes are bereft of provisions expressly precluding or permitting judges to award punitive damages in Probate Court.⁷ There are no cases on point, but it stands to reason that the *Judy* case provided an opportunity for the Court to set precedent, which it did not. The only other provision in the Probate Code pertains to trustees and may award punitive damages for breach of trust, although it also does not expressly permit punitive damages either.⁸

⁴ Merits Trial, Day 2, Page 195, lines 10 – 13.

⁵ *Id.*, Page 196, 25, Page 197, lines 1 – 9, Page 203, lines 1 – 10.

⁶ *Judy v. Judy*, 393 S.C. 160, 174, 712 S.E. 2d 408,415 (2011), The Respondents could have removed their tort claims to Common Pleas when they realized that they were seeking punitive damages. Their proposal to refile the action in Common Pleas is barred *res judicata* and not within any exception.

⁷ S.C. Code Ann. § 62-1-111 permits the award of costs and expenses as justice and equity require.

⁸ S.C. Code Ann. § 62-7-1004 allows “any other appropriate relief.”

Our courts hold that punitive damages require an additional level of due process where a jury or judge would consider eight specific factors.⁹ Matters most related to the decedent's estates are unlikely to be repeated and thus punitive damages will fail to have the necessary deterrent effect.¹⁰ The Trial Court judge cited this as a key factor in her ruling.

Respondent argues the Appellant's behavior regarding the Will execution substantiates the punitive damage award. However, the Trial Judge didn't find he met the standard of making a prima facie case for intentional interference with inheritance and denied him all relief on these grounds, "...Respondents have not proven all of the requirements for the course of action...".¹¹

His claim for punitive damages is not based on any success in litigating a tort factually related to the relief. He failed to prevail on all but one tort claim – Conversion, where it awarded compensatory damages of \$7,164.32. Assuming his basis for the punitive damages was the conversion claim, the attorney fee award he received is 790% higher than the actual damages awarded. However, the Trial

⁹ *Gamble v. Stevenson*, 305 S.C. 104, 111, 112, 406 S.E. 2d 350 (1991). The factors are (1) defendant degree of culpability, (2) duration of the conduct, (3) defendant's awareness or concealment, (4) existence of similar past conduct, (5) likelihood the award will deter similar conduct in the future, (6) whether the award is reasonably related to the harm caused by the conduct, (7) defendant's ability to pay, and (8) other appropriate factors.

¹⁰ See *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E. 2d 667 (2006); S.C. Code Ann. § 15-32-520 addresses punitive damages in a bifurcated jury trial, not a bench trial as occurred in this case. Section (E)(5) clearly states the likelihood the award would deter future conduct as one of the factors for consideration.

¹¹ Merits Order, Section II.

Judge was careful to state that conversion was not the basis of her attorney fee award, which the Respondent concedes in his brief.

Punitive damages are disfavored. Where they are allowed, they are intended as a means of deterring a tortfeasor from committing the same tort again. The facts and circumstances in this case, and with most probate matters, are very specific and do not lend themselves to reoccurrence. By this argument, the deterrent would be to prevent the Appellant, should she remarry, from writing a Will for her new husband, failing to have it executed properly, surviving him, and submitting the improperly executed Will to probate. Given her experience over the past 17 months, it does not take a huge leap in logic to conclude she will not ever undertake to write a Will for a future spouse. This wrong is unlikely to ever reoccur and punitive damages are improper in this context.

CONCLUSION

The Petitioner restates her basis for appeal articulated in her brief.

Punitive damages in inappropriate for Probate Court because the code fails to specifically provide them. Statutes must be interpreted on their face and, if our legislature intended to expand awards to punitive damages, it would have done so when it re-wrote the Probate Code in 2014. While tort claims related to decedent estates can be brought in Probate Court, they can also be brought in Common Pleas where punitive damages are more commonly awarded.

Even if this court rules that Probate Court can award punitive damages, the Trial Judge specifically stated in her order that this case did not present with significant actual damages and there was an insufficient basis for awarding punitive damages. The Respondents did not raise this part of the ruling in their issue on appeal and thus it is outside of the appeal scope.

Respectfully submitted,
Malissa Church Law, LLC

/s/ Malissa P. Church
Malissa P. Church
Attorney for Appellant
SC Bar # 100296
514 Oakland Avenue, First Floor
Rock Hill SC 29730
Malissa@malissachurchlaw.com
Phone 803-327-4600
South Carolina Bar # 100296

February 20, 2023

CERTIFICATE OF COUNSEL

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

/s/ Malissa P. Church

Malissa P. Church

Attorney for Appellant

February 20, 2023.

ELECTRONICALLY FILED - 2023 Feb 20 4:50 PM - YORK - COMMON PLEAS - CASE#2022CP4603359

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Court Judge

Appellate Case No. 2022CP4603359

Probate Case No. 2021ES4601533

Pamela Hasian.....Appellant,

versus

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

CERTIFICATE OF SERVICE

I certify I served the Reply Brief of Appellant on the following persons by electronically filing with the E-Flex System on February 20, 2023, and depositing a copy in the United States Mail, postage prepaid, on February 21, 2023, addressed as shown below.

J. Nathaniel Pierce
Morton & Gettys, LLC.
PO Box 707
Rock Hill, SC 29731

/s/ Malissa P. Church
Malissa P. Church
Attorney for Appellant
SC Bar # 100296
514 Oakland Avenue, First Floor
Rock Hill SC 29730
malissa@malissachurchlaw.com
Phone 803-327-4600

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM YORK COUNTY
Probate Court
Trial Court Action Number 2021-ES-46-01533
The Honorable Carolyn Woodruff, Probate Judge

Appellate No. 2022-CP-46-03359

Pamela C. Hasian Appellant,

v.

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

RESPONDENTS' INITIAL BRIEF

Respectfully Submitted,

s/ J. Nathaniel Pierce
Morton & Gettys, LLC
J. Nathaniel Pierce, S.C. Bar No. 102803
Attorney for Appellant
P.O. Box 707, Rock Hill, SC 29731
T: 803.366.3388; F: 803.366.4044
nate.pierce@mortongettys.com

February 9, 2023
Rock Hill, South Carolina

TABLE OF CONTENTS

Table of Cases and Authorities.....1
Statement of Issues on Appeal.....2
Statement of the Case.....2
Standard of Review.....3
Argument.....4
Conclusion.....12

TABLE OF CASES AND AUTHORITIES

Cases

In re Estate of Weeks, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).4

Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 458 S.E.2d 431, 439 (Ct. App. 1994)).....4

Hyload, Inc. v. Pre-Engineered Products, 308 S.C. 277, 417 S.E.2d 622 (Ct. App. 1992).....4

Windham v. Riddle, 381 S.C. 192, 672 S.E.2d 578 (2009) *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528 (2000).....4

Fontaine v. Peitz, 291 S.C. 536,354 S.E.2d 565 (1987)).....4

Glasscock v. Glasscock, 304 S.C. 158, 160, 403 S.E.2d 313, 315 (1991).....5

Judy v. Judy, 393 S.C. 160, 712 S.E.2d 408 (2011).....8

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578 (2000).....10

Scoggins v. McClellion, 321 S.C. 264, 468 S.E.2d 12 (Ct. App. 1995).....10

Statutes

S.C. Code Ann. § 62-1-308.....3

S.C. Code Ann. § 62-1-111.....4

S.C. Code Ann. § 62-1-302.....8

S.C. Code Ann. § 62-1-103.....9

S.C. Code Ann. § 15-32-520.....10

Court Rules

South Carolina Rule of Civil Procedure 15(b).....11

STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court did not err in awarding attorney's fees to Respondents.**
- II. The Trial Court did not err in finding Appellant committed conversion.**
- III. The Trial Court erred in finding it was not authorized to award punitive damages to Respondents.**

STATEMENT OF THE CASE

Appellant filed a Petition for Formal Testacy and Appointment on October 18, 2021, seeking appointment of Appellant Pamela Hasian ("Appellant") as the personal representative of the Estate of Larry Joe Hasian ("Decedent"). Simultaneously, Appellant filed a handwritten will ("Handwritten Will"), alleged to have been signed by Decedent on May 9, 2021 and witnessed by Cynthia Spera ("Spera") and Hank Bell ("Bell"). Respondents, Decedent's daughters, timely filed a response to Appellant's Petition, alleging their own Petition for Formal Testacy and Appointment along with claims for Intentional Interference with Inheritance, Conversion, Civil Conspiracy, Attorney's Fees pursuant to S.C. Code Ann. § 62-1-111, and violation of the South Carolina Frivolous Civil Proceedings Sanctions Act. Appellant responded to Respondents' claims, denying all wrongdoing.

Appellant claims she and Decedent, her husband, decided to draft Decedent's will after a discussion regarding Covid-related deaths. After performing a search on Google for examples of wills, Appellant claims she wrote out the Handwritten Will herself and passed the Handwritten Will to Decedent. Appellant could not recall whether she witnessed Decedent signing the Handwritten Will.

Two witnesses, identified in discovery as Spera and Bell, purportedly witnessed the signature of the Handwritten Will on May 9, 2021. Spera testified at her deposition that she signed the Handwritten Will as a witness while visiting Decedent and Appellant's home to do the books for Decedent's business, Larry J's Automotive ("Larry J's"). Spera testified she signed

Handwritten Will as a witness on May 9, 2021, but could not offer an explanation as to why she would be doing Larry J's books on Mother's Day Sunday, rather than on a weekday. Interestingly, Appellant testified Spera was *not* present and did not witness the Handwritten Will on May 9, 2021, the day it was written by Hasian and, allegedly, signed by Decedent. Spera testified that she did not witness Decedent sign the Handwritten Will. Further, Spera did not witness Appellant sign the Will in Decedent's presence at Decedent's direction. Rather, the Handwritten Will was already written and signed when she arrived at Decedent and Appellant's home.

Likewise, Bell did not witness Decedent sign the Handwritten Will nor did he witness Appellant sign in Decedent's presence at Decedent's direction. Bell testified that he did not actually sign the Handwritten Will as a witness on May 9, 2021. In fact, Bell testified he did not sign the Handwritten Will as a witness until September 2021, *after* Decedent died, and backdated his signature at Appellant's request. Appellant testified that she specifically asked each witness to back date their signatures to May 9, 2021.

Based on the above facts, the Trial Court granted Respondents' partial summary judgment as to the Handwritten Will, and specifically held its ruling on attorney's fees in abeyance pending a full hearing on the merits. After a two-day hearing, the Trial Court found Appellant had converted funds from the Decedent's estate to her own use and ordered Appellant to pay \$7,147.32 in damages. Additionally, the Trial Court awarded Respondents attorney's fees and costs in the amount of \$56,516,80, as authorized by S.C. Code Ann. § 62-1-111. Appellant made a motion to alter or amend judgment, which the Trial Court denied. This appeal follows.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i). If the action appealed is one at law, the circuit court should uphold the findings of the probate court if there is

any evidence to support them. *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). If the action appealed is equitable, the circuit court may make findings in accordance with its own view of the preponderance of the evidence. *Id.* The amount of an attorney's fees award is within the sound discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431, 439 (Ct. App. 1994) (citing *Hyload, Inc. v. Pre-Engineered Products*, 308 S.C. 277, 417 S.E.2d 622 (Ct. App. 1992)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528 (2000) (citing *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987)).

ARGUMENT

I. The Trial Court did not err in awarding attorney's fees to Respondents.

a. Statutory basis for award of attorney's fees.

Appellant's argument that the Trial Court was not authorized to award attorneys' fees does not withstand scrutiny. The Trial Court ordered Appellant to pay Respondents' attorney fees and costs in the amount of \$56,516.80 pursuant to S.C. Code Ann § 62-1-111, which authorized the Probate Court to award attorney's fees as justice and equity require. Appellant argues at length regarding the weight the Trial Court should place on various aspects of Respondents' trial presentation. Judge Woodruff, the trial judge, was in the best position to determine the justice and equity of awarding attorney's fees after presiding over this matter from start to finish, including the final hearing on the merits. Judge Woodruff awarded Respondents their attorney's fees because she found Appellant committed a fraud on the Court by knowingly submitting the invalid Handwritten Will to the Court to improve her own situation. She also found Appellant's rationale

that the invalid Handwritten Will was “all [she] had” was not sufficient justification for her actions. Further, Judge Woodruff ruled the Appellant’s willful violation of the law put the Respondents to the considerable expense of the underlying litigation. Respondents attempted to avoid litigation altogether and sent Appellant’s counsel a letter outlining the findings of Dean Investigations – Respondents’ handwriting expert – asking Appellant to withdraw the Handwritten Will and associated Petition. Appellant refused, forcing this litigation. Based on the above, the Court found that justice and equity authorized it to award Respondents their attorney’s fees under S.C. Code Ann. § 62-1-111.

b. *Glasscock factors*

Appellant argues the Trial Court erred in awarding Respondents’ attorneys’ fees because there is insufficient evidence supporting two of the *Glasscock* factors considered by the Trial Court: (1) the time necessarily devoted to the case and (2) the beneficial results obtained. *See Glasscock v. Glasscock*, 304 S.C. 158, 160, 403 S.E.2d 313, 315 (1991).

i. **Time necessarily devoted to the case**

In her brief, Appellant focuses narrowly and exclusively on the pre-suit correspondence between counsel, though this was not considered in the Trial Court’s Order on this *Glasscock* factor. However, this factor does not weigh in favor of disallowing attorney’s fees, let alone outweigh the factors actually considered by the Trial Court. The pre-suit demand for Appellant to withdraw the Handwritten Will and associated Petition was supported by the findings of handwriting expert Theresa Dean – the same handwriting expert qualified and deemed credible by the Trial Court. Appellant’s response to this demand was to raise general issues of uncertainty inherent in all litigation.

At the hearing on Appellant's Motion to Alter or Amend, Respondents' counsel argued this case was exceptionally difficult and time consuming to prepare for and that Respondents' counsel and his staff spent 216 hours working on the matter. Respondents' counsel was required to hire and prepare an expert handwriting witness for trial, take out-of-state depositions of key witnesses, work with multiple forensic analysts to examine Appellant's cell phone, issue subpoenas, read through hundreds of pages of bank and phone records as well as other documents, and prosecute multiple discovery motions on top of a Motion for Partial Summary Judgment. This was made all the more difficult because Appellant refused to proactively participate in discovery, being held in contempt at one point for refusing to comply with the Court's discovery order. The Trial Court agreed, as evidenced by its Order Denying Appellant's Motion to Alter or Amend.

Additionally, the Court found unpersuasive Appellant's argument that fees should be limited to those incurred prior to Respondents attaining partial summary judgment. The Trial Court found the issues presented to the Court in Respondents' Petition were not fully resolved until trial. Specifically, the Court did not and could not determine whether Appellant knowingly and fraudulently submit an invalid will before a hearing on the merits. The Trial Court held the issue of attorney's fees in abeyance until it had an opportunity to assess Appellant's credibility at trial and ascertain whether Appellant knew the Handwritten Will was improperly executed and had not been signed by Decedent.

ii. Beneficial results

Despite Appellant's argument to the contrary, it is clear Respondents' counsel obtained beneficial results for his client. Appellants would not have been entitled to any portion of the Decedent's estate had the Handwritten Will not been invalidated. Appellant has also been ordered to pay to the Estate all the funds she converted to her own use by writing herself checks from Larry

J's Automotive, an estate asset. Appellant has not been and will not be allowed to serve as the personal representative of Decedent's estate – especially beneficial given the Trial Court's finding of Appellant's fraudulent intent as to the Handwritten Will. Further, Respondents were able to establish Appellant perpetrated a fraud on the Court and the Respondents by knowingly submitting an invalid, unsigned, will for probate, establishing Respondents' entitlement to their attorney's fees.

II. The Trial Court did not err in finding Appellant committed conversion.

As a threshold issue, Appellant's argument as to conversion is predicated upon two evidentiary rulings made by the Trial Court. Appellant made no proffer at trial to establish the scope of the information she claims would have resulted had the Trial Court ruled in her favor. Therefore, these arguments are not preserved for appellate review and cannot be used as bases for Appellant's general argument as to the Trial Court's ruling on conversion.

Appellant next argues Trial Court erred in finding she was not entitled to the funds in an account over which she presented no evidence of authority or ownership. Appellant introduced no argument, allegation, or evidence that she owned the account from which the checks were written or that she had authorization to write herself checks from the account after Decedent was incapacitated or after Decedent died. Notably, Appellant failed to introduce documentation reflecting her authorization to sign on the account in question. All of the evidence and testimony introduced to the Trial Court established, at best, Decedent orally authorized Appellant to write checks while Decedent was alive.¹ Appellant argues, in sum, that she is entitled to Larry J's Automotive's funds, which became the property of Decedent's estate the moment he died, because she wrote checks for the business during Decedent's lifetime and the checks Appellant

¹ Respondents do not concede Appellant was authorized to take such action.

wrote to herself were alleged to be for backpay. By this logic, any individual who wrote checks for a business would be entitled to write themselves checks without limitation if they claimed the checks were for backpay. Because Appellant failed to introduce any evidence at trial of her authorization to sign on the account after Decedent died, there are not sufficient grounds to overturn the Trial Court's ruling.

III. The Trial Court erred in finding it was not authorized to award punitive damages to Respondents.

a. The Probate Court has subject matter jurisdiction to hear Respondents' tort claims.

As a threshold issue, this Court must determine whether the Trial Court had subject matter jurisdiction to hear the tort claims at issue in this case, as these are the only claims from which punitive damages arise.² If the Trial Court did have subject matter jurisdiction to hear Respondents' tort claims, then, for the reasons set forth below, it had the authority to grant all remedies available to parties prosecuting such claims. If the Trial Court finds that it did not have subject matter jurisdiction to hear Respondents' tort claims and grant all remedies available, then it must issue an order to that effect, allowing Respondents to re-file their tort claims in the Circuit Court.

The Probate Court is not a constitutional court, but rather a statutory court. The South Carolina legislature determines the cases and controversies the Probate Court may hear. The jurisdiction of the Probate Court is defined in the South Carolina Probate Code ("Code"), primarily in S.C. Code Ann. § 62-1-302 (2019, as amended). S.C. Code Ann. § 62-1-302(a)(1) provides:

To the full extent permitted by the Constitution, and *except as otherwise specifically provided*, the probate court has exclusive original jurisdiction over *all subject matter related* to . . . estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or

² The tort claims at issue in this case are conversion, civil conspiracy, and tortious interference with inheritance.

a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court.

(emphasis added). The phrase “all subject matter related to the estate of decedents” has been construed broadly to grant the Probate Court the authority to rule on tort claims associated with a decedent’s estate. *See Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011) (holding the Probate Court had subject matter jurisdiction over appellant’s claim for waste committed against real property owned by an estate). Section 62-1-103 of the Code provides “[u]nless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.”

Respondents’ Response to Appellant’s Petition included a challenge to the Handwritten Will, a request for acceptance of a copy of the 1997 Will executed by Larry Joe Hasian on November 21, 1997 (“1997 Will”), claims for civil conspiracy and intentional interference with inheritance associated with Appellant’s submission of a falsified and forged will for probate, and a claim for conversion of funds owned by Decedent that would have inured to the benefit of the heirs of a pending estate. Appellant and Respondents are the actual or potential heirs of Decedent’s estate. The claims and defenses alleged by Respondents fall squarely within the Probate Court’s exclusive original subject matter jurisdiction, and the York County Probate Court had jurisdiction to hear all of Respondents’ claims, including those sounding in tort.

b. The Probate Court has the authority to award punitive damages

The York County Probate Court had exclusive original subject matter jurisdiction over Respondents’ tort claims. That jurisdiction was conferred by S.C. Code Ann. § § 62-1-302(a)(1), which states the Probate Court’s jurisdiction is exclusive, original, and general “except as otherwise specifically provided.” Therefore, the Code must be the source of any limitation on the

Probate Court's authority to fully adjudicate the claims over which it has subject matter jurisdiction. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578 (2000) (holding the best evidence of the legislature's intent is the text of a statute). There is no limitation in the Code that limits the authority of the Probate Court to award punitive damages, nor is there any provision in the Code limiting the Probate Court's ability to fully adjudicate "all subject matter related to . . . estates of decedents." Similarly, there are no such limitations contained in the Rules of Probate Court nor in the punitive damages provision of the South Carolina Non-Economic Damages Act housed in S.C. Code Ann. § 15-32-510, et seq.

South Carolina statute and jurisprudence allow for litigants to seek punitive damages from tortfeasors. *See Scoggins v. McClellion*, 321 S.C. 264, 468 S.E.2d 12 (Ct. App. 1995) (holding punitive damages should be submitted to the finder of fact when there is evidence a tortfeasor's conduct was willful, wanton, or reckless in its disregard for the rights of another); *See* S.C. Code Ann. § 15-32-520 (2019, as amended) (providing punitive damages may be considered if compensatory or nominal damages have been awarded in the first stage of the trial and if plaintiff proves by clear and convincing evidence that its harm was caused by the willful, wanton, or reckless conduct of the defendant).

At trial, Appellant's counsel argued *Judy* stands as a bar to Respondents' recovery of punitive damages. However, nowhere in the *Judy* decision does the Supreme Court of South Carolina hold the Probate Court cannot award punitive damages nor does it provide any support for the appellant's rote claims. *See Judy*, 712 S.E.2d at 414. In *Judy*, the appellant brought an action for partition and waste of estate property in the Probate Court. After a hearing in which appellant introduced evidence of diminution of the value of the property via an expert witness, the appellant asked the Probate Court not to rule on his cause of action for waste. *Id.*, 712 S.E.2d at

410. Later, the appellant filed an action for waste in the Circuit Court. *Id.* The respondent argued the doctrine of *res judicata* in defense of appellant's claim. *Id.*, 712 S.E.2d at 411. In response, the appellant argued, in part, that *res judicata* did not bar his claim for punitive damages because "the probate court could not have awarded punitive damages."³ *Id.*, 712 S.E.2d at 415. In analyzing this argument, in dicta, the Supreme Court took appellant's argument at face value. The Court found, taking as true appellant's punitive damages argument, appellant could have removed the action to the Circuit Court where he ultimately attempted to recover punitive damages. *Id.* Because appellant proceeded all the way through an evidentiary hearing on his waste claim, failed to avail himself of statutory remedies, voluntarily waived his right to a ruling, and then refiled his waste action in circuit court, the Supreme Court found *res judicata* applied.

Respondents' pleadings, as amended under Rule 15(b), include a demand for punitive damages.⁴ Respondents presented evidence that Appellant (1) specifically asked two witnesses to falsify the date they witnessed the Decedent sign the Handwritten Will; (2) asked one of the witnesses to sign the Handwritten Will after Decedent died; and (3) knowingly submitted a falsified will to the York County Probate Court that completely disinherited Respondents. Further, Theresa Dean testified that, to a reasonable degree of professional certainty, it was highly probable Decedent did not sign the Handwritten Will and it was probably Appellant who signed Decedent's name.⁵ In sum, Respondents presented evidence that Appellant forged Decedent's name on the Handwritten Will, asked witnesses to provide false information, and knowingly submitted the forged, falsified will for probate, with the intent of completely disinheriting Respondents.

³ The appellant did not cite any statute, rule, or case supporting this proposition, nor did the Supreme Court in its analysis of the argument.

⁴ At trial, after Respondents' motion under Rule 15(b), South Carolina Rules of Civil Procedure, Appellant's counsel consented to conformation of Respondents' pleadings to include a demand for punitive damages.

⁵ The Court qualified Theresa Dean as an expert in handwriting and document examination.

The Probate Court had subject matter jurisdiction over Respondents' tort claims. There is no provision of the Code that limits the Probate Court's ability to award punitive damages or otherwise fully adjudicate the matters properly before it. Respondents presented more than enough for the Court to consider punitive damages under S.C. Code Ann. § 15-32-520 and South Carolina jurisprudence. The Probate Court is authorized to award punitive damages if it finds by clear and convincing evidence Appellant's conduct willful, wanton, and reckless.

CONCLUSION

Based on the above, Respondents' ask this Court to affirm the Trial Court's rulings on the issues of attorney's fees and conversion and reverse the Trial Court's ruling on the issue of punitive damages.

Respectfully submitted,

s/ J. Nathaniel Pierce
Morton & Gettys, LLC
J. Nathaniel Pierce, S.C. Bar No. 102803
Attorney for Appellant
P.O. Box 707, Rock Hill, SC 29731
T: 803.366.3388; F: 803.366.4044
nate.pierce@mortongettys.com

February 9, 2023
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM YORK COUNTY
Probate Court
Trial Court Action Number 2021-ES-46-01533
The Honorable Carolyn Woodruff, Probate Judge

Appellate No. 2022-CP-46-03359

Pamela C. HasianAppellant,

v.

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

PROOF OF SERVICE

The undersigned certifies that he has served Respondents' Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 9, 2023, addressed to its attorneys of record to the below addresses:

Malissa Church
514 Oakdale Avenue
Suite 100
Rock Hill, South Carolina 29730

s/ J. Nathaniel Pierce
Morton & Gettys, LLC
J. Nathaniel Pierce, S.C. Bar No. 102803
Attorney for Appellant
P.O. Box 707, Rock Hill, SC 29731
T: 803.366.3388; F: 803.366.4044
nate.pierce@mortongettys.com

February 9, 2023
Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Court Judge

Appellate Case No. 2022CP4603359

Probate Case No. 2021ES4601533

Pamela Hasian.....Appellant,

versus

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

INITIAL BRIEF OF APPELLANT

Malissa P. Church
Malissa Church Law, LLC
Attorney for Appellant
514 Oakland Avenue, First Floor
Rock Hill SC 29730
malissa@malissachurchlaw.com
Phone 803-327-4600

Contents

TABLE OF AUTHORITIES.....	3
STATEMENT OF ISSUES ON APPEAL.....	4
STATEMENT OF THE CASE AND FACTS	5
STANDARD OF REVIEW	8
ARGUMENTS	9
I	9
II	16
CONCLUSION	18
CERTIFICATE OF COUNSEL	19

TABLE OF AUTHORITIES

Cases

<i>Glasscock v. Glasscock</i> , 304 S.C. 158, 160, 403 S.E. 2d 313, 315 (1991)	9
<i>Gordon v. Busbee</i> , 397 S.C. 119, 2012 S.C. App. Lexis 163 (2012)	16
<i>J. K. Const., Inc. v W. Carolina Reg'l Sewer Auth.</i> , 336 S.C. 162, 166, 519 S.E. 2d 561, 563 (1999)	8
<i>Townes Associates Ltd., v. Greenville</i> , 226 S.C. 81, 221 S.E. 2d 773 (1976)	8
<i>Wellin v. Wellin</i> , 427 S.C. 15, 22, 828 S.E. 2d 767, 771 (2019)	8

Statutes

S.C. Code Ann. § 62-1-111	10
S.C. Code Ann. § 62-2-102	7
S.C. Code Ann. § 62-2-103	7

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 trial judge, Judge Carolyn Woodruff, presided on all motion hearings and at the trial of this case.

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 entirety of the 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, 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.⁹

The Daughters filed a Motion for Partial Summary Judgment regarding the 2021 Will probate, and it was heard on April 6, 2022.¹⁰ The judge granted partial summary judgment dismissing the Petition to Probate the 2021 Will in its April 13, 2022 Order, which further deemed the instrument was invalid due to improper witness attestation.¹¹

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 requested post-trial briefs from counsel on the question of 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.¹²

⁸ Id.

⁹ Id.

¹⁰ The Daughters Motion for Partial Summary Judgment

¹¹ Order Granting Partial Summary Judgment, April 13, 2022.

¹² Trial Day 2 Transcript, page 310, lines 17 – 19, page 322, lines 4 – 7.

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.¹³ The conversion claim was granted, and actual damages of \$7,147.32 were awarded to the estate.¹⁴ 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.¹⁵ The Daughters' counsel's request for punitive damages was denied. Hasian's attorney fee request was denied, but the Daughters' attorney fees were granted in the amount of \$56,516.80.¹⁶

Hasian timely filed and served a Motion to Alter or Amend.¹⁷ On October 26, 2022, the judge issued its supplemental order denying Hasian's Motion, which Hasian's counsel received on October 28, 2022.¹⁸ On November 7, 2022, Hasian filed and served her Notice of Intent to Appeal on all parties, the Probate Court, and this Court.

¹³ Merits Order, pages 4 – 5, Section II, pages 5 – 6, Section III.

¹⁴ *Id.*, pages 6 – 7, Section IV, and pages 7 – 8, Section 5..

¹⁵ *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

¹⁶ Merits Order, page 8, Section VI.

¹⁷ Motion to Alter or Amend, August 22, 2022.

¹⁸ Amended Order, October 26, 2022.

STANDARD OF REVIEW

This appeal involves both a question of law and equity, both tried in a bench trial. 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.¹⁹ 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.²⁰

Because the conversion matter is an action at law, the findings of fact will not be disturbed on appeal unless they are found to be without evidence to reasonably support the judge's findings.²¹ 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.²²

Because the attorney fee award is an action at equity, the appellate court has the authority to find facts in accord with its own review by the preponderance of the evidence.²³

¹⁹ *Wellin v. Wellin*, 427 S.C. 15, 22, 828 S.E. 2d 767, 771 (2019)

²⁰ *Id.*

²¹ *Townes Associates Ltd., v. Greenville*, 226 S.C. 81, 221 S.E. 2d 773 (1976)

²² *J. K. Const., Inc. v W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E. 2d 561, 563 (1999)

²³ *Townes Associates Ltd., v. Greenville*, 226 S.C. 81, 221 S.E. 2d 773 (1976)

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 upon 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.²⁴ 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.²⁵

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

²⁴ S.C. Code Ann. § 62-1-111

²⁵ *Glasscock v. Glasscock*, 304 S.C. 158, 160, 403 S.E. 2d 313, 315 (1991)

1. Nature, extent, and difficulty of the case;
2. Time Necessarily devoted to the case;
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.²⁶ 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 with the knowledge that it was invalid.²⁷ This conclusion was not supported by the testimony but appears 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 not accurate, she believed the content to be correct and the signatures were those of the actual witnesses.²⁸ In its Order, the court concludes that the Decedent

²⁶ Amended Order, Attorney Fee Award section, pages 2 – 5.

²⁷ Merits Order, page 8, paragraphs 41 – 42.

²⁸ Trial Transcript, Day 1, page 148, lines 6 – 19. Trial Transcript, Day 2, page 296, lines 11 – 14.

did not sign the 2021 Will as a result of the handwriting expert testimony, but nowhere in the Order does it state that she believes that Hasian knew the Decedent didn't sign the Will.²⁹ The Amended Order concludes the court believes Hasian knew the Decedent didn't sign the Will, but does so in a conclusory manner and does not identify the specific facts, evidence or testimony supporting the conclusion.³⁰

The handwriting expert's analysis itself qualified the conclusions by stating the exemplars were not ideal.³¹ 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 only be one sample within 2017 – 2021.³²

Furthermore, she testified that physical issues and medical conditions can impact the consistency of a person's signature in handwriting analysis.³³ The handwriting expert indicated that while she was informed that the Decedent died from a heart attack or stroke, these were not considered to be health issues at the time of the signing in 2021.³⁴ It is understandable that the expert might think the cardiac event was sudden and without any previous illness. However, one of the

²⁹ Merits Order, page 5, paragraph 23.

³⁰ Amended Order, page 3, paragraph 44 (b).

³¹ Respondent's Trial Exhibit.

³² Trial Transcript, Day 2, page 195, lines 14 – 20, page 201, lines 7 – 14.

³³ Trial Transcript, Day 2, page 186, lines 3 – 11.

³⁴ Id., page 201, lines 15 – 25, page 202, lines 1 – 13.

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.³⁵ Furthermore, Hasian testified that she observed other medical issues the Decedent suffered from in 2021 that were not disclosed to the handwriting expert.³⁶

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.”³⁷ 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 and continued this discussion.³⁸ 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.³⁹

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 completely disinherits Hasian,⁴⁰ it is reasonable to conclude that she would have

³⁵ Trial Transcript, Day 1, page 55, lines 13 – 20.

³⁶ Trial Transcript, Day 2, page 293, lines 20 – 25.

³⁷ Motion Transcript, page 25, lines 4 – 8.

³⁸ Trial Transcript, Day 1, page 61, lines 6 – 19, two of the daughters engaged in this discussion.

³⁹ 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.

⁴⁰ Id., page 42, lines 3 - 4.

not consented to the probate of the 1997 Will, thus litigation between these parties was inevitable. 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.⁴¹

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, 2022.⁴² This was amended in her subsequent Order, but does not further elaborate on the specific facts supporting her conclusion.⁴³

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.⁴⁴ A demand for the complete capitulation of an opposing party is not a good-faith settlement offer. The Memorandum notably ignores the fact that Hasian attempted to resolve the case with the Daughters in December 2021 by proposing both parties

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

⁴² 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.

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

⁴⁴ Daughters' Memorandum in Opposition to Motion to Alter or Amend, page 3 and Exhibit A.

withdraw their Wills, proceed to administer and distribute the estate intestate, and nominate a third-party to act as Personal Representative.⁴⁵

The Daughter's counsel summarily rejected this proposal and provided no counteroffer or continued negotiations.⁴⁶ The final ruling – the estate was to be administered intestate and a disinterested Personal Representative appointed⁴⁷ – was identical to the recovery received if the Respondents had taken the offer with the exception of the Conversion damages and identification of the third-party Personal Representative.

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

The Amended Order also erroneously states that the judge concluded, “that the Petitioner had knowingly submitted a fraudulent document with reckless disregard for others.”⁴⁸ In fact, no Order, in this case, makes this ruling.⁴⁹

⁴⁵ Motion Transcript, page 9, lines 20- 25, page 10, lines 1 -25, page 11, lines 1 – 10. Motion Hearing Petitioner's Exhibit A.

⁴⁶ Motion Hearing, Exhibit A.

⁴⁷ Merits Order, page 8 - 9, paragraphs a – d.

⁴⁸ Amended Order, page 3, Paragraph 44(b).

⁴⁹ Merits Order, page 8, Paragraph 42.

BENEFICIAL OUTCOME

The Daughters plead a total of four causes of action and sought punitive damages in their third-party complaint.⁵⁰ They failed to prevail on three of their four causes of action and were denied punitive damages.⁵¹

The Amended Order likewise failed to state any beneficial result, aside from the 2021 Will not being admitted to probate.⁵² As of the April Motion for Partial Summary Judgment, the Decedent's estate was going to either be probated under the 1997 Will or intestate. The Daughters' counsel failed to achieve a beneficial outcome of seeing the 1997 Will probated. 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 portion 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 upon 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."⁵³ There has never been a Personal Representative appointed to administer the Decedent's estate. This was not a beneficial outcome.

In awarding the Daughter's attorney fee of \$56,516.80, they received an award that is 790% greater than the actual damages of \$7,147.32 for their

⁵⁰ Third Party Petition.

⁵¹ Merits Order, page 9.

⁵² Amended Order, page 4, paragraph 44 (f).

⁵³ *Id.* at page 5, paragraph 44 (f).

Conversion claim, the only cause of action upon 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.⁵⁴

Conversion is the unauthorized assumption and exercise of ownership of the property of another to the exclusion of the rightful owner's rights.⁵⁵ The Daughters alleged that Hasian converted funds belonging to the Decedent's business to her own use by writing and cashing several checks the day before the Decedent died.⁵⁶ Hasian does not contest the fact that she wrote these checks.⁵⁷

The trial court issued a ruling from the bench precluding testimony on the ownership of the business account.⁵⁸ The trial court also substantially limited the

⁵⁴ Amended Order, page 2, Conversion section.

⁵⁵ *Gordon v. Busbee*, 397 S.C. 119, 2012 S.C. App. Lexis 163 (2012)

⁵⁶ Daughters' Third-Party Petition.

⁵⁷ Trial Transcript, Day 1, page 176, lines 20 – 25, page 177, lines 1 – 13.

⁵⁸ 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.

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 would be allowed to testify on the second day.⁵⁹ 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 at trial was that Hasian wrote checks on the business account, including payroll, and the checks at issue had a notation which tied them to payroll weeks and the total for each check equaled her weekly salary.⁶⁰ Hasian also testified that she had signature authority on the accounts.⁶¹

The strongest assertions against this practice were provided by one of the Daughters, who, despite having no insight into the Decedent's business practices, thought it was improper for the checks to have been written.⁶²

The unrebutted testimony of the Decedent's business' CPA was that backdating or holding payroll checks was standard if ill-advised, practice.⁶³ The business consistently operated with low cash flow⁶⁴ and it did not always have sufficient funds to meet payroll and pay vendors, so Hasian would hold her paychecks until funds were available.⁶⁵

⁵⁹ *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.

⁶⁰ Trial Transcript, Day 1, page 46, lines 1 – 18, page 176, lines 20 – 25, page 177, lines 1 -13.

⁶¹ Trial Transcript, Day 1, page 169, lines 9 – 12.

⁶² *Id.*, page 58, lines 1 – 25.

⁶³ Trial Transcript, Day 2, page 266, lines 1 -11, page 267, lines 11 – 23.

⁶⁴ *Id.*, page 276, lines 17 – 24.

⁶⁵ *Id.*, page 276, lines 1 – 17.

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 award of attorney fees is not supported by the facts and this court has the right to make its own findings of the facts. There is no equitable basis for assessing fees of this amount 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 Conversion award should likewise be reversed. Hasian was authorized to write checks on the business account. The checks themselves with the notations show the funds paid were clearly tied to work she performed.

Respectfully submitted,
Malissa Church Law, LLC

/s/ Malissa P. Church
Malissa P. Church
Attorney for Appellant
SC Bar # 100296
514 Oakland Avenue, First Floor
Rock Hill SC 29730
Malissa@malissachurchlaw.com
Phone 803-327-4600
South Carolina Bar # 100296

January 10, 2023

CERTIFICATE OF COUNSEL

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

/s/ Malissa P. Church
Malissa P. Church
Attorney for Appellant

January 10, 2023.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Court Judge

Appellate Case No. 2022CP4603359

Probate Case No. 2021ES4601533

Pamela Hasian.....Appellant,

versus

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

CERTIFICATE OF SERVICE

I certify I served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on the following persons by electronically filing with the E-Flex System on January 10, 2023, and depositing a copy in the United States Mail, postage prepaid, on January 11, 2023, addressed as shown below.

J. Nathaniel Pierce
Morton & Gettys, LLC.
PO Box 707
Rock Hill, SC 29731

/s/ Malissa P. Church
Malissa P. Church
Attorney for Appellant
SC Bar # 100296
514 Oakland Avenue, First Floor
Rock Hill SC 29730
malissa@malissachurchlaw.com
Phone 803-327-4600

FILED RECEIVED
2022 NOV -7 P 12:31
CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SA

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Judge

Case No. 2021EP4601533

In the Matter of Larry Joe Hasian

Pamela Hasian, Petitioner and Appellant

versus

Kellie Queen, Kamila Warren, and Brandy Gibson, Third-Party Petitioners,
Respondents.

NOTICE OF INTENTION TO APPEAL

Pamela Hasian, the Petitioner and Appellant, appeals from the Order on the Merits of the Third-Party Petitioner's claims dated August 10, 2022, and the Order Denying Petitioner and Appellant's Motion for Reconsideration dated October 26, 2022, of The Honorable Carolyn Woodruff.

The Petitioner and Appellant received written notice of the Order Denying her Motion for Reconsideration on October 28, and written notice of the Order Granting Plaintiffs' and Respondents' Motion to Dismiss on August 6, 2021.

Malissa P. Church
Malissa Church Law, LLC

/S/ Malissa P. Church
Malissa P. Church
Attorney for Defendant and Appellant
Bar No. 100296
514 Oakland Avenue, Suite 100
Rock Hill SC 29730
malissa@malissachurchlaw.com
Phone 803-327-4600

November 7, 2022.

Other counsel of record are:

Nate Pierce
Respondents' Counsel
Morton & Gettys, LLC
331 E. Main Street, Ste. 300
Rock Hill, SC 29730

FILED RECEIVED
2022 NOV -7 P 12:32
CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS,
SIXTEENTH JUDICIAL CIRCUIT
APPEAL FROM YORK COUNTY PROBATE COURT

Carolyn Woodruff, Probate Judge
Case No. 2021EP4601533
In the Matter of Larry Joe Hasian

Pamela Hasian, Petitioner and Appellant

versus

Kellie Queen, Kamila Warren, and Brandy Gibson, Third-Party Petitioners,
Respondents.

CERTIFICATE OF SERVICE

I certify I served the Notice of Intention to Appeal on the following persons by
hand-delivery on November 7, 2022, addressed as shown.

Nate Pierce
Respondents' Counsel
Morton & Gettys, LLC
331 E. Main Street, Ste. 300
Rock Hill, SC 29730

York County Probate Court
2 S. Congress St.
York, SC 29745

/s/ Malissa P. Church
Malissa P. Church
Attorney for Petitioner and Appellant
Bar No. 100296
514 Oakland Avenue, Suite 100
Rock Hill SC 29730
malissa@butlerchurchlaw.com
Phone 803-327-4600

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS

AND

YORK COUNTY PROBATE COURT

Hon. Heath P. Taylor, Court of Common Pleas

Hon. Carolyn Woodruff, Probate Court

Common Pleas Appeal File No. 2022CP4603359

Probate Court File No: 2021ES4601553 (In the Matter of Larry Joe Hasian)

Pamela Hasian,
Petitioner and Appellant,

versus

Kellie Queen, Kamila Warren, and Brandy Gibson,
Third-Party Petitioners and Respondents.

HEARING TRANSCRIPT

STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF COMMON PLEAS
2022-CP-46-03359

PAMELA HASIAN,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

KELLIE QUEEN, KAMILLA WARREN,
AND BRANDY GIBSON,
DEFENDANTS.

August 16, 2023
York, South Carolina

B E F O R E:

THE HONORABLE HEATH P. TAYLOR, JUDGE.

A P P E A R A N C E S:

MALISSA P. CHURCH, ESQ.
Attorney for the Plaintiff

JOHN P. GETTYS, JR. ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE CLERK: This is Pamela Hasian vs. Kamilla Warren.

3 All right. Counsel, I'll be happy to hear from you.

4 MS. CHURCH: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. CHURCH: I represent Pamela Hasian. And we're
7 appealing the attorneys fee awarded to the respondents and
8 the conversion finding and, thus, the conversion award.
9 We argue that the attorneys fee award is -- we -- is an
10 equitable cause of action and the Court can make its own
11 findings of fact by a preponderance of the evidence.
12 Conversion is a -- is a law -- is a case at law. So you
13 would need to take the factual findings of the [inaudible]
14 report, unless -- if there's any evidence to support them.

15 As I stated, I represented Pamela Hasian, the
16 appellant. She was the decedent's last wife. The
17 respondents were the decedent's daughters from an
18 earlier marriage. Both my client and the respondents put
19 forth wills -- competing wills, which had they both
20 been -- had either of them been probated would have
21 disinherited one another. My client had a handwritten
22 will from 2021. They had a will from 1997, a copy of it.

23 The response allegedly -- additionally, alleged
24 intentional interference with inheritance, fraud,
25 conspiracy, and conversion. Ultimately, the Court

1 rejected both wills and said the estate should proceed
2 intestate. It, also, rejected intentional interference,
3 fraud, and conspiracy claims, specifically, finding
4 respondents failed to prove their causes of action.

5 The sole basis for recovery was on the conversion
6 claim with actual damages of \$7,184 -- 147.32. However,
7 the Court awarded \$56,516.80 in attorneys fees damages.
8 And in the original merits order, the quote was, We
9 wouldn't have been here had my client not put forth the
10 will.

11 The attorneys fees are 790 percent higher than the
12 actual damages awarded in the case. We believe it is
13 grossly disproportionate to actual damages. And there
14 were insufficient findings to substantiate the award.

15 Statute -- the statutory provision 62-1-111 which is,
16 unfortunately, bereft of any case law in South Carolina
17 interpreting what it means, but it does say that probate
18 court can award attorneys fees as justice and equity so
19 required.

20 The merits order said the main version -- the main
21 reason for her award of the attorneys fees was not the
22 actual cause of action that the respondents prevailed on,
23 conversion, but because my client put forth the 2021 will,
24 which was not -- not properly witnessed, and that we would
25 not have been in litigation but for that.

1 In the court order, the -- the trial judge does not
2 state that -- does not state the fact that my client knew
3 the will -- that the decedent did not sign the will. And
4 I've raised that in my brief that, in fact, if you go back
5 to the actual testimony, what she says is she believed he
6 signed the will, but she did not see it. However, the
7 Court relied heavily on this in its substantiation for
8 doing it. In other words, it boiled down to, but for
9 this, we wouldn't be here.

10 Your Honor, we believe that -- we believe that this
11 is a -- we believe this was an erroneous finding. The --
12 there was testimony into the -- there was sufficient
13 factual testimony that was not contested that the
14 respondents took an adversarial posture even before my
15 client filed her will for probate. They a week or two
16 after the decedent died confronted her about having a
17 share of the cremains and then had testified that they had
18 been collecting this 24-year-old will a month prior to his
19 death.

20 As the statutory -- absent case law interpreting the
21 probate code, we are -- we have ended up relying heavily
22 on Glasscock. The Court in its merits order cited
23 Glasscock summarily. And in our motion for -- to alter
24 and amend, she did go into the Glasscock -- did go into
25 the Glasscock bases. But I believe that there are two key

1 parts of the Glasscock requirements that were not met,
2 time devoted to the case and beneficial outcome.

3 So in their response to our motion to alter or amend,
4 the respondent said that they had made an effort to settle
5 and that but for that, we wouldn't have been there. Their
6 offer for settlement was a complete capitulation by my
7 client to accept their will. It ignores the good faith
8 efforts that my client made -- or I made on behalf of my
9 client to try to resolve the case later, which asked for
10 us both to withdraw our wills, proceed intestate with a
11 third party appointed. That's exactly where the trial
12 court ended up seven months later and after three days of
13 trial.

14 We believe that the parties that were responsible for
15 dragging out the litigation or even seeing it through were
16 the respondents, and not the appellant on this one. And
17 we believe the Judge abused her discretion and
18 misinterpreted the facts by relying on that for a basis
19 for a reward.

20 The amended merits order, also, I must mention,
21 incorrectly states that the -- actually, the amended order
22 incorrectly states the merits orders conclusion that my
23 client knowingly submitted a fraudulent document with
24 reckless disregard. This is incorrect. There's no
25 statement of that anywhere in the merits order.

1 Our second basis is we believe that she erred on
2 finding a beneficial outcome. The respondents lost on
3 three of four of their causes of action and failed to show
4 know -- failed to show knowing and intentional actions in
5 the merits order. It, clearly, states that they failed to
6 meet their burden of proof. They won on conversion, which
7 we believe was, also, incorrect. And we will address that
8 next.

9 The amended order incorrectly cites as a beneficial
10 result that the appellant was removed as personal
11 representative. There never was a personal representative
12 appointed in this case. So that was not a beneficial
13 result. In other words, everybody ended up in the same
14 place that they would have been if -- if we had taken --
15 just taken a step back and made an agreement, but we did
16 not.

17 The net effect is we have a 790 percent higher
18 attorneys fee award than the actual damages in this case.
19 And for these reasons, we believe two very important parts
20 of the Glasscock factors were not met. And that this
21 Court should overrule the probate courts determination on
22 that.

23 Regarding the conversion claim, the Court's
24 evidentiary rulings from the bench preclude a full range
25 of testimony. However, the contested evidence that

1 appellant regularly wrote checks -- she worked for the
2 decedent's business. It was just she and the decedent.
3 She regularly wrote checks, including payroll. And that
4 the checks at issue had a notation that they aligned with
5 payroll weeks.

6 We, also, had testimony from the accountant who
7 testified that due to low cash flow, the descendant and
8 the appellant would routinely write payroll checks and not
9 cash them. And then, thus, they would go stale, holding
10 off until they were able to have sufficient liquidity
11 through the business to pay themselves.

12 We believe that that in and of itself is sufficient
13 to show that the pay -- the back pay that my client paid
14 herself, which is the -- which is the only set of the
15 checks that she wrote -- she, also, wrote checks to
16 suppliers that weren't questioned -- more than
17 substantiates the fact that there -- she did not convert
18 assets. She merely paid herself back pay.

19 I want to address respondents arguments that the
20 punitive damages award should be reversed. The
21 respondent -- the respondents sought punitive damages.
22 The probate court rejected them entirely on their face,
23 not because the probate court believed solely that she
24 could not award those damages, but because she believed
25 that they were not proper in this circumstance. And I

1 quote, The Respondents have not shown sufficient basis for
2 an award of punitive damages and have not demonstrated how
3 an award of punitive damages would deter Petitioner in the
4 future as is required.

5 The respondents brief makes it -- if you read it, it
6 makes it sound as if the probate court would have
7 issued -- would have awarded punitive damages if it could.
8 That is completely in opposition to what we have on the
9 face of the merits order itself. And that was -- and
10 nowhere in their motion in their appeal do they say the
11 Court erred in its determination of whether they met their
12 burden for punitive damages.

13 The merits order, specifically, says there's no
14 basis. They didn't show the eight Gamble factors. And,
15 most particularly, they did not show that this would be
16 a -- this was evidence of past conduct. That this
17 would -- and, more importantly, that this would deter
18 future actions.

19 It is safe to -- safe to say that given the past
20 couple years, if my client ever marries again, I sincerely
21 doubt that she will ever attempt to draft a will for her
22 next husband and, thus, probate it. Therefore, the effect
23 of deterring future actions is -- is impossible to -- to
24 meet in this case.

25 So we believe this Court should uphold the denial of

1 punitive damages, reverse the order on attorneys fees, and
2 I -- either -- either reduce the attorneys fee award
3 altogether or permit an allocation of those fees for the
4 work done on the causes of action where they prevailed.
5 Because they did not receive a beneficial outcome. And
6 the cause incurred was in large part due to their actions.

7 Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 Again, I -- I'm coming into this thing cold. I don't
10 have all the pleadings in front of me. But with respect
11 to the beneficial outcome, if I understood you from the
12 beginning, there were two competing wills. And if your
13 client -- the one your client presented had been found to
14 be the appropriate will, then the daughters would have
15 received nothing; correct?

16 MS. CHURCH: That is correct, Your Honor.

17 THE COURT: And as it stands here based on the way
18 the probate court ruled, your client received half and the
19 daughters received half; correct?

20 MS. CHURCH: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. CHURCH: If I may correct. The merits -- the
23 merits trial did not address the -- my client's will, the
24 2021 will. It was -- it was our claim to probate that
25 will and was dismissed in a -- in a motion for summary

1 judgment several months before we had the trial on the
2 merits. The merits trial did not touch that it was solely
3 as to whether the 1997 will would be probated and their
4 tortious claims.

5 THE COURT: Okay. Mr. Gettys.

6 MR. GETTYS: Yes. Thank you, Your Honor. Thank you
7 for your time this morning.

8 And I realize that the Court hasn't had a chance to
9 look through both of the courts -- the probate court's
10 orders in the matter, as well as the briefs that were
11 filed by both the appellant and the --

12 THE COURT: And I -- I will. I assure you, I'll look
13 through everything.

14 MR. GETTYS: Yes, sir. And -- and knowing that --

15 THE COURT: I know y'all are just as surprised to see
16 me as I am to see you.

17 MR. GETTYS: Yes, sir. Now, I was not the trial
18 attorney.

19 THE COURT: Okay.

20 MR. GETTYS: The trial attorney worked for our law
21 firm. He's since moved on to greener pastures. So when I
22 say my next statement, I say it with -- without any
23 ravida [phonetic] on my part. There was an exceptional
24 job of lawyering in this case.

25 THE COURT: Okay.

1 MR. GETTYS: Your Honor, the summary given that
2 you'll read much more in depth in the orders and the
3 briefs before the Court, Ms. Hasian was found to have
4 improperly submitted a will to probate. The lawyer
5 representing the daughters of the decedent, who was
6 employed by my firm, filed a competing formal petition for
7 appointment of the personal representative and probating
8 of the estate.

9 In probate court, had my clients only sought to
10 discredit the will, Ms. Hasian would have been appointed
11 personal representative because she submitted a will and
12 had the color of authority as personal representative
13 throughout. By filing a formal appointment for personal
14 representative and challenging the will, it barred
15 Ms. Hasian from being personal representative through the
16 beginning of this estate.

17 As a result, she had no color of authority, which
18 means that the conversion action which the Court based its
19 finding of damages, she could not have under the color of
20 authority written checks and had those wash out as
21 personal representative. She, therefore, had to prove
22 that the payment of the checks to herself after death had
23 to be authenticated, which was not done at trial.

24 By filing the competing action for formal
25 appointment, it made the conversion action one that could

1 be proven at trial, which was proven at trial.

2 THE COURT: So let me stop you there so I understand.

3 MR. GETTYS: Yes, sir.

4 THE COURT: The -- the checks that are in dispute as
5 far as the conversion action is concerned were written
6 after death?

7 MR. GETTYS: They were written after death is the
8 findings of the Court.

9 THE COURT: Okay.

10 MR. GETTYS: And of course -- and I should state I
11 think I brief -- the brief that -- that my firm presented
12 to the Court lists the -- the -- the language necessary to
13 determine whether abuse of discretion and the burdens of
14 proof are different than my opponent in this matter. But
15 that's -- that's briefed appropriately with the
16 appropriate citings as to abuse of discretion and what
17 role the circuit court should give the probate judge as
18 being the trial judge in that matter.

19 So by formally seeking appointment of a new personal
20 representative to challenge the will, it took a will that
21 the Court found in a motions hearing -- not at trial, but
22 in a motions hearing had been witnessed by people who did
23 not see the testator sign the document, that had a
24 handwriting expert say that -- wasn't sure that the
25 descendent signed the will, and that through testimony and

1 depositions taken during discovery had the witnesses
2 testify they may have signed as witnesses well after the
3 fact that was dated on the will.

4 The Court set aside that will in the April hearing,
5 but did -- but held attorneys fees to be determined in
6 abeyance at that time until there was a two-day trial in
7 which the Court could see and -- and watch the credibility
8 of the witnesses, determine what actions were taken, have
9 live testimony through cross-examination, rather than
10 depositions, and make a decision as to whether attorneys
11 fees were warranted.

12 Your Honor, there was a motion to compel in this
13 case. There were depositions in this case. There was a
14 handwriting expert brought in on this case. There was a
15 volume of work to set aside the will, and then go to
16 trial, and have the testimony show that the wife of the
17 decedent, who submitted a will that she later found
18 out -- the Court later ruled was not properly executed and
19 in Paragraph 26 and 41 of the original order a fraud on
20 the court. These are the findings of the probate judge
21 who heard all this testimony.

22 And then after doing that and seeing the same test --
23 the -- the decedent's wife come in for testimony on the
24 conversion action write checks subsequent to death to
25 herself, which in effect defrauds potential creditors or

1 heirs of the estate because they're no longer estate
2 assets that when passed -- anybody that was owed money or
3 an heir of the estate, the Court rightfully, in our
4 opinion, recognized that justice in equity required that
5 Ms. Hasian be responsible for the daughters of the
6 decedent's attorneys fees.

7 She submitted a will that was -- that was in
8 Paragraph 26 and 41 characterized as fraudulent by the
9 Court, though, there was no finding of fraud. There was
10 no prayer requesting fraud. But found in -- as matters of
11 fact in paragraphs 26 and 41 of the original order and
12 an -- a reference to it in the motion -- the order for
13 motion to alter and amend as to that and made these
14 findings based upon her hearing the testimony presented
15 before -- the Court hearing the testimony presented before
16 it and found that the daughters of the decedent should
17 not have -- should not be responsible for having to pay
18 the attorneys fees for someone who submitted a will.

19 And after it was thrown out in April of 2022 -- well
20 before the trial -- refused to say she didn't want to be
21 personal representative any more, refused to say I'm sorry
22 I made a mistake, let the daughters be the personal
23 representative. She refused to not -- basically, say I'm
24 sorry, I made a mistake, I did wrong, let somebody else be
25 in charge. She continued to seek appointment as personal

1 representative of the estate.

2 The Court that heard this matter had ample testimony
3 before it to make the decisions it did. In the original
4 order, the Court mentioned the Glasscock factors in
5 summary, not -- not specifically even -- just in passing.
6 But in the motion to alter or amend went back and
7 factually made points as to how each element was met by
8 the trial attorney for the prevailing party.

9 It's a little bit more in depth than the argument
10 that -- certainly, the Court's heard here this morning.
11 The briefs say that much more eloquently than I'm trying
12 to at this point in time. But with the standards that are
13 necessary for the Court to consider this appeal, the facts
14 that you'll see as summarized in both -- both orders
15 before the Court and in the briefs before the Judge, it's
16 obvious that justice in equity would require the --
17 621-111 allows the probate court -- allows the Court after
18 hearing all the testimony.

19 And, again, I'll remind the Court throughout the will
20 filed first to disinherit the children that was improperly
21 witnessed and in 26 and 41 paragraphs of the complaint
22 found to be fraudulent and then went forward on the merits
23 of the trial.

24 The daughters presented a will that was executed well
25 before to see if that would be accepted as they had a

1 right to do. An original could never be found. They had
2 a witness come in to testify as case law allows. But the
3 testimony didn't suffice. It wasn't enough to carry the
4 burden of proof. We do that every day. We try our best.
5 We don't get that done. But it wasn't fraud. There was
6 no statement of fraud. The Court even says in its order
7 they just didn't meet the burden of proof with those
8 things.

9 The Hasian daughters -- Ms. Hasian tried to commit
10 fraud and cut out the daughters by creating a will.
11 Everything that flows after that is because of her
12 actions. To come in and say there's no beneficial result
13 to the Hasian daughters dismisses the whole fact of
14 what -- what was tried and what was defeated.

15 And that's all, unless the Court has any questions.

16 THE COURT: All right. And you said your briefs --
17 well, tell me, what do you think my standard of review is?
18 They're, obviously, going to be different on the attorneys
19 fees and the legal claim.

20 MR. GETTYS: Sure. In action of law, circuit court
21 upholds findings of probate court if there is any evidence
22 to support them according to the [inaudible]. The amount
23 of attorneys fee award is within the sound discretion of
24 the trial judge and will not be reversed on appeal absent
25 an abuse of discretion, which is Charleston Lumber. And

1 an abuse of discretion occurs when the trial court's
2 ruling is based on an error of law or when grounded in
3 factual conclusions without evidentiary support. It's in
4 their brief.

5 THE COURT: So on the conversion, it's an any
6 evidence standard and on the attorneys fees, it's an abuse
7 of discretion?

8 MR. GETTYS: Yes, Your Honor.

9 THE COURT: Do you agree with that, counsel?

10 MS. CHURCH: Yes, Your Honor, I do.

11 THE COURT: Okay. Do you have anything in response?

12 MS. CHURCH: I do, Your Honor. The basis for the
13 attorneys fees award was not the actual cause of action on
14 which they prevailed, the conversion. It was a
15 generally -- a general statement saying that the
16 handwritten will was submitted to the Court and was
17 submitted -- submitted knowing that the witnesses were
18 incorrect.

19 Your Honor, this -- my opponent says that if she had
20 just stepped back, it would have been fine. First off,
21 their petition did -- did not seek to appoint the
22 daughters as personal representative. It seeked [sic] to
23 appoint the sister of the decedent's ex -- the
24 decedent's ex-sister-in-law as the personal representative
25 is who they were seeking to appoint, just to correct that,

1 which is even further removed.

2 And we did try. And this wouldn't even be coming
3 into evidence had the respondents not brought it in our
4 motion to alter and amend. But since they did, we're
5 here. And we're going to say it, we did. And at no point
6 was any good faith effort entered into to counter offer,
7 to continue, or anything like that.

8 In December of 2021, we said, look, you've only got a
9 copy of your will. We now know there's issues with our
10 will. Let's pull them both back and have a third party
11 appointed and let this thing go intestate. And that's
12 exactly what happened.

13 Granted, they received a \$7,000 award on conversion.
14 That would not have happened under my settlement offer.
15 But that's not to say something else couldn't have
16 happened as we went along with it. But we were -- we --
17 the opportunity was not provided. Their idea of an early
18 settlement was you give up your case and let us win.
19 Complete capitulation is not a good faith settlement
20 offer, just it isn't.

21 And so that's -- that -- that -- that part, I do -- I
22 do believe -- I do have an issue with that. And I do not
23 believe that the judge raised sufficient findings to show
24 that an attorneys fee award of this magnitude -- of this
25 level given -- given the will amount of the actual damages

1 is -- I believe she abused her discretion on that.

2 THE COURT: Anything else?

3 MS. CHURCH: No, Your Honor.

4 THE COURT: Mr. Gettys, anything in response?

5 MR. GETTYS: Your Honor, I think the briefs suffice.

6 Thank you.

7 THE COURT: All right. Well, I will take -- take
8 everything under advisement. And I will either issue an
9 order or request a proposed order, depending on how I see
10 things after I review your briefs.

11 All right. Thank y'all.

12 *****END OF TRANSCRIPT OF RECORD*****

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 16th day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 9, 2024

Hollie M. Jenkins, Court Reporter

RECEIVED
FEB 27 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas
The Honorable Heath P. Taylor, Circuit Court Judge

Probate Court
Carolyn Woodruff, Probate Judge

Appellate No. 2024-000912

Probate Case Number 2021ES4601533
Common Pleas Case Number 2022CP4603359

In re: Estate of Larry Joe Hasian

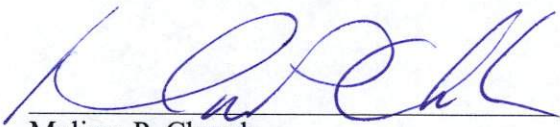
Pamela C. Hasian,Appellant,

v.

Kellie Queen; Kamilla Warren; Brandy Gibson, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Malissa P. Church
Malissa Church Law
514 Oakland Ave. Ste 100
Rock Hill, SC 29730
(803) 327-4600
Attorney for Pamela C. Hasian

February 26, 2025