

BETTY FISHER
 PLAINTIFF(S)

BESSIE HUCKABEE
 DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a) SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

2013 DEC 18 AM 11:45
 FILED
 JULIE J. ARMS, CLERK OF COURT
 BY [Signature]

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

12/12/13
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Betty Fisher, et al.,)
)
 Plaintiffs,)
)
 versus)
)
 Bessie Huckabee, et al.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-10-1332

ORDER AFFIRMING PRIOR ORDER
 GRANTING SUMMARY JUDGMENT
 IN FAVOR OF DEFENDANTS

FILED
 2013 DEC 18 11:11 AM
 CLERK OF COURT
 JULIE K. COOPER
 BY _____

Plaintiff's Motion to Reconsider filed on May 28, 2013, came before the Court on October 8, 2013. Plaintiff was represented by Lisa Fisher and John Hughes Cooper. Defendant was represented by Peter A. Kouten. Plaintiff asked the Court to reconsider its order of May 8, 2013, in which it granted summary judgment in favor of Defendants. Upon further review of the matter, Plaintiff's Motion to Reconsider is **DENIED** and the Court's order of May 8, 2013, is **REINSTATED** and Defendant's motion for summary judgment is **GRANTED** in favor of the Defendants.

Den

FINDINGS OF FACT

1. Alice Shaw- Baker ("decedent") died on February 25, 2013.
2. An estate was opened in the Charleston County Probate Court within thirty days of her date of death.
3. Plaintiffs delivered the Last Will and Testament to the Charleston County Probate Court and the personal representative was nominated pursuant to the Last Will and Testament and appointed.
4. Plaintiffs filed a will contest of the Last Will and Testament and sought removal of the Personal Representative in a complaint filed on April 27, 2009.

5. Plaintiff filed the current action on February 24, 2012, under the Charleston County Circuit Court file number 2012-CP-10-1332.

CONCLUSIONS OF LAW

"Summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. The evidence and inferences drawn therefrom should be viewed in the light most favorable to the nonmoving party." *Southern Contracting, Inc. v. H.C. Brown Construction Co., Inc.*, 317 S.C. 95, 450 S.E.2d 602 (Ct. App. 1994).

The Court's prior order granted summary judgment on the basis that Plaintiff lacked standing to sue on behalf of the decedent in the current action. Plaintiff argues that as a beneficiary of the decedent's estate, she is a "real representative" pursuant to South Carolina Code Annotated Section 15-5-90, which states:

Causes of action for an in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person and the legal representative of an insolvent person or a defunct or insolvent corporation, any law or rule to the contrary notwithstanding.

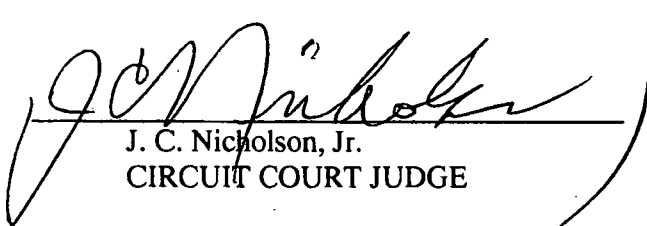
Furthermore, the Plaintiff argues that she is deemed a "real representative" based on her interpretation of a 1905 South Carolina Supreme Court case which states "'causes of action for and in respect to any and all injuries and trespasses, to and upon real estate, shall survive both to and against the personal or real representative (as the case may be) of deceased persons,' etc. The heirs at law are the real representatives." *Duke, et al. v. Postal Telegraph Cable Co.*, 71 S.C. 95, 50 S.E. 675, 676 (1905). Plaintiff argues that she is able to bring an action under Section 15-5-90 against the Defendants because she is a real representative of the decedent's estate, rather than a personal representative, because she is a beneficiary of the decedent's estate. The Court disagrees

with Plaintiff's interpretation of a real representative. Historically, a real representative was able to bring actions "in respect to injuries and trespasses to and upon *real estate*." *Duke*, 50 S.E. at 676 (emphasis added). The Court finds that a real representative is unable to bring an action on behalf of the decedent for injuries to the person or to personal property; rather, such action must be taken through the personal representative of the estate. Though the Court is sympathetic to Plaintiff because it understands that a personal representative will not sue itself, the Plaintiff's proper remedy is through the probate court and through the removal of the personal representative. Therefore, the Court reaffirms its prior decision and finds that Plaintiff lacks standing to bring the asserted causes of action.

Therefore, the Court's order of May 8, 2013, is in **REINSTATED** and Defendant's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

Date: 12/12/2013



J. C. Nicholson, Jr.
CIRCUIT COURT JUDGE