

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. 2013-2319

APPEAL FROM LAURENS COUNTY
COURT OF COMMON PLEAS

Civil Action No. 2012-CP-30-258
The Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

JUN 16 2014

SC Court of Appeals

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay Appellant-Respondent,

vs.

Martha Brown and Mary Moses Respondents-Appellants.

**APPELLANT-RESPONDENT'S RETURN TO MOTION
TO REVISE DESIGNATION OF MATTER ON APPEAL**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF
APPEALS:

Pursuant to Rule 240(e), SCACR, Appellant-Respondent Edward D. Sullivan, Personal Representative, respectfully submits the following response in opposition to Respondents-Appellants Brown and Moses' motion to revise designation of matter on appeal. For the reasons stated the motion should be denied; however, the Appellant-Respondent only objects to the revisions with respect to the specific items addressed below and

accepts the other revisions for purposes of putting together the Record on Appeal.

Rule 210 (c), SCACR, provides that, "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal." Respondents-Appellants have moved to designate for inclusion in the Record on Appeal the following matter that was not presented to either the probate court (Judge Hocker) or the circuit court (Judge Addy):

1. Documents from heirs (Presby. Home, B. Heard, M. Orias) accepting terms for settlement
2. Return to Petition to Distribute Estate Proceeds

The foregoing Items 1 and 2 were not presented to the court(s) below and do not meet the requirements of SCARC 210 (c). Accordingly, these documents should be excluded from the Record on Appeal and the Motion to Revise denied as to these items. These items were previously listed in Appellant-Respondent's Motion to Exclude Certain Matter Designated by Respondents-Appellants to be Included in the Record on Appeal filed April 22, 2014.

The Court of Appeals by Order dated 6/5/2014 granted Appellant-Respondent's earlier motion to strike these items from Respondents-Appellants' initial designation and that Order should remain in effect.

Additionally, Respondents-Appellants also designate:

3. The responsive documents not otherwise specified to any documents the PR wants in the record.

Such a non-specific designation cannot reasonably be responded to. Rule 209(b), SCACR, provides "[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal..." Respondents-Appellants' designation "[t]he responsive documents not otherwise specified to any document the PR wants in the record" does not clearly identify what is designated to be included in the Record on Appeal and does not comply with the requirements of the Rule 209(b), SCACR. Accordingly, it is an improper designation, and Respondents-Appellants' Motion to Revise should be denied relative to this designation.

Respondents-Appellants also designate:

4. Affidavits of Neely C. Blackmon with attachments filed with the Probate Court.

These affidavits were submitted to the Court after the hearing for the sole purpose of allowing the Court to consider the admission into the record of Defendants' (Respondents-Appellants) Hearing Exhibit 4, which had

been marked for identification only. (See excerpt of transcript attached hereto as pages 7 through 18 as well as the Court's listing of Exhibits, pages 19 through 21.) Defendants' Hearing Exhibit 4 was allowed per the Court's Order (Order, page 5, paragraph 20, Order attached hereto as pages 22 through 30) and is a part of the record on appeal.

Attached hereto at Page 31 is a letter from John Ferguson to Judge Hocker plainly stating that the Affidavits were to verify the letters which are already designated as part of the Record on Appeal. The Affidavits are not part of the record and as the letters referenced are to be part of the Record on Appeal, they serve no useful purpose.

The Affidavits were not presented to the court(s) below as a pleading or as evidence. Furthermore, it does not appear that these Affidavits were cited by Respondents-Appellants in any of their initial briefs in support of their position on any issue. Because the Affidavits were NOT cited in the briefs of the Respondents-Appellants, Appellant-Cross-Respondent did not address them. If the Affidavits were to be added to the record, Appellant-Respondent would request the opportunity to submit a brief and possibly other exhibits to discuss the content of the Affidavits. As offered by Respondents-Appellants at this time, one can only guess as to how they might be argued, if oral argument is allowed.

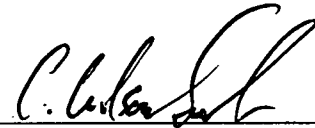
Rule 209(b), SCACR, provides that “a party shall not include any matter in his designation which is not relevant to the appeal.” The referenced Affidavits, not having been referenced in any briefs filed with the Court, are not relevant and therefore do not comply with the requirements of the Rule. Accordingly, “Affidavits of Neely C. Blackmon with attachments filed with the Probate Court” is an improper designation, the motion itself is not timely as addressed below, and the motion to revise should be denied relative to this designation.

Rule 209 (a), SCACR, provides that [at] the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal . . . “ Respondents–Appellants have heretofore filed a “Proposed Record on Appeal.” All briefs, including a reply, have been filed. Accordingly, the revised Designation is untimely and the motion to revise should be denied as to the items discussed above. As earlier stated, Appellant-Respondent does not object to the other designations sought to be amended in the Motion.

CONCLUSION

For the foregoing reasons, Appellant-Respondent respectfully requests that the above referenced items in the Respondents-Appellants' Motion to Revise Designation of Matter on Appeal be denied and that the other Revisions be allowed by agreement.

**LAW OFFICE OF DARYL G. HAWKINS,
LLC**



For: Daryl G. Hawkins
SC Bar No. 2844

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June 12, 2014

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John R. Ferguson, Esquire
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PO Box 286
Laurens, SC 29360

State of South Carolina) In The Probate Court
County of Laurens) Case No.: 2007-ES-30-00208

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In The Matter Of:)
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Marion M. Kay) Hearing
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The within Probate Hearing, taken before Andrea S. Shorb, a notary public in and for the State of South Carolina, commencing at the hour of 3:10 p.m., Monday, February 21, 2011, at the Laurens County Annex, 100 Hillcrest Drive, Laurens, South Carolina.

Transcribed by
Andrea S. Shorb

SHORB COURT REPORTING

*Post Office Box 555
Laurens, South Carolina 29360
(864) 575-9942
shorbcourtreporting@prtcnnet.com*

1 Q Okay. But other the -- the powers of the Personal
2 Representative under the will, did he have the
3 power absolutely to set the price for Mr. Copeland
4 to buy land?

5 A Yes.

6 Q And did he -- was he required to get any
7 information or permission from anybody else from
8 setting -- before setting that price?

9 A No.

10 Q Okay. That's all the questions I have.

11 THE COURT: Mr. Hawkins.

12 MR. HAWKINS: Nothing further, Your Honor.

13 THE COURT: Okay. I think there was a couple
14 of exhibits, Mr. Ferguson, if you'll come up.
15 (To witness) You can step down, ma'am. Thank
16 you for your testimony. Okay. Mr. Ferguson,
17 do you -- have you made a decision what you
18 want to do about --

19 MR. FERGUSON: Your Honor, I would like that
20 document into evidence; and if Mr. Hawkins
21 will allow an affidavit from Ms. Blackman
22 that that is indeed her letter, that would
23 suit me fine. Other than that, I think we're
24 going to have to come back and have Ms.
25 Blackman come and say, yeah, that document

1 that's on file in the court was the one she
2 sent.

3 THE COURT: Okay.

4 MR. HAWKINS: As long as -- I tell you what,
5 Your Honor, as long as we can put in counter
6 affidavits from other members of the Session
7 that say that's not what the -- my objection
8 to the letter, Your Honor, is it represents
9 what the Session did. The Session is part of
10 a governing body of the church, and Ms.
11 Blackman is a member of the Session, was at
12 the time a member of the Session, along with
13 others. Other people didn't agree with her
14 about what she's put in this letter that I'm
15 seeing now filed with the Court. So my
16 objection to it is that she gives a letter
17 where she claims to be speaking for the
18 Session; whereas, we know there was a vote
19 three to one and she was the one and not to
20 object to any of this.

21 THE COURT: Okay. All right.

22 MR. HAWKINS: So I will -- if I could have
23 the right to submit the counter affidavits of
24 the other people, I will agree to let it in
25 with assuming she gives us the affidavit and

1 we submit counter affidavits.

2 THE FERGUSON: And I think we might want to
3 have the right to respond to the affidavits;
4 but other than that (inaudible) affidavits.

5 THE COURT: Well, you know, I don't want this
6 thing to cluster and everybody submitting
7 these papers in response to other papers.

8 MR. FERGUSON: Well, there is -- I had
9 assumed that at some point Mr. Sullivan might
10 get on the stand about his -- his charges;
11 but if that is not to be the case, then I
12 would like to submit one more summary.

13 THE COURT: Well, let's -- before we get to
14 that, let's -- let's deal with this -- this
15 witness. Now, what Mr. Hawkins is saying, is
16 that he could submit -- you submit an
17 affidavit from this lady concerning the
18 letter, and then he wants affidavits that he
19 can submit and counter that. And then what
20 you're saying, is that you want to be able to
21 submit affidavits to counter his counter
22 affidavits.

23 MR. FERGUSON: Well, the point of the
24 affidavit was just to identify the exhibit so
25 that -- that it could properly be placed into

1 evidence. And my understanding of his
2 counter affidavit is that it will go well
3 beyond the identification of the exhibit as
4 having come from Ms. Blackman.

5 THE COURT: Well, I mean, if you -- if the
6 lady had been available to testify, would not
7 Mr. Hawkins have the right to put up some
8 reply witnesses to counter or try to counter
9 your lady's testimony. So I think that's
10 what he's asking to be able to do, is to
11 counter what your lady says in the -- in her
12 letter. And I understand you're saying to
13 authenticate the letter or make it more
14 admissible, you do an affidavit. I
15 understand that, but is he not asking the
16 right to -- just to put up some reply
17 evidence.

18 MR. FERGUSON: Yeah. I don't have a problem
19 with that. My problem comes in that if he
20 had put up reply, I would have a right to
21 cross-examine or to in some way respond to
22 that; and because I just don't have any idea
23 what he's going to put in his affidavits, I'm
24 hesitant to say whatever he puts in the
25 affidavits I don't have a right to respond

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to.

THE COURT: Right, I understand that. And it looks like to me the only way to remedy that is to reconvene and you bring in your witness to testify. I know that's not what y'all want to do, but I just envision I'm going to be swamped with affidavits on this one particular point. I haven't read the letter and don't intend to until it comes into evidence, but I'm just concerned that I'm just opening up the flood gates to you fine attorneys and I'm going to be just loaded up with more paperwork; that's my concern. And so the way to remedy the Court's concern, is to reconvene and you call this lady to testify; and then Mr. Hawkins can cross-examine, and he can put up any reply or witnesses that he wishes to. Unless y'all can -- can think of another way to handle this, because I know y'all are wanting to hear it today; and certainly Mr. Hawkins is in Columbia and Mr. Sullivan is in Columbia too, so help me. Do y'all want a minute or two to talk, possibly?

MR. FERGUSON: Okay.

1 THE COURT: Can we do that? So as far as any
2 reply, I guess, you've got to solve this
3 issue before you tell me for sure whether or
4 not you want to put up any reply about the
5 case. And then you say you've got another
6 summary that you -- let's go ahead and deal
7 with that. You said you've got another
8 summary that you would like to put in
9 (inaudible)

10 MR. FERGUSON: Okay. It's really just based
11 on the -- the previous exhibit. Well, it's a
12 summary based on the -- the billing, the
13 Collins and Lacy billing and --

14 THE COURT: Mr. Hawkins.

15 MR. HAWKINS: Your Honor, we have -- we have
16 no objection.

17 THE COURT: Okay. So this is a summary of
18 the Collins and Lacy?

19 MR. FERGUSON: Well, yeah. This ultimately
20 comes from the Collins and Lacy materials,
21 and there was a separate exhibit about the --
22 the Sullivan trips to Laurens; and this just
23 lays out --

24 THE COURT: Do you mind me writing on -- on
25 here the reference to the Collins and Lacy

1 invoice?

2 MR. FERGUSON: Go right ahead.

3 THE COURT: Okay. And do you have any
4 problems with that, Mr. Hawkins, me writing
5 on this exhibit in reference to Collins and
6 Lacy invoice?

7 MR. HAWKINS: No, sir, Your Honor.

8 THE COURT: Okay, all right. I'm going to
9 give y'all just a few minutes, and then I'll
10 come back in and you let me know if you've
11 resolved this. This will be Defendant's 15.

12 (Exhibit No. 15 marked;
13 retained by the Court.)

14 THE COURT: We'll be off the record.

15 MR. HAWKINS: Thank you, Your Honor.

16 (Off the record from 6:03
17 p.m. until 6:06 p.m.)

18 THE COURT: Okay.

19 MR. FERGUSON: A total 100 percent final
20 understanding of the situation is going to
21 require that I talk with Ms. Blackman who
22 presently has the pneumonia. So what I am
23 asking and what opposing counsel has agreed
24 to, is that I be allowed to talk with her to
25 see precisely what the situation is. And

1 based on that conversation, I may or may not
2 want to put in an affidavit from her with the
3 letter attached; but if I do that, then they
4 would have the right to file affidavits in
5 response.

6 THE COURT: Okay. And -- but it would stop
7 there; correct?

8 MR. FERGUSON: Right.

9 THE COURT: Okay. All right. So to make
10 sure I understand, you will decide whether or
11 not you want that letter into evidence or not
12 with a accompanying affidavit? You may
13 decide not; and if you decide not, then, of
14 course, there's no need to do your affidavits
15 on your end. But if you do, then he has the
16 right to put counter affidavits in for my
17 consideration?

18 MR. FERGUSON: Yes, Your Honor.

19 THE COURT: But we will not do the hearing
20 under any circumstance?

21 MR. FERGUSON: That is correct.

22 THE COURT: Okay, all right. Well, let me
23 just say this to the parties and, of course,
24 I can't, you know, make the decision until
25 the record is closed and all the evidence is

1 in here. And even if the record were closed
2 now, I would not make the ruling from the
3 bench because I've got, as you can see, a lot
4 of the paperwork that I want to review. I've
5 got a general idea what direction I'm going
6 to head in; but again, I want to make sure
7 that the Court impose all the time necessary
8 in making a decision. The lawyers certainly
9 have put a lot of time into this; and I
10 commend both lawyers for the job well done,
11 so I want to do the same. I want to devote a
12 sufficient amount of time before I render my
13 decision, so I will wait -- do we have any
14 kind of time frames when, when I'll be
15 hearing from you guys?

16 MR. FERGUSON: I am hopeful that before the
17 expiration of 10 days --

18 THE COURT: Okay.

19 MR. FERGUSON: -- that she would be well
20 enough for me to talk with her; and I would
21 hope get an affidavit, if I have to, maybe --
22 maybe in 15 days.

23 THE COURT: Okay. Let's -- let's give you 15
24 days; and then if you do submit an affidavit,
25 then you've got 15 days.

1 MR. HAWKINS: I'll try not to take all that
2 time (inaudible)

3 THE COURT: Well --

4 MR. FERGUSON: And I'll try to not take that
5 much time --

6 THE COURT: Things -- things come up. All
7 right. So I'm going to make this -- that
8 will be 15 days from today. And then when
9 you submit the affidavit, then Mr. Hawkins
10 would have 15 days to submit a counter.

11 Okay. All right. Anything further on the
12 record before we adjourn today? Anything Mr.
13 Hawkins?

14 MR. HAWKINS: However this revolves, whether
15 we do the affidavits or not, would you like
16 to have post-trial briefs to (inaudible) our
17 position?

18 THE COURT: I think I've got -- I mean, if
19 you want one, if you want to write or do one,
20 I certainly give you the right to do one.
21 I've got a pretty good idea of each side's
22 position and where you're coming from, a
23 pretty good idea on that. So unless you've
24 just got a real strong notion to do a post-
25 trial brief, I'm not going to require it.

1 MR. HAWKINS: Okay.

2 THE COURT: Fair enough?

3 MR. HAWKINS: Thank you. Yes, sir.

4 THE COURT: All right. Thank you very much.

5 This hearing's adjourned and have a good
6 evening.

7 (Whereupon, there being no
8 further testimony, the hearing
9 was adjourned at 6:10 p.m.)

10 (This transcript may contain quoted material.
11 Such material is reproduced as read or quoted by
12 the speaker.)

13 (Certificate accompanies sealed original only.)

KAYE W. FRIDY
PROBATE JUDGE
DONALD B. HOCKER
ASSOCIATE PROBATE JUDGE



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LAURENS, SC 29360
TELEPHONE: (864) 984-7315
FAX: (864) 984-3779

Office of the Probate Court

FAX MESSAGE/COVER SHEET

Date: 03/24/2011

From: DBA

To: Sheri Neely - Hawkins Fax Number: 803-744-1949

Soldon Ferguson Fax Number: 984-7372

Fax Number: _____

Re: Kay Estate Case Number: _____

Total Number of Pages Including Cover: 3

Exhibit list

This facsimile message is privileged and confidential. It is intended solely for the use of the individual named above. If you are not the intended recipient or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution or copying of this communication is prohibited. If you have received this facsimile message in error, please immediately notify the sender by telephone and return the original message to the sender by U.S. Mail.

estate P exhibits

- A - CV
- B - CVT
- C-2 - 2 letters
- C-4 - option?
- C-1 - Summary Eddie's testimony
- C-5 - letter for Cayland
- C-6 - Affidavit 330
- C-7 - " 6
- C-8 - " 4
- C-9 - Letter for Atty Fuller
- D - Invoices Collier & Lang
- C-11 - letter for Eddie 5/2/08
- C-12A - Amended Cayland
- C-12b - A/C
- C-13 - Letter 3/16/10
- C-14 - 3 @ K/E
- C-15 - Comments with letter for John
- C-16 - Out COA Deed
- C-17 - filings -
- C-18 - Pl time service 11/12 filing -
- E - Wilson CV
- F - Mike Oct 19, 09 letter
- G - Eddie letter Oct 27, 09
- H - E-mail NOV 2/4
- I - APR. 11/9/09 from Eddie
- J - Dec 14, 09 Emails
- K - Dec 15, 09 Emails
- L - Dec 16, 09 Ltr -

- M - email 3/16/10
- N - Invoice Wilson
- O - Bodiford CPA
- P - Invoice - Brian Messy
- Q - Major & Co. INV.
- R - Daniels INV.
- S - P.R. -

- Def. Exh. 1 - Letter for Eddie
- Def. Exh. 2 - Summary of Tracts
- Def. Exh. 3 - 25,806 → Collins & Lucy
- ID Def. Exh. 4 - LIFBA Chance Letter
- Def. Exh. 5 - Summary Invoice
- Def. Exh. 6 - Summary Non-Attorney
- Def. Exh. 7 - Letter for Eddie to Depts
- 8 - { Deed 10 acres
- 9 - { Plat
- 10 - { Deed
- 11 - { Plat
- 12 - Deed
- 13 - LOR for Eddie May 7 08
- 14 - This fee Aff.
- 15 - Summary

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ID

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007ES3000208

IN THE MATTER OF
THE ESTATE OF MARION M. KAY

PLAINTIFF(S)

DEFENDANT(S)

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
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:

Dated at Laurens, South Carolina, this 24th day of May, 2011.

Donald B. Hocker

PRESIDING JUDGE

This judgment was entered on the 24th day of May, 2011, and a copy mailed first class this 24th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John R. Ferguson, Esquire

Daryl G. Hawkins, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty W. Hoke

Clerk of Court

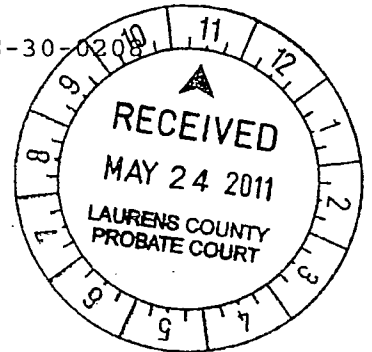
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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE PROBATE COURT

Case No. 2007-ES-30-0208

IN THE MATTER OF MARION M. KAY



FINAL ORDER

This matter came before me on February 21 and 22, 2011 to consider Personal Representative Edward D. Sullivan's Petition for Settlement of the estate and related issues. Those related issues include determining PR commissions and costs, the parties' requests for attorney fees, the consideration of an offset pursuant to S.C. Code § 62-3-903, PR expenses pursuant to S.C. Code § 62-3-715(16) and (19), requested commissions for an unknown amount of PR work preparing tax returns and closing the estate, the treatment of exhibits marked for identification and a Motion to Remove the Personal Representative. Heirs Mary M. Moses and Martha M. Brown (hereinafter the Defendants) oppose the relief sought by the PR.

The Personal Representative has requested approval of the following:

- a) \$ 93,775.00 total commissions already paid;
- b) \$ 13,447.05 additional commissions not yet paid;
- c) \$ 12,195.93 paid to Collins and Lacey for attorney's fees and costs;
- d) \$ 5,000.00 paid to Paul Major for an appraisal;
- e) \$ 1,303.65 paid to Collins and Lacey for additional attorney fees and costs;
- f) \$ 750.00 paid to Wilson Forestry for consultant work;
- g) \$ 7,714.57 billed by Collins and Lacey for attorney's fees and costs but not yet paid;
- h) \$ 4,592.23 billed by Collins and Lacey for attorney's fees and costs but not yet paid;

A handwritten signature or set of initials in the bottom left corner of the page, appearing to be written in ink.

- I) \$ 13,447.05 to Daryl Hawkins for attorney's fees and costs;
- j) \$ 1,695.00 for expert fees to Major and Co.;
- k) \$ 350.00 for expert fees to Wilson Forestry;
- l) \$ 285.00 court reporting fees to Shorb Court Reporting;
- m) \$ 875.00 court reporting fees to Garber Court Reporting.

Together these fees and costs total \$ 157,179.00; and the PR is claiming an additional unspecified amount for preparation of tax returns and closing the estate. Of this amount, only \$ 7,714.57 (5% of the total) related to litigation outside of litigation costs in connection with approval of all of these fees and expenses in the current action.

I make the following findings of fact:

1. The twin flaws in the PR's position are his failure to provide adequate proof for the hours he claims and his failure to prove a necessity for most of the hours he claims.

2. The PR unnecessarily complicated the Estate by insisting on filing a partition action. This was a fairly basic estate which could have been easily, quickly and cheaply settled by a deed of distribution. This would also have been in conformity with the Testatrix's Will.

3. The PR unnecessarily complicated the Estate by converting an eight month option to purchase the Estate's one half interest in its real estate into an indefinite right to purchase and by giving the option holder the right to buy only a portion of the property contrary to the Will.

4. There was no necessity for a sale of the real estate. The Court understands that a sale of real property generates proceeds.

5. The Court does not understand why the PR began charging the

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Estate before the Testatrix died on May 3, 2007 and before he was appointed PR on May 16, 2007.

6. The PR did an excellent job in securing the sales price for the real estate, but this does not justify the commission sought.

7. Although the PR argued the existence of novel issues regarding the real estate, I do not find any.

8. The PR failed to provide any legitimate basis for the fees he claimed and instead testified that he had no method or formula for determining the amount for the four draws he gave himself other than by pulling a figure out of the air. Although the PR in Memorandum argued that he had 468.6 hours of time as PR, the proof he provided failed to support this.

9. No explanation was offered to explain or excuse the PR's failure to provide interim accountings until the latter part of 2010 when the final accounting was in the offing, about three and a half years after the estate was opened.

10. The Supplemental Inventory reflects an Estate value, including real estate, of \$ 513,491.00; however, the addition of the personal property value of \$ 122,491.00, real estate proceeds of \$ 365,012.00 and additional income to the Estate of \$ 24,682.47 produces a total Estate value of \$ 512,185.47.

11. The PR's total draws to date equal 18.3% of the estate value. Adding the additional request of \$ 13,447.05 would boost the PR's share to 21.0% of the estate, and this percentage would go even higher if additional compensation were allowed for preparation of tax returns and closing of the estate. By contrast, the

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statutory rate of 5% would produce a commission of \$ 25,650; and a 10% commission would be \$ 51,300.

12. The claimed \$ 157,179.00 in commissions, attorney's fees and expenses would constitute 31% of the Estate's value. Although litigation can deplete an estate, that is not the situation here. Most of the amount claimed is not related to litigation resulting from the demand for a hearing on the final accounting.

13. The commissions sought by the PR are clearly excessive, and he failed to provide the Court with an alternate proposal for valuing his services.

14. I find that a PR fee of \$ 51,300, which is about ten (10%) percent of the Estate, is reasonable. The PR had previously paid himself \$ 93,775.00 without prior court approval. The balance of the commission draws previously taken (\$ 42,475.00) must be promptly refunded to the Estate. This compromise takes into account that not all of the heirs opposed the PR's final accounting and that the PR may face difficulties in obtaining the necessary funds to make the refund. The PR is not entitled to the additional \$ 13,447.05 he has claimed.

15. Although the PR has exemplary credentials and good standing in the Bar, this in and of itself does not ^{automatically} justify the relief requested. (DAN)

16. I do not find bad faith on the part of the PR.

17. I approve the previous payment of \$ 13,499.58 to Collins and Lacey and find that the Collins and Lacey is entitled to be paid an additional \$ 12,306.80. Although the Court questions the



necessity of 204.6 hours of paralegal time, they should be compensated for their work.

18. The PR is entitled to have the Estate pay \$ 5000 to Paul Major for an appraisal and \$ 750 to Wilson Forestry for consultant work.

19. Although Daryl G. Hawkins represented the PR well, his representation was primarily of the PR in his individual capacity seeking approval of the PR's commissions and expenses. I therefore do not find that the Estate should pay Mr. Hawkins or the trial expenses for his three experts, Major, Wilson and Massey.

20. There were three exhibits marked for identification (Plaintiff's L and Defendants' 4 and 14). All of these shall come into evidence and be made part of the record.

21. Defendants have sought attorney's fees for their attorney, John R. Ferguson; and I find that this is warranted. Mr. Ferguson has been in practice for more than 30 years and enjoys a high reputation. He is the author of a legal reference work. He necessarily devoted 99.3 hours to this case to date (all of which appears related to the merits of the matter) and the usual compensation rate in such situations is \$ 200 per hour. Through his efforts the Estate has benefitted substantially. Having considered all the *Glasscock* factors, I therefore find that he is entitled to be paid \$ 19,860.00 as his fee from the Estate.

I make the following conclusions of law:

1. Inasmuch as the Testatrix was a resident of Laurens County, jurisdiction and venue are properly with this court.

2. A personal representative has a duty to settle and distribute the estate in accordance with the terms of the Will and the Code as expeditiously and efficiently as is consistent with the best interests of the Estate. S.C. Code § 62-3-703.

3. A personal representative is a fiduciary and in equity and good conscience is bound to act in good faith and with due regard to the interests of the estate. *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 838 (Ct. App. 2009).


4. Equity requires that all the heirs pay for the work of Defendants' attorney, because his work preserved and protected a common fund, not just for the benefit of the Defendants, but for all the heirs. *Layman v. State*, 376 S.C. 434, 452, 658 S.E.2d 320 (2008).

5. While S.C. Code § 62-3-720 allows litigation expenses, including attorney's fees for the PR, I do not find this statute to be applicable to a situation where the representation was primarily for the benefit of the PR individually and not the Estate.

6. In light of the fact that this Estate is ready to be closed, Defendants' Motion for Removal of Personal Representative is denied. If the PR is willing to finish wrapping up the Estate (including filing the necessary tax forms), he shall be entitled to an additional \$ 2500 in commissions for this. See S.C. Code § 62-3-715(16) and (19).

7. Offset pursuant to S.C. Code § 62-3-903 is denied, as the PR did not present sufficient evidence to grant this relief.

8. In light of my other rulings, I do not reach the

Handwritten signature and initials, possibly "H G" and "ABW", in black ink.

Defendants' contention that the PR is not entitled to enhanced compensation for legal services rendered to himself. See *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 545 (2000).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

a) the PR is granted the right to retain \$ 51,300.00 in commissions;

b) the PR must refund to the Estate within thirty (30) days of this Order all other commissions he has taken. His request for further compensation is denied;

c) the previous payment of \$ 13,499.58 to Collins and Lacey is approved, and Collins and Lacey is entitled to an additional \$ 12,306.80 from the Estate;

d) the payment of \$ 5000.00 to Paul Major for an appraisal and the payment of \$ 750.00 to Wilson Forestry for consultant work by the Estate are approved;

e) the Estate shall pay John R. Ferguson the sum of \$ 19,860.00 for his attorney fee pursuant to the common fund doctrine;

f) attorney fees for Daryl Hawkins are denied, and these are the responsibility of the PR and not the Estate;

g) costs pertaining to the Petition for Settlement and the expert witness fees of Major, Wilson and Massey, must be borne by the PR and not the Estate;

h) the exhibits marked for identification are admitted into evidence;

i) the Motion for Removal of the Personal Representative is

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DAA

denied. If Mr. Sullivan is willing to finish winding up the affairs of the Estate, he shall be entitled to an additional \$ 2500 in commissions. If he is not willing to continue, then both sides shall promptly submit the name of a possible successor who is willing to serve so that the Court may select a successor; and

k) offset pursuant to S.C. Code § 62-3-903 is denied.



DONALD B. HOCKER
Associate Judge
Laurens County Probate Court

Laurens, SC

May
24, 2011

#8

COX & FERGUSON

ATTORNEYS AT LAW
107 E. Laurens St.
P.O. Box 286
LAURENS, SOUTH CAROLINA 29360-0286

W. REID COX, JR.
JOHN R. FERGUSON

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E-MAIL: jferg@backroads.net

March 28, 2011

The Hon. Donald B. Hocker
Associate Probate Judge
P.O. Box 972
Laurens, SC 29360

Re: Marion Kay Estate

Dear Judge Hocker:

I accordance with your instructions, I am enclosing a Summary of Position of Defendants Moses and Brown. I am also enclosing excerpts of some of the cases cited and a Supplementary Attorney Fee Affidavit. I ask that you accept both attorney fee affidavits into evidence, along with the letters from Lisbon Presbyterian Church, which were filed with the Court and then verified by the Blackmon affidavit.

If there is any further information you need from me, please let me know. I am, of course, serving Daryl Hawkins with a copy of all of these as always.

Sincerely,

John R. Ferguson

JRF/wp
CC: Daryl G. Hawkins, Esq. ✓
Mary Moses
Martha Brown

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. 2013-2319

APPEAL FROM LAURENS COUNTY
COURT OF COMMON PLEAS

Civil Action No. 2012-CP-30-258
The Honorable Frank R. Addy, Circuit Court Judge

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay Appellant-Respondent,

vs.

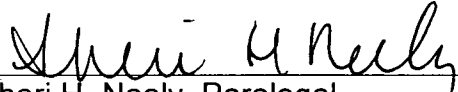
Martha Brown and Mary Moses Respondents-Appellants.

PROOF OF SERVICE

I certify that I served the Appellant-Respondent's Return to Motion to Revise Designation of Matter on Appeal via U.S. Mail upon:

John R. Ferguson, Esquire
Cox Ferguson & Wham LLC
PO Box 286
Laurens, SC 29360-0286

LAW OFFICE OF DARYL G. HAWKINS, LLC



Sheri H. Neely, Paralegal

June 12, 2014

RECEIVED

JUN 16 2014

SC Court of Appeals

TELEPHONE
(803) 733-3531

LAW OFFICE OF
DARYL G. HAWKINS, LLC
1331 Elmwood Avenue • Suite 305 (29201)
Post Office Box 11906
Columbia, South Carolina 29211

FACSIMILE
(803) 744-1949

June 12, 2014

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: *In the Matter of the Estate of Marion M. Kay*
Edward D. Sullivan, as Personal Representative of
the Estate of Marion M. Kay, Appellant-Respondent v.
Martha Brown and Mary Moses, Respondents-Appellants
Laurens Co Circuit Court Appeals File No. 2012-CP-30-258
Laurens Co Probate Court File No. 2007-ES-30-208
SC Court of Appeals Tracking No. 2013-2319

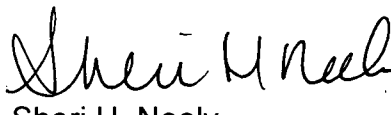
Dear Ms. Kitchings:

Enclosed for filing with your office are the original and seven (7) copies of Appellant-Respondent's Return to Motion to Revise Designation of Matter on Appeal.

I would appreciate your returning a clocked copy in the return envelope provided for your convenience.

By copy of this letter to counsel for the Respondents-Appellants, I am herewith serving a copy of each of the above upon him.

Sincerely,



Sheri H. Neely
Legal Assistant to Daryl G. Hawkins

Enclosures

cc: John R. Ferguson, Esquire

RECEIVED
JUN 16 2014
SC Court of Appeals