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THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court Of Common Pleas

Honorable J.C. Nicholson, Jr., Circuit Court Judge  
Tamara C. Curry, Probate Court Judge

Appellate Case No. 2014-002034  
Case No. 2011-CP-10-8657

LISA FISHER.....Appellant,

v.

BESSIE HUCKABEE.....Respondent.

BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE

Alice Shaw-Baker (hereinafter Alice), died testate on February 25, 2009. Prior to her death, there were hearings to appoint guardian and conservator for Alice. Lisa Fisher, Esquire is a relative to Alice and sought appointment and was appointed guardian and conservator for Alice. The conservator and Betty Fisher, mother of conservator, both live in California. Upon Alice's death, Respondent Bessie Huckabee was appointed personal representative after Alice's last will, which nominated Bessie Huckabee, was presented to the probate court by John Hughes Cooper, Esquire, local counsel for the conservator, Lisa Fisher individually and Betty Fisher. Attorney Cooper is sponsor for Lisa Fisher's pro hac vice appointment for this action and others pending in circuit court, to include a will contest.<sup>1</sup> Appellant sought by petition to void appointment of the personal representative, contest the will, appoint an intestate heir as personal representative, and contest the beneficiary designations of additional non-probate assets. Appellant removed these actions to Charleston County Court of Common Pleas by statutory right. The actions were filed in 2008 and have yet to be heard.

The conservator was discharged by the Charleston County Probate Court on May 11, 2009 after filing her Final Conservatorship Accounting. The conservator sought to maintain control over the estate assets by filing motions for extensions to turn over estate assets. Her sole basis to hold assets on each of her six motions for extension was so that they can be turned over to the proper party. Until the probate court deems otherwise, the personal representative is the proper party to receive estate assets as she is authorized to marshall assets of the estate. Respondent reviewed the conservatorship file periodically and noted that

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<sup>1</sup> The petition contesting last will has not been heard. The petition to remove personal representative has not been heard. They were filed in 2009.

the court had written to Lisa Fisher seeking an annual accounting after her discharge based on the fact that she was holding the funds. Lisa Fisher did not respond to the request in a timely matter. The Respondent corresponded with counsel for the Appellant seeking the requested accounting from Lisa Fisher and no response was had. Lisa Fisher sought additional extension when the previous extension expired and Respondent objected to the extension based on lack of accounting. The Respondent sought to appoint a special fiduciary. Prior to the hearing from which this appeal comes, Appellant and Lisa Fisher sought motion to strike Respondent's motion based on S.C. Rules of Civil Procedure notice requirement. Proper notice was given to the conservator. Appellant is not a party to whom notice was required. Prior to hearing on Motion for Appointment of Special Fiduciary, Lisa Fisher filed an amended final accounting three years after she was discharged as conservator and an accounting for the following calendar year, 2010. Lisa Fisher, who is a lawyer in California and who alleges to practice in the area of conservatorships in her home state, clearly represented in her account filings to the probate court that she continued to act in matters affecting the estate. She expended funds after she was discharged as conservator. "The court discharged her" (R. \_\_\_\_\_ Transcript Page 13, Line11), and Lisa Fisher "can no longer act as conservator."( R. \_\_\_\_\_ Transcript Page 14, Lines 2 and 3) Further, counsel for Appellant at the motion hearing indicated that "we just think this is a better way to do it" (R. \_\_\_\_\_ Transcript Page 27, Lines 8 and 9) The Appellant continues to expend estate assets without court authority and is unapologetic. The court asked whether the discharged conservator might have sought permission from the court to act in certain matters. (R. \_\_\_\_\_ Transcript Page 26, Lines 13 and 14) Lisa Fisher did not nor has she since. The lower court granted the motion appointing a special fiduciary. The lower

court found that Lisa Fisher, “did not have the duty to act in a conservator capacity.” (R. \_\_\_\_\_ Transcript Page 35, Lines 17 and 18) Appellant appealed to the circuit court and was denied. The appellant filed the appeal at bar.

### STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court's Failure to Consider Appellant's Statement of Grounds prior to Oral Argument, and Failure to reverse the Probate Court's Order amount to an abuse of discretion and a deprivation of due process?
2. Did the Probate Court Abuse its Discretion in Depriving Appellant of her right to "reasonable compensation" and reimbursement of fees by denying her Motion for Approval of Fees and Expenses under S.C. Code Ann. § § 62-5- 312(b) and well established legal precedent?
3. Did services by Appellant to her great-aunt, Alice Shaw Baker, constitute "property" interests entitling her to "just compensation" under the Takings Clause in the U.S. Const. Amend. V; S.C. Const. Art. I, § 13(a) and well established legal precedent?
4. Was the Probate Court's denial of Appellant's Request for Approval of Fees and Expenses in violation of the Equal Protection Clause of the United States Constitution in the U.S. Const. Amend. XIV; S.C. Const. Art. I, § and well established legal precedent?
5. Did the Probate Court Abuse its Discretion by issuance of an Order intending to Freeze not only the decedent, Alice Shaw-Baker's assets, but Appellant's personal Assets?
6. Were the Probate Court's Orders Freezing Accounts in violation of the Due Process Clause, Equal Protection Clause, and Takings Clause of the United States Constitution and well established legal precedent?

## ARGUMENTS

### **1. Did the Circuit Court's Failure to Consider Appellant's Statement of Grounds prior to Oral Argument, and Failure to reverse the Probate Court's Order amount to an abuse of discretion and a deprivation of due process?**

The circuit court, as appeals court in this matter, did not abuse its discretion nor did it deprive the Appellant due process.

The findings of fact of the trial judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1976) Here, the Appellant comes to the conclusion that the trier of fact did not consider the statement of grounds. There is no indication by the appellate court that it did not consider the statement of grounds. The trier of fact indicated, in the transcript, that it had not read Appellant's brief prior to hearing and further indicated that he would do so prior to ruling. In review of the evidence presented, the lower court upheld the order of the probate court. Appellant argues, with no evidence for the conclusion, that because the appeals court upheld the lower court's ruling, it abused its discretion and somehow deprived the Appellant due process. For the above reasons, the lower court's order should be upheld.

### **2. Did the Probate Court Abuse its Discretion in Depriving Appellant of her right to "reasonable compensation" and reimbursement of fees by denying her Motion for Approval of Fees and Expenses under S.C. Code Ann. § § 62-5- 312(b) and well established legal precedent?**

"Generally, an issue must be raised to and ruled upon by the circuit court to be preserved." Pye v. Estate of Fox, 369 S.C. 555, 565 (2006) (citing Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24 (2004)) Here, Appellant raises the issue of compensation for the

guardian from the conservator, by agreement, in furtherance of South Carolina Probate Code Section 62-5-312(b). This issue was never raised at the lower court and has not been preserved. For this reason, the issue at bar on appeal should be dismissed.

The plain language of South Carolina Probate Code Section 62-5-312(b) states that a guardian is entitled to receive sums for services and room and board as agreed upon between the guardian and conservator. Any agreement between the guardian and conservator would constitute a contract. Here, the Appellant has provided no evidence of a contract between the guardian and conservator. Further, the lower court has the authority to weight appropriate factors, including those contained in legal precedent, if any, which would constitute whether the services rendered were of benefit to the ward. The lower court has determined that, based on Appellant's disregard for the authority of the lower court as it pertains to holding assets in trust, the lower court has a right to protect the remaining conservatorship assets and deny Appellants request for fees. For the above reasons, the lower court's order should be upheld.

**3. Did services by Appellant to her great-aunt, Alice Shaw Baker, constitute "property" interests entitling her to "just compensation" under the Takings Clause in the U.S. Const. Amend. V; S.C. Const. Art. I, § 13(a) and well established legal precedent?**

The findings of fact of the trial judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1976) Appellant cites case law which does not support her allegation of entitlement to compensation. Appellant was not appointed to represent an indigent litigant as in Ex Parte Brown. 393 S.C. 214 (2011) Appellant was not forced to bear public burdens as in Armstrong v. United States. 364 U.S. 40 (1960) The Appellant sought appointment as guardian and conservator of Alice Shaw-Baker. The Appellant went

to great lengths to secure her appointment. Now, the Appellant seeks reimbursement of fees to which the lower court has denied. It is well-established legal precedent that attorney's fees are not recoverable unless authorized by contract or statute. Dowaliby v. Chambless 344 S.C. 558 (2001) Further, any compensation that may be reasonably established is subject to a determination by the court. S.C. Probate Code Section 62-5-414 Here, the lower court reviewed the request for fees and denied the request based on evidence that money in the conservatorship when the Appellant was discharged is no longer where it was held for safe keeping. The Appellant has spent conservatorship funds without authority. For the above reasons, the lower court's order should be upheld.

**4. Was the Probate Court's denial of Appellant's Request for Approval of Fees and Expenses in violation of the Equal Protection Clause of the United States Constitution in the U.S. Const. Amend. XIV; S.C. Const. Art. I, § and well established legal precedent?**

The findings of fact of the trial judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1976) Appellant cites case law which does not support her allegation of entitlement to compensation. Appellant was not appointed to represent an indigent litigant as in Ex Parte Brown. 393 S.C. 214 (2011) Appellant was not forced to bear public burdens as in Armstrong v. United States. 364 U.S. 40 (1960) The Appellant sought appointment as guardian and conservator of Alice Shaw-Baker. The Appellant went to great lengths to secure her appointment. Now, the Appellant seeks reimbursement of fees to which the lower court has denied. It is well-established legal precedent that attorney's fees are not recoverable unless authorized by contract or statute. Dowaliby v. Chambless 344 S.C. 558 (2001) Further, any compensation that may be reasonably established is subject to a determination by the court. S.C. Probate Code Section 62-5-414 Here, the lower court reviewed

the request for fees and denied the request based on evidence that money in the conservatorship when the Appellant was discharged is no longer where it was held for safe keeping. The Appellant has spent conservatorship funds without authority. For the above reasons, the lower court's order should be upheld.

**5. Did the Probate Court Abuse its Discretion by issuance of an Order intending to Freeze not only the decedent, Alice Shaw-Baker's assets, but Appellant's personal Assets?**

The Appellant argues that the probate court was without evidence to support her findings in freezing conservatorship and personal accounts of Appellant. At the same time, Appellant provides excerpts from the lower court's orders which indicate that "Ms. Fisher withdrew monies from the conservatorship account without having the legal fiduciary authority..." and "The Court's position remains that Lisa Fisher's fiduciary role as Guardian and Conservator was terminated by this court's Order dated May 11, 2009, and that Ms. Fisher withdrew monies from the Conservatorship account without having the legal fiduciary authority to do so."

In Grosshuesch v. Cramer, the respondent became a trustee of considerable assets belonging to a couple who trusted her. The couple transferred substantial assets to the trustee including liquid assets worth over \$3.5 million. They subsequently discovered that the trustee was improperly taking trust assets. They sought to prevent the respondent from transferring or otherwise disposing of the assets at issue. They sought a preliminary injunction preventing the respondent from exercising control over any of the subject assets and ordering an accounting for all funds. The trial court denied the request for an injunction, however, the appeals court granted the injunction freezing the respondent's accounts and any other assets. 367 S.C. 1 (2005) Here, the lower court has evidence provided by the Appellant that she has

expended funds from the conservatorship account without authority. The court is within its authority under Cramer to freeze not only the conservatorship accounts, but also personal accounts. Therefore, the Court should uphold the ruling of the lower court based on findings of fact which reasonably support the lower court's ruling and Appellant's appeal on this issue should be denied.

**6. Were the Probate Court's Orders Freezing Accounts in violation of the Due Process Clause, Equal Protection Clause, and Takings Clause of the United States Constitution and well established legal precedent?**

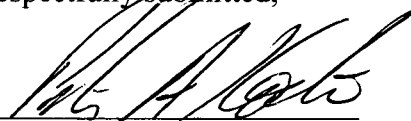
The court is within its authority under Cramer to freeze not only the conservatorship accounts, but also personal accounts. Id. Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1)

Here, the lower court determined that Ms. Fisher withdrew monies from the Conservatorship account without having the legal fiduciary authority. Therefore, the Court should uphold the ruling of the lower court based on findings of fact which reasonably support the lower court's ruling and Appellant's appeal on this issue should be denied.

CONCLUSION

For the reasons stated, this Court should uphold the judgment of the lower court and deny Appellant's appeal.

Respectfully submitted,



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