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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEALS FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

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JUL 24 2015

SC Court of Appeals

Appellate Case No. 2014-002020
Circuit Case No. 2011-CP-10-7819

BETTY FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

Appellate Case No. 2014-002028
Circuit Case No. 2011-CP-10-7821

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

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

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

**APPELLANTS' JOINT MOTION TO STRIKE
PORTIONS OF RESPONDENT'S DESIGNATION OF RECORD**

JOHN HUGHES COOPER, ESQUIRE
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843-883-9099; fax 843-883-9335

(Attorney for Appellants)

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COMES NOW Appellants Betty Fisher and Lisa Fisher respectfully move for an order striking portions of Respondent Bessie Huckabee's *Consolidated Designation of Record to Be Included in the Record of Respondent*, or such other relief as the Court may deem appropriate.

The motion is brought pursuant to Rule 204 of the South Carolina Appellate Court Rules and Rule 12(f) of the South Carolina Rules of Civil Procedure. The grounds for said motion are that Respondent is attempting to include documents that were not presented to the lower court in violation of Rules 208 and 210 of the South Carolina Rules of Civil Procedure. The underlying orders on Appellant's Renewed Motion for Fees and Respondent's Motion for Appointment of Special Fiduciary were brought pursuant to the procedures for Probate Appeals. Respondent Bessie Huckabee failed to brief or designate any records for the underlying Circuit Court Appeal. Moreover, Appellant is arguing that Respondent failed to present any competent evidence, or evidence at all, to the lower court, therefore allowing her to present matter outside of the proper pleadings, herein documents related to the Estate of Alice Shaw Baker is improper under the distinct rules of the court.

Specifically, Appellants Lisa Fisher and Betty Fisher, jointly, seek an order striking items no. 1, 2, 6, 7, 9, and 10 in Respondent's Designation of Matter. Respondent Bessie Huckabee failed to present items 1, 6, and 10 in the probate court, and items 2, 6, 7, and 9 are unintelligible and fail to adequately identify the documents so that Appellant can not determine if they were presented to the probate court. The documents are more fully set forth as follows:

Respondent's no. 1 Certificated of Appointment of Bessie Huckabee as Personal Representative for the Estate of Alice Shaw Baker.

Respondent's no. 6 Order Granting Modification of TRO June 9, 2019

Respondent's no. 10 Estate of Alice Shaw Baker, Probate Court Order 6/9/2009

Appellants further seek to strike the following documents based on their incomplete and unintelligible description.

Respondent's no. 2 Certificate of Discharge of conservator

Respondent's no. 7 Motion for Extension to deliver estate assets filed by Appellant dated 8/14/2009, 11/12/09, 2/16/2010, 5/10/2010, 8/11/2010, 11/10/2010, 2/7/2011, 5/13/2011

Respondent's no. 9 Conservatorship of Alice Shaw Baker, Probate Court Order 9/28/2011

Respondent's item no. 7 appears to be documents previously designated by Appellant, however these are separate documents and as clarified in the Rule 209, SCACR, shall be described with "specificity", and accordingly should be separately designated

ARGUMENT

I. The Items Respondent Seeks to Present were not presented to the Probate Court and Should not be Considered by this Court.

Rule 210(c) of the South Carolina Appellate Court Rules provides that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209..." Rule 210(c),SCACR. However, the record "shall not.. Include matter which was not presented to the lower court tribunal." *Id.* The procedural requirement of this Rule is straightforward and important for the proper disposition of an appeal.

As this Court has noted, “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794 (1992). Therefore, “[i]t is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Id.*

The matter before the court is an appeal from an order entered in by the probate court. The Court is therefore “bound by the record established as trial.” (*Argabright v. Argabright*, 398 S.C. 176, 179, n. 3, 727S.E. 2d 748, 750, n. 3 (2012).

See Also *State v. White*, 372 S.C. 364, 387, 642 S.E. 2d 607, 619 (2007) concluding that co-defendant’s statements was not presented to the lower court and cannot be properly in the Record on Appeal.” The Court should strike the items Respondent seeks to include in its designation because those items were not presented to the lower court and are therefor not part of the record.

With regard to items 2, 7, and 9, Appellant can not identify these items without further specificity. Respondent did not brief or designate in the Circuit Court Appeal, so presentation of these documents and there purpose is unclear. For that reason, they should not be included.

CONCLUSION

Appellants respectfully pray that the Court strike these documents from Respondent’s Designation , because they were not part of the record below. This appellate court does not

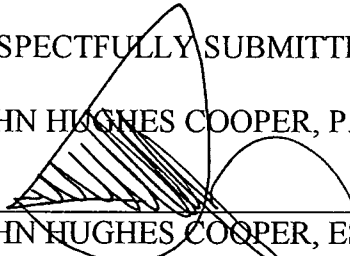
permit Respondent to make new arguments based upon evidence that was not considered below. As the court in *McConnell v. Akins*, 586 S.E.2d 688 (2003) explained: “The law forbids introduction into case, by way of argument, facts which are not in the record and are calculated to prejudice party and render trial unfair.”

It is well established by the rules of the court, Rules 208 and 212, SCACR, that this court is not to consider any alleged fact not cited in the record. Here, there is nothing in the record to allow the court to jump to this conclusion, and Appellant respectfully requests that the court ignore the documents which may lead to improper and misleading conclusions.

July 22, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

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In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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J.C. Nicholson, Jr., Circuit Court Judge

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Circuit Case No. 2011-CP-10-7819

LISA FISHERAppellant

v.

BESSIE HUCKABEERespondent

PROOF OF SERVICE

I certify that I have served **Appellant's Joint Motion to Strike** upon Respondent Bessie Huckabee by depositing a copy of it in the United States Mail, postage prepaid, on July 22, 2015, addressed to her attorney of record Peter A. Kouten, Esquire, P.O. Box 340, Johns Island, SC 29457.

July 22, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

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July 22, 2015

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South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JUL 24 2015

SC Court of Appeals

Re: BETTY FISHER, Appellant v. BESSIE HUCKABEE, Respondent
Appellate Case No. 2014-002020; and
LISA FISHER, Appellant v. BESSIE HUCKABEE, Respondent
Appellate Case No. 2014-002028; and
LISA FISHER, Appellant v. BESSIE HUCKABEE, Respondent
Appellate Case No. 2014-002034; Consolidated Record on Appeal

Dear Madam Clerk:

Enclosed for filing please find the original and six copies of Appellant's Motion to Strike, Proof of Service, and a check for the \$25.00 Motion Fee.

Also enclosed please find a copy of our filing for date stamping and return to us in the enclosed envelope.

Thank you for your assistance with this matter.

Best regards.

Very truly yours,

John Hughes Cooper

Enclosures: Original
6 copies
Proof of Service
\$25.00 check
Date stamp copies
Return envelope

cc: Peter A. Kouten, Esquire

WE COVER THE WATERFRONT

