

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

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

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SC Court of Appeals

BETTY FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

Betty Fisher, Appellant,

v.

Bessie Huckabee, Respondent.

Appellate Case No. 2014-002020 No. 2014-002028
Circuit Case No. 2011-CP-10-7821

Lisa Fisher, Appellant,

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

v.

Bessie Huckabee, Respondent.

Appellate Case No. 2014-002028

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Lisa Fisher, Appellant, Appellate Case No. 2014-002034
Circuit Case No. 2011-CP-10 8637

V.
Bessie Huckabee, Respondent. v.
Appellate Case No. 2014-002034

CONSOLIDATED RECORD ON APPEAL
VOLUME 2

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THE STATE OF SOUTH CAROLINA
In the Court of Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Probate Court

Tamara C. Curry, Associate Judge of Probate.

Case No. 2011-CP-10-7821

Lisa Fisher.....Appellants

v.

Bessie Huckabee.....Respondent

STATEMENT OF GROUNDS BY APPELLANT LISA FISHER
SUPPORTING HER APPEAL FILED ON OCTOBER 25, 2011
SEEKING TO VOID PROBATE ORDERS IN CASE 2008-GC-088
and MEMORANDUM OF POINTS AND AUTHORITIES

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Lisa Fisher files this *Statement of Grounds* supporting her Appeal filed on October 25, 2011 seeking review of the Probate Orders of the Honorable Tamara C. Curry dated September 28, 2011 appointing Special Fiduciary and Denying Lisa Fisher's Motion to Strike and Opposing the Motion Appointing Special Fiduciary and October 14, 2011 denying Ms. Fisher's Motion for Reconsideration of the September 28, 2011 order.

Appellant Lisa Fisher timely filed her *Notice of Intent to Appeal* on October 25, 2011.

STATEMENT OF GROUNDS ON APPEAL
PURSUANT TO S.C. CODE ANN. § 62-1-308 (a)

1. Did the Pending Appeal in the South Carolina Supreme Court Preclude the Probate Court from Appointing a Special Fiduciary?
2. Did the Pending Appeal in the South Carolina Supreme Court preclude the Probate Court's Order Appointing a Special Fiduciary, because it attempts to a Review another Judge's Order in Violation of Rule 60 and Decisional Law.
3. Once a Personal Representative is Appointed, Does the Probate Court have Jurisdiction to Appoint a Special Fiduciary under Probate Code § 62-7-704 (e)?
4. Was it an Abuse of Discretion for the Court to Consider Bessie Huckabee's Motion, when her Standing is on Appeal, and when it amounts to a Removal without Cause

of Appellant?

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5. Did The Probate Court's Proceedings as Protective Proceedings end at Alice Shaw Baker's Death, thereby Precluding the Court from considering the Appointment of a Special Fiduciary?
6. Did the Probate Court Abuse its Discretion in its Failure to Rule on Appellant's Objections to Respondent's Motion to Appoint Special Fiduciary and Made at the Hearing?
7. Was the Probate Court's Finding that Appellant did not have Authority to Pay Expenses on Behalf of the Estate Erroneous, and Demonstrate that there was no Emergent Need?
8. Does the Legal Principal Governing Laches Demonstrate that there is no "Emergent need" under S.C. Code Ann. § 62-7-704(e) and Preclude the Appointment of a Special Fiduciary?
9. Did the Probate Court Abuse its Discretion by Refusing to Strike Respondent's Motion to Appoint Special Fiduciary due to her failure to comply with Rule 11, SCRCPP?
10. Did The Probate Court's Abuse its Discretion in Failing to Grant Appellant's Extension of Time to Deliver Proper?
11. Did the Probate Court Err in hearing the Motion to Appoint a Special Fiduciary when the record disclosed that interested parties, including the Attorney General of South Carolina and Heir at Law Betty Fisher, had not received statutory notice of the Proceedings, under S.C. Code Ann. § 62-3-614 and the United States Constitution, Amends. V and XIX, § 1 and the South

Carolina Constitution, Art. 13?

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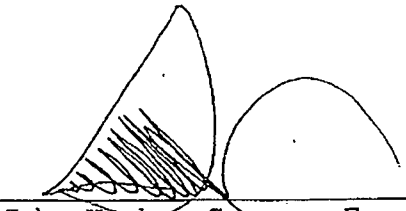
Additionally, Appellant Lisa Fisher joins in the
concurrently
filed Statement of Grounds by Appellant Betty Fisher.¹

December 8, 2011

¹ Filed concurrently with Appellant's Statement of Grounds are Appellant Betty Fisher's Statement of Grounds. These appeals are related in that they both object to the Appointment of J. Heyward Harvey, Esq. As Special Fiduciary. However, Betty Fisher, as heir at law for Alice Shaw Baker, objects to the failure to provide statutory and constitutional notice, sua sponte appointment of Mr. Harvey without an opportunity to object, and lack of standing by Bessie Huckabee to bring said motion. Appellant Lisa Fisher joins in Betty Fisher's Statement of Grounds, and requests that the court consider these issues in her appeal.

Additionally, Appellant has filed a separate *Notice of Intent to Appeal* based on the trial court's sua sponte grant of freezing orders on October 14, 2011, and failure to grant Appellant's request for fees and costs. Due to the need to file a Motion for Reconsideration, these issues are separately addressed in Case no. 2011-CP-10-8657. Appellant does not waive the issues relating to these orders to Freeze Accounts, including Appellant's personal accounts.

It is well settled that An order freezing the accounts is in the nature of an injunction. *Grosshuesch v. Cramer*, 367 S.C. 1, 5, 623 S.E.2d 833, 835 (2005) (interpreting order freezing assets as an injunction). Under the South Carolina Code, injunctions are immediately appealable. To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. *County of Richland v. Simpkins* 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). In this case, no party requested these orders freezing the assets.



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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANT'S
STATEMENT OF GROUNDS

Appellant Lisa Fisher submits these points and authorities in support of her *Statement of Grounds* filed pursuant to S.C. Code Ann. § 62-1-308 (a).

Due to the fact that the procedural requirements for a circuit court appeal are vague (i.e. no briefing schedule under S.C. Code Ann. § 62-1-308 (d)), Appellant is unable to refer to the record.

For the court's convenience, Appellant has summarized the pertinent pleadings below:

I.
INTRODUCTION

On February 25, 2009, Alice Shaw Baker died. Her great niece, Appellant Lisa Fisher, Esquire ("Appellant"), had helped her since involuntary commitment proceedings were initiated without notice to her family. Though she was already conserved, Appellant rushed to her side. After a hearing, on October 29, 2008, Appellant was appointed her guardian and conservator.

Ms. Shaw Baker had worked hard her entire life. She demonstrated a life long commitment to charitable activities, especially animal charities. Prior to her death, she revoked her

will and reaffirmed her desire that all of her property benefit these animal charities.

She was greatly loved by her family, evidenced by Appellant's repeated travels from California to help Ms. Shaw Baker maintain her independence and avoid institutionalization. Since Ms. Shaw Baker's death, Appellant has executed her duties to protect and preserve Ms. Shaw Baker's estate pending final determination of the proper appointment of the personal representative (or special administrator) by the South Carolina Supreme Court.

The Probate Court's orders of September 29, 2011 and October 14, 2011, were obtained without testimony, in violation of Appellant's Due Process rights. If allowed to stand, these orders will have the effect of dissipating Ms. Shaw Baker's estate, aiding third parties in their alleged plundering and pilfering of her Estate, and most importantly, it will ignore the "objectives" and "probable intention" of Ms. Shaw Baker to benefit animal charities, and defeat the "proper administration" of her Estate. (See Restatement (Third) of Trusts, § 34)

Appellant contends that South Carolina statutory, decisional, and Constitutional law does not support such a result, and reversal is mandated.

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II. STATEMENT OF THE CASE

A. *Brief Statement of Facts*

Appellant was appointed guardian and conservator of Alice Shaw Baker on October 25, 2009. During Appellant's tenure as Ms. Shaw Baker's conservator, she protected her assets and continues to this date.

Moments after her death, while Appellant was in the room with Ms. Shaw Baker's body, Respondent Bessie Huckabee obtained the keys to Ms. Shaw Baker's house without Appellant's knowledge. Appellant believes property was taken from the house.

Thereafter, Appellant and Ms. Shaw's Baker's niece, Betty Fisher, initiated litigation on April 27, 2009 in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009. These Proceedings included Alice Shaw Baker's family's attack of the validity of the informal appointment of Bessie Huckabee, the Will Contest, the appointment of a Special Administrator, the effect of Attorney Peter Kouten's ex-parte communication in the lower court proceedings, and bond provisions. These issues are currently on

Appeal before the Supreme Court.

Appellant obtained extensions regarding Ms. Shaw Baker's property from the Probate Court pending final resolution by the Supreme Court, and at all times maintained proper control of Ms. Shaw Baker's property.

B. Pertinent Pleadings

On or about May 20, 2011, Respondent Bessie Huckabee ("Respondent") served her *Motion to Appoint Special Fiduciary* on Appellant's counsel. No affidavits were attached to the motion. (The certificate of service stated that it was served on May 19, 2011, however the letter to counsel was dated May 20, 2011).

On or about June 1, 2011, Appellant filed her *Motion to Strike and Memorandum in Opposition to Bessie Huckabee's Motion to Appoint Special Fiduciary*. In part, the basis for the *Motion to Strike* was Respondent's failure to comply with Rule 11.

Appellant again filed an *Objection* to the Court's consideration of the *Motion* on August 12, 2011.

The court set the motion for hearing on August 17, 2011. At the hearing the Court appointed a Special Fiduciary, J. Heyward Harvey, Esquire, without any information about his record, any potential conflicts of interest, and/or his relationship to the parties.

The parties submitted their drafts of the order. Appellant objected to Respondent's orders, due in part to the inclusion of findings of fact not supported in the record and relief that was not sought in the original motion. The court signed Respondent's order on September 28, 2011. Said order was served on Appellant on September 29, 2011.

Appellant filed her *Motion for Reconsideration* of the Order pursuant to Rule 59 and Rule 60 on or about October 7, 2011. Said motion included an affidavit by Appellant. The court did not set the matter for hearing. Respondent failed to oppose said motion.

On or about October 14, 2011, the Court signed its *Order Denying the Motion for Reconsideration* (which was not served until October 24, 2011). On October 14, 2011, the court also sua sponte issued freeze orders regarding both Ms. Shaw Baker's accounts and Appellant's individual accounts. These freeze orders were served prior to certification by the court and without notice to Appellant. (These orders are also on appeal filed on or about November Case no. 2011-10-CP-8657).

C. Probate Court's Failure to Allow Testimony and Lack of Evidentiary Hearing

At the hearing, Appellant's counsel objected to Respondent's

counsel, Peter Kouten,¹¹ discussion of contested issues relating to appellant's accounting. (Reporters' Transcript, filed on December 4, 2011, "R.T." 6: 24-25 and 7: 1-12)

Over Appellant's objection, the court allowed Respondent's Counsel to discuss the accounts (without allowing him to "go into specificity" but "just generalities"). (R.T.8:4-8)

During argument, Appellant's counsel requested authority to have Appellant speak, which the court denied as follows:

"THE COURT: No, this is a motion, and this is really between the attorneys, and I just want to know what your position is, legal position, as to what her legal authority is to still disburse moneys when in fact the conservatorship has -- when she has been discharged, and the only thing the Court has been looking for are the annual accountings." (R.T., 16: 7-14)

Without taking any evidence or allowing any testimony, or even taking judicial notice of any proceedings, during further argument concerning the court's lack of jurisdiction, the court stated:

¹¹ Appellant does not waive her objections to the continuing representation of Peter Kouten as counsel to Huckabee, in light of his non-waivable representation of Alice Shaw Baker in the underlying conservatorship case where he was court appointed counsel and a visitor.

"THE COURT: I am just trying to determine procedurally where we are... I am interested in reference to what is happening with the conservatorship accounts." (R.T., 24: 22-25 and 25: 1-14)

After Respondent's counsel made numerous statements and accusations, Appellant's counsel stated:

"MR. COOPER: Your Honor, without going through all of them, there are a lot of things that Mr. Kouten said in terms of factual representations about the expenditure and so forth, we disagree with and certainly we think are beyond the scope of this hearing." (R.T., 34: 18-23)

Appellant contends that the court's failure to set her *Motions for Reconsideration* on calendar precluded her from responding to the court's concerns and violated her Due process rights. Appellant did file an affidavit in her *Motion for Reconsideration*, and Respondent did not object nor did she oppose the Motion. However, the record is silent as to whether the

court considered said affidavit. The Probate Court abused its discretion by Ordering the Appointment of a Special Fiduciary, and by denying her objections, the motion to strike, and the motion for reconsideration, and as such, the court's actions all mandate reversal.

D. Probate Orders

The probate court's order dated September 28, 2011 appointing Special Fiduciary made the following *Finding of Facts and Conclusions of Law* in pertinent part:

"This court has jurisdiction over this matter and venue is proper. Respondent Lisa Fisher was discharged as Conservator by Order of this Court on May 11, 2009. Movant Bessie Huckabee has argued that requests for account of estate assets have been made on several occasions and these accountings had been denied. Lisa Fisher continues to object to the jurisdiction of this Court with regard to the Estate of Alice Shaw Baker, in part due to the fact that any ruling by this court would intrude on decisions properly to be made in the Supreme Court and/or the Circuit Court. Respondent filed a final accounting on May 26, 2009. Respondent has sought and been granted extensions of time to turn over the estate and has held these estate assets in trust. Respondent has, on June 1, 2011, filed with the Court annual accountings for the estate assets for the years 2009 or 2010.

In reviewing the 2009 and 2010 accountings, it is determined that there are real property assets in the estate of decedent Alice Shaw-Baker and there are continuing requirements for upkeep and repair on this property. Further, review of the filed accountings

indicate that there are needs for authority to deal with third parties with regard to this estate. Bessie Huckabee, as personal representative of the estate of decedent Alice Shaw-Baker (2009-ES-10-0378) is currently respondent to pending probate actions including action to appoint a special administrator. The Court finds an emergent need for authority as to these estate assets.

Whether or not a vacancy exists as to administration of these assets held in trust, the Court has the authority to appoint a special fiduciary. (South Carolina Probate code 62-7-704(e))

THEREFORE, based on the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED that Respondent's motion to strike and motion for extension to turn over estate assets be DENIED and that a special fiduciary be appointed, and it is further

ORDERED, ADJUDGED AND DECREED that Respondent's motion to strike and motion for extension to turn over estate assets be DENIED and that a special fiduciary be appointed, and it is further

ORDERED, ADJUDGED AND DECREED that Heyward Harvey, Esquire, be appointed Special Fiduciary for the estate assets of Alice Shaw-Baker, and it is further

ORDERED, ADJUDGED AND DECREED that Heyward Harvey receive all assets held by Lisa Fisher within fifteen days of execution of this Order. That Mr. Harvey:

- a. marshal all assets, review accounts and 2009 and 2010 accountings with all the powers and discretions as authorized by law with regard to same.
- b. Seek formal approval of the final accounting and 2009 and 2010 accountings with authority to amend same, if necessary, and further, seek to close the conservatorship estate.
- c. review needs for maintenance, taxes and insurance on real property with authority as fiduciary over same.
- d. maintain authority and control over all estate assets.
- e. keep records of his time devoted to this file and seek approval of his fees through separate order of this Court, and it is further

ORDERED, ADJUDGED AND DECREED that Mr. Harvey's appointment shall terminate upon final determination of proper authority over administration of the estate of Alice Shaw-Baker."

On or about October 24, 2011, the Probate Court served its *Order Denying Motions for Reconsideration and Opposition of Probate Court Order Appointing Special Fiduciary, Motion to Strike, etc.* which states in pertinent part:

"...Petitioner asks the Court to reconsider the Court's Order, dated September 28, 2011. This motion is based on the Court's order concerning the Motion to Appoint a Special Fiduciary for Conservatorship Assets filed by Bessie Huckabee dated May 20, 2011 by and through her attorney, Peter A. Kouten, Esq. in response to Lisa Fischer [sic] 's Motion for Extension filed May 13, 2011, and her Motion to Strike file [sic] June 1, 2011 by and through her attorney, John Hughes Cooper, Esq. This Court's order denied the Respondents Motion to Strike and Motion for Extension to turn over assets and further ordered that a special fiduciary be appointed. The court further ordered that J. Heyward Harvey, Esq. be appointed Special Fiduciary for the estate assets of Alice Shaw Baker and that Lisa Fischer [sic] within fifteen days turn over these assets to Heyward Harvey, Esq.

At this time, having reviewed the Motions and the record, the Court hereby denies Respondents Motions. The probate court has

jurisdiction of proceedings initiated by interested parties concerning the internal affairs over protective proceedings and guardianship proceedings (South Carolina Probate Code 62-5-102) This Court finds that Lisa Fischer's [sic] fiduciary role as Guardian and Conservator was terminated by this Court's Order dated May 11, 2009. Since Ms. Fischer's [sic] discharge she has held estate assets; has requested and been granted several extensions to perform the same, due to the ongoing litigation in the estate matter. The Court became aware at the August 17, 2011 hearing that Lisa Fischer [sic] has continued to expend funds since Alice Shaw-Baker's death from the Conservator accounts of Alice Shaw Baker.

The Court finds that Lisa Fischer [sic] has been terminated as Conservator and no longer has the authority to withdraw or pay expenses out of the estate which is being withdrawn without authorization from the Probate Court. The decedent's estate is seized with real property. On the court's own motion, to preserve the estate of Alice Shaw-Baker, this Court is freezing all money and assets in the name of Alice Shaw-Baker.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED THAT:

1. The Motion for Reconsideration of Probate Order Dated September 28, 2011 Appointing A Special Fiduciary, the Motion to Strike and Opposition to the Motion to Appoint A Special Fiduciary, the Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator and the Motion to Set Aside Void Probate Court Order dated September 28, 2011 Appointing A Special Fiduciary is hereby Denied; it is further ordered

2. That Alice Shaw-Baker has funds currently in a number of banking institutions under the name of Alice Shaw-Baker Conservatorship and Lisa Fischer [sic] Conservatorship or individually. It is ordered that the assets in any and all accounts in the name of Alice Shaw Baker Conservatorship, or individually being held with any banking institution shall be frozen until J.. Heyward Harvey, Jr., Esq. as Special Fiduciary takes control of said accounts."

E. Timely Appeal by Appellant

On October 25, 2011, Appellant filed her *Notice of Intention to file Appeal* pursuant to S.C. Code Ann. 62-1-308(a). The time for filing said *Notice of Intention to file Appeal* is 10 days after written entry of notice, here October 24, 2011 on the *Motion for Reconsideration*.

In light of the fact that Appellant filed her *Motion for Reconsideration*, said time was extended pursuant to SCRCP 59(f) and SCACR 203(b)(1) by Appellant's *Motion for Reconsideration*. (See also *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."

III.

ARGUMENT

A. Standard of Review

It is well settled that the standard of review for Appeals from the probate court are governed by the provisions of the Probate Code. (*Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993).) The Probate Code provides that a final order or decree of the probate court may be appealed to the circuit court. (S.C. Code Ann. § 62-1-308 (2009).)

Moreover, an issue regarding statutory interpretation is a question of law. (*Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274-75, 617 S.E.2d 135, 137 (Ct. App. 2005).

If the proceeding in the probate court is in the nature of an action at law, neither the circuit court nor the appellate court may "disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." (*Neely v. Thomasson*, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005).)

As will be set forth herein, the Probate Court's refusal to allow Appellant to testify supports her position that this court

must reverse the findings of fact, because "there is no evidence to support them." (Id.)

1. The Pending Appeal in the South Carolina Supreme Court Precluded the Probate Court from Appointing a Special Fiduciary.

Appellant contends that the Probate Court had no jurisdiction to hear this matter, because when a matter is on appeal the lower court loses jurisdiction pursuant to Rule 203, SCACR:

"Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (Rule 205, SCACR, emphasis added.)

Further, pursuant to S.C. Code Ann. § 62-1-308 (c):

" When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is

had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken." (Emphasis added)

There is currently on appeal the issue of the proper appointment of the personal representative and the appointment of the special administrator, thus the Probate Court had no jurisdiction to interfere with the Supreme Court's jurisdiction.

2. Appellant's Appeal in the Supreme Court precluded the Probate Court's Order Appointing a Special Fiduciary, because it attempts to a Review another Judge's Order in Violation of Rule 60 and Decisional Law.

When the Probate Court entertained Huckabee's motion, it was interfering with the appellate jurisdiction, and ultimately the order of another judge.

Despite Respondent's desire to interfere with Appellant's proper protection of Ms. Shaw Baker's estate assets by the filing of her motion, it was error for the Probate Court to entertain the motion because it essentially counters the actions in the pending Appeal.

It is well settled law that a court can not interfere with another court's order which is subject to the pending litigation.

{See Rule 60, SCACR; See also *Dukes & Dukes v. Hygrade Food Products*, 236 S.C. 69 (1960).)

Therefore, any and all orders issued in relationship to the Motion for Special Fiduciary must be reversed.

3. Once a Personal Representative is Appointed, the Probate Court does not have Jurisdiction to Appoint a Special Fiduciary under Probate Code § 62-7-704 (e)

Here, Appellant contends that S.C. Code Ann. § 62-7-704(e) upon which Respondent relies is very specific:

" Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust. The procedure for such appointment and the notice requirement shall be the same as set forth for special administrators under South Carolina Code Section 62-3-614." (Emphasis added).

While on the surface it appears that this Code provides the Probate Court unfettered discretion to appoint a Special Fiduciary, however as noted above the procedure for appointment is governed by the code for appointment of Special administrator, § 62-3-614, which provides as follows:

"A special administrator may be appointed:

(1) informally by the court on the application of an interested person when necessary:

(a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609; or

(b) for a creditor of the decedent's estate to institute any proceeding under Section 62-3-803
(c);

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice." (Emphasis added)

These codes make it clear that appointment of a Special Fiduciary is only appropriate in cases where there has been no appointment, or there is an adjudication that a Personal Representative can not act. These very issues are on appeal.

So statutory interpretation of the conflict between § 62-7-704(e) and § 62-3-614 mandates reversal. The cardinal rule of statutory construction explains that:

"[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Spectre, LLC v. S.C. Dept. of Health and Env'tl. Control*, __ S.C. __, 688 S.E.2d 844, 853 (2010)." (Emphasis added)

The specific language in § 62-3-614 overlaps the general terms regarding the appointment of a representative of the estate. It is "well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result." (*Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).) Viewing the statutes together, it is clear that appointment of a Special Fiduciary is not proper, while the issues on Appeal before the Supreme Court are pending. No orders may be made which will undermine the objectives concerning the rightful appointment of a personal representative.

4. Respondent Huckabee' Standing is also on Appeal, so it was an Abuse of Discretion for the Court to Grant her Motion which Amounts to a Removal without Cause of Appellant.

The statutory definition for an "interested party" in a Probate matter is set forth in S.C. Code Ann. § 62-1-201(20).

"Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." (Emphasis added)

Bessie Huckabee had no standing while Ms. Shaw Baker was alive to involve herself in the conservatorship (S.C. Code § 62-5-309), and Appellant contends that the statutory language and facts of this case preclude her from intervening and attempting to gain favor in the Probate Court by their forum shopping.

The language governing Trusts also makes clear that she did not have standing to bring the motion as a "representative" because it amounted to a removal. (See S.C. Code Ann. § 62-7-706 ["a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative."]) Here, the court did not "remove" Appellant on its own initiative, and Appellant asserts that her reputation and character is attacked by the removal without cause.

Due to their lack of standing, both Respondent and Kay

Passailague are merely interlopers attempting to sully Appellant's name and interfere with the proper administration of the estate. These individuals proved that they were not even friends to Alice Shaw Baker in the end, and as such allowing them to interfere with the administration is contrary to Alice Shaw Baker's stated wishes.

The language of S.C. Code Ann. § 62-1-201(20) makes it clear that the role of an interested party may "vary from time to time" in litigation. Therefore, while it is on Appeal and the subject of the Circuit Case Removal, the Probate Court's jurisdiction is precluded and constitutes an improper interference with the Circuit Court's jurisdiction. (See S.C. Code Ann. § 62-1-302)

To allow Respondent to come in, seek the appointment of a third party, whose very appointment will squander away funds rightfully held for the protection of the animals, is inherently wrong.

Ms. Shaw Baker's life was about animals and their protection. Respondent Huckabee must not be allowed to undermine the Supreme Court's jurisdiction, by attempting to garner favor before the Probate court through innuendo and misrepresentation about Appellant's actions and role in Ms. Shaw Baker's life.

5. The Probate Court's Proceedings were Pursuant to Protective Proceedings, however this Court's Jurisdiction Ended at Alice Shaw Baker's Death.

Appellant is duty bound to maintain the property pending final "receipt" by the proper Personal Representative (S.C. Code Ann. § 62-5-425(d)).

Here, Huckabee can not use innuendo to gain control, or interfere with the estate, while they are a party to a known appeal dealing with the same subject. Said action implicates Due Process considerations, and Equal protections under the United States and South Carolina Constitutions.

Although the Probate Code retains "exclusive jurisdiction" of certain matters not removed (S.C. Code Ann. § 62-1-302 (e)), the Probate Court's attempt to characterize this as litigation relating to its jurisdiction of protective proceedings under § 62-5-102 is misplaced. At Ms. Shaw Baker's death, the Probate court lost jurisdiction to deal with the Estate property. (See S.C. Code Ann. § 62-5-306 (1987) (terminating the authority of a guardian upon the death of the ward).

Since there is a dispute as to who is legally "entitled" to delivery of Ms. Shaw Baker's property and/or to appointment or to receive "delivery". The Probate Court in its capacity in the

protective proceedings can not interfere with the Probate Court's jurisdiction of Estate administration under S.C. Code Ann. § 62-3-105.

Respondent Huckabee attempted to forum shop by filing the Motion in Probate. She knew that the matter had been removed and was subject to "estate administration." No longer was it an affair for the Probate Court in its protective proceedings capacity. Therefore, it was improper for the Probate Court to interfere with the litigation pending the Appeal in the Supreme Court.

6. The Probate Court Erred in its Failure to Rule on Appellant's Objections to Respondent's Motion to Appoint Special Fiduciary and Made at the Hearing.

The transcript and the record discloses that Appellant objected to 1) the procedure, 2) the accusations and purported averments by Respondent's counsel, and 3) the conclusions of the court (both at the hearing and in its orders), and the Probate Court's rulings are not supported by the record.

It is well settled that an attorney does not have to use the word "objection" to Contest the court's consideration of evidence at a contested hearing. Recently, the South Carolina Supreme Court explained in *State v. Najjar De'breece Byers*, No. 26976

(S.C. 05/23/2011) that a defense counsel's purpose would not have been made clearer had he used the word "objection" before making a motion to strike.

The court also said that for an admissibility error to be preserved, the objection must include a specific ground "if the specific ground was not apparent from the context." Rule 103(a) (1), SCRE. When supported by context, "[a] party need not use the exact name of a legal doctrine . . . , but it must be clear the argument has been presented on that ground." (*State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010).)

In this case, under the Rules of Evidence, Appellant clearly preserved the issue of admissibility by moving to strike the pleadings of Respondent, and by objecting to the statements made at the hearing, and for the improper findings of fact in the orders. (See Motion to Strike, transcript, and Objections to Orders filed herein.)

This court is authorized to judicially notice the files and proceedings in this case. It is well settled that a court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records. (See *Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011); *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325

(Ct.App.1984); see also *In re Estate of Pallister*, 363 S.C. 437, ___, 256 (2005) (orders of the probate court reversible if there is no evidence to support them.))

The motion filed by Respondent contained no affidavits, was filled with speculation and innuendo, and as evidenced by the counter affidavit filed by Appellant (in her Motion for Reconsideration), was false. The allegations were an improper attempt to impugn Appellant Lisa Fisher's character. (See *Toyota v. Florence Inv. V. Lynch* (1994) 314 S.C. 257 [vicious, inflammatory argument resulting in clear prejudice support new trials]; see also South Carolina Rules of Professional Conduct, Rules 3.3, 4.1, 8.4(a), 8.4(d), and 8.4(e) provide that an attorney cannot provide a false statement of material fact to the court.)

Therefore, reversal is mandated.

7. The Probate Court's Finding that Appellant did not have Authority to Pay Expenses on Behalf of the Estate was Erroneous, and Demonstrates that there was no Emergent Need.

Respondent relied on Trust law for support that the Probate court had authority to appoint a Special Fiduciary under S. C. Code Ann. § 62-7-704, claiming Appellant no longer had authority to protect the Estate.

However, under S.C. Code Ann. § 62-5-417, "...a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62-7-933."

Therefore, under Trust law, there are numerous statutory obligations and safeguards that mandated Appellant's proper protection of the Estate and demonstrated that she has behaved in an appropriate manner, under relevant trust law.

The law is explicit as governed by South Carolina Probate Code § 62-7-303(a)(4), "a trustee may represent and bind the beneficiaries of the trust with respect to questions or disputes involving the trust."

Under § 62-7-404 provides "A trust may be created only to the extent its purposes are lawful and possible to achieve." Here, both the extension and the statutory mandate that Appellant delivers property to the personal representative demonstrates it is for a "lawful purpose."

A trust and its terms must be for the "benefit of its beneficiaries." Alice Shaw Baker's intentions made known, and evidenced in writing, did not require a formal trust document. (See § 62-7-407 ["...a trust need not be evidence by a trust instrument."]) Alice Shaw Baker's estate belongs to Animal Charities.

Moreover, § 62-7-418(a) provides in pertinent part: "When any person shall be seized of any lands...the person or body politic that shall have such use, confidence, or trust...shall be deemed and adjudged in lawful seizing...to all intents, constructions, and purposes in law of and in such like estates as they shall have in use, trust, or confidence of or in them."

(Emphasis added).

It is clear that South Carolina protects estates under both formal and informal trusts. Appellant is protecting the assets pending proper transfer. Huckabee relies on trust law for this improper order, however § 62-7-701 (A)(2) provides that: "...if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or Performing duties as trustee, or otherwise indicating acceptance of the trusteeship." (Emphasis added)

So even under Huckabee's argument, Respondent had an obligation to protect the assets. Huckabee's counsel cites that this court has authority to appoint a special fiduciary under § 62-7-704(e). However, the purpose of the code is to provide the means for appointment of a special fiduciary when there is a "Vacancy in trusteeship." There is no vacancy in the

trusteeship. Subsection (e)'s provision for appointment "whether or not a vacancy exists" still is not unlimited due to the limiting language controlling Special Administration, if it were, than any person without standing could act as an interloper and interfere. Here, assuming that the Will Contest is successful, Huckabee has no standing to interfere with this case.

There are no grounds for the motion except conjecture and speculation, and allowing such argument is adverse to the interests of justice. Moreover, this court's appointment of a stranger to the Estate compromises the purpose of the "trust" to benefit animal charities and allows dissipation of the trust at the whims of a stranger to the estate, and the court's conclusion that Appellant did not have authority to continue to act on behalf of the Estate is contrary to Trust law, and common sense. Had Appellant not acted, the Estate would have been subject to waste.

Finally, a trustee has a duty under S.C. Code Ann. § 62-7-707 to:

" Unless a cotrustee remains in
office or the court otherwise orders,
and until the trust property is
delivered to a successor trustee or

other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property." (Emphasis added).

This emphasizes the statutory scheme which provides for a continuing duty of a fiduciary/conservator to hold property until it can be delivered to the proper person. Here, Appellant was never removed, there was never any action filed regarding the accounting, and she has at all times acted appropriately, and in furtherance of the statutory scheme to protect the property of Ms. Shaw Baker.

Finally, under a "trust", Appellant would be required to "...administer the trust solely in the interests of the beneficiaries." (§ 62-7-802) The beneficiaries of the trust are animal charities, and pending final determination of the litigation on their behalf, Appellant is required to take all action to protect the trust properties. Therefore, Appellants acts are in the best interests of the estate, and the court's orders were without authority.

8. The Legal Principal Governing Laches
Demonstrates that there is no "Emergent need" under S.C.
Code Ann. § 62-7-704(e).

Here Bessie Huckabee knew that Appellant was safeguarding the property for Ms. Shaw Baker. She failed to object to all of the previously requested extensions filed by Appellant. She took no action whatsoever. Only Appellant's action has protected the Estate of Ms. Shaw Baker. Had appellant not taken this action, the Estate would have sustained serious injuries.

Under *Hallums v. Hallums*, 296 S.C. 195, 198-199, 371 S.E. 2d 525, 527 (1988), the doctrine of Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have done." (Emphasis added).

Respondent Huckabee is barred from arguing for the appointment of a Special Fiduciary, nearly three years after Alice Shaw Baker's death.

9. The Probate Court Abused its Discretion by Refusing to Strike Respondent's Motion to Appoint Special Fiduciary due to her failure to comply with Rule 11, SCRCF

It is clear that Rule 11 requires "[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing

the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter . . . unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held."

The penalty for noncompliance is to strike the motion unless the attorney promptly amends the document to comply with the rule.

In *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (S.C. 06/23/1997) , the court held that when the trial judge makes a finding on the record that it would be pointless to consult about the filing of the motion, that this is adequate to cure the deficiency under Rule 11.

Here, the Probate Court made no finding on the record, and just denied the motion in its entirety. (R.T. p. 35, ll. 6) No procedural safeguards were honored in this case on behalf of Appellant. No testimony was allowed. The court made findings of fact where the record is devoided of evidence and testimony in violation of Appellant's due process rights. (See *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856 (1993) [bias demonstrated when factual findings not supported by the records]).

10. The Probate Court's Erred in Failing to Grant Appellant's Extension of Time to Deliver Proper.

Appellant sought lawful court orders to hold property pending final determination by the Supreme Court. The Probate Court's conclusion that "Ms. Fisher did not have the duty to act in a conservator capacity once she had been discharged" (R.T, p. 35,11. 17-18) wasn't reasonable.

Just as a trustee must "protect the trust property" until delivery of the property (S.C. Code § 62-7-707), Appellant would have subjected herself to sanctions and/or possible litigation had she not protected the property.

The extensions granted for 2 ½ years gave Appellant the right, and duty, to act as a fiduciary until the Will Contest was heard.

11. The Probate Court Erred in hearing the Motion to Appoint a Special Fiduciary when the record disclosed that interested parties, including the Attorney General of South Carolina and Heir at law Betty Fisher, had not received statutory notice of the Proceedings, under S.C. Code Ann. § 62-3-614 and the United States Constitution, Amends. V and VIX, § 1 and the South Carolina Constitution, Art. 13.

A void judgment is one that from its inception is a complete

nullity and without legal effect. (*Thomas v. Howard Co. & T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).)

The requirements of due process include notice and an opportunity to be heard. (*S.C. Dep't of Soc. Serv. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).)

It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected. (*Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992).)

In proceedings in the probate court where notice is required, an order is binding only as to persons given notice of the proceedings. (See S.C. Code Ann. § 62-3-106).

Interested Person, Betty Fisher, the niece of Alice Shaw Baker and litigant in the Will Contest, etc. action did not receive individual notice. The Attorney General, on behalf of animal charities, did not receive notice. This failure and refusal to give notice to persons entitled to notice deprived them from objecting to the appointment of a Special Fiduciary. It also deprived them from inquiry into the cost, conflict of interest, and role of a Special Fiduciary. This court's unilateral choice of an "unknown" fiduciary, without opportunity

to review his record and/or object is improper and mandates reversal in this case.

IV. CONCLUSION

Aside from the familial relationship to Ms. Shaw Baker, as former conservator, Appellant understands that in "equity and good conscience" she is bound to act in good faith and with due regard to the interests" of Ms. Shaw Baker (See *O'Shea v. Lesser*, 308 S.C. 10, 15) . By appealing the Probate Court's orders, Appellant is continuing to observe the trust reposed in her by Ms. Shaw Baker--to protect her estate, prevent the depletion of the principle and ensure that animal charities benefit.

This duty coupled with the statutory duty under S.C. Code Ann. § 62-5-425 to deliver the estate "to a duly appointed personal representative or other persons entitled thereto" mandate reversal.

The main issue of who was the "duly appointed personal representative" is currently on appeal before the Supreme Court thereby precluding the Probate Court's interference in this

matter.

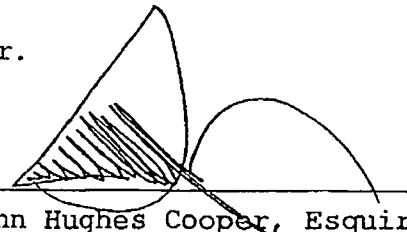
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Appellant respectfully requests that this Honorable Court
reverse the Orders in this matter.

December 8, 2011



John Hughes Cooper, Esquire
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(843) 883-9099
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2011 we served a copy
of the **STATEMENT OF GROUNDS BY APPELLANT LISA FISHER SUPPORTING**
HER APPEAL FILED ON OCTOBER 25, 2011 SEEKING TO VOID PROBATE
ORDERS IN CASE 2008-GC-088 and MEMORANDUM OF POINTS AND

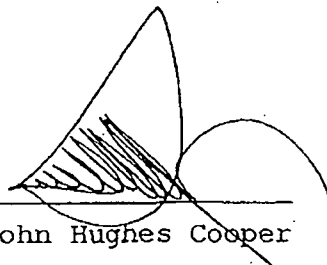
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THE STATE OF SOUTH CAROLINA
In the Court of Court of Common Pleas

TDD
PROBATE COURT
2 JAN -5 AM 11:11

APPEAL FROM CHARLESTON COUNTY
Probate Court

Tamara C. Curry, Associate Judge of Probate

Case No. 2011-CP-10-8657

Lisa Fisher.....Appellants

v.

Bessie Huckabee.....Respondent

STATEMENT OF GROUNDS BY APPELLANT LISA FISHER
SUPPORTING HER APPEAL FILED ON NOVEMBER 21, 2011
SEEKING TO REVERSE PROBATE ORDERS IN CASE 2008-GC-10-088
and MEMORANDUM OF POINTS AND AUTHORITIES

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Lisa Fisher files this *Statement of Grounds* supporting her Appeal filed on November 21, 2011 seeking review of the Probate Orders of November 9, 2011 by the Honorable Tamara C. Curry entitled:

- 1) "Denial of Motion to Alter or Amend the Orders Freezing Assets Dated October 14, 2011," including but not limited to the sua sponte orders of the court and the orders that gave J. Heyward Harvey control of the assets in the name of Alice Shaw-Baker¹ Conservator and Lisa Fischer [sic] Conservatorship.

And

- 2) "Denial of Motion to Alter or Amend Denial of Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator."

Appellant Lisa Fisher timely filed her *Notice of Intent to Appeal* on November 21, 2011. Her counsel received notice of entry of these orders on November 21, 2011.

¹ Alice Shaw Baker died on February 25, 2009. There is currently pending a Will contest initiated by Betty Fisher and Appellant regarding her intentions concerning her estate, and her desire that said monies benefit Animal Charities. The matter is on Appeal before the South Carolina Supreme Court. (Cir. Ct. Case no. 2009-CP-3010).

STATEMENT OF GROUNDS ON APPEAL
PURSUANT TO S.C. CODE ANN. § 62-1-308 (a)

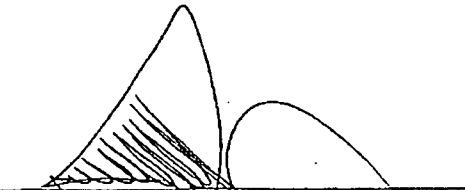
1. Did the Probate Court Abuse its Discretion in Depriving Appellant of her right to "reasonable compensation" and reimbursement of fees by denying her Motion for Approval of Fees and Expenses under S.C. Code Ann. §§ 62-5-312(b) and 62-5-312 and well established legal precedent?
2. Did services by Appellant 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?
3. 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?
4. 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?

5. 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?

Additionally, this Appeal is Related to the Appeals filed by Appellant Lisa Fisher (Case no. 2011-CP-10-7821) and Appellant Betty Fisher (Case no. 2011-CP-10-7819) on October 25, 2011, Statement of Grounds on both cases filed on December 9, 2011. Appellant joins and restates these grounds as support for her appeal herein.

January 5, 2012



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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANT'S
STATEMENT OF GROUNDS**

Appellant Lisa Fisher ("Appellant") submits these points and authorities in support of her *Statement of Grounds* filed pursuant to S.C. Code Ann. § 62-1-308 (a).

Due to the fact that the procedural requirements for a circuit court appeal are vague (i.e. no briefing schedule under S.C. Code Ann. § 62-1-308 (d)), Appellant is unable to refer to the record.

I.

**THIS BRIEF SUMMARY DEMONSTRATES "NOVEL" ISSUES OF LAW WHICH DO
NOT WARRANT DEFERENCE TO THE PROBATE COURT'S ORDERS:**

- A. RELATING TO THE PAYMENT OF COMPENSATION FOR SERVICES RENDERED TO A "PROTECTED PERSON", and**
- B. RELATING TO THE ORDERS FREEZING ASSETS WITHOUT NOTICE, HEARING, OPPORTUNITY TO BE HEARD, AND/OR JURISDICTION**

Appellant briefly summarizes the important legal issues raised by the Probate Court's orders denying Appellant her fees and freezing monies held by Appellant and on behalf of Ms. Shaw Baker's estate.

Recently, the court in Ex Parte Brown, 393 S.C. 214, 711 S.E.2d 899 (2011) held that "...the Fifth Amendment Takings Clause is implicated when an attorney is appointed to represent an indigent litigant. In such circumstances, the attorney's services constitute property entitling the attorney to just compensation." The court limited its holding to cases involving

"...an attorney's constitutional entitlement to compensation in appointed cases." However, in its analysis of the issue, the South Carolina Supreme Court reviewed precedent which demonstrates application in areas not limited to court appointed attorneys.

The United Supreme Court found in, Armstrong v. United States 364 U.S. 40, 49 (1960), that the Takings Clause was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

The inclusion of this "public service" rationale, coupled with the public policy of "protection of persons under disability and their property" set forth in S.C. Ann. Code § 62-5-101 et seq., supports an expansive view of the decision in *Brown* which on the professionalism and public service duties of an attorney. Therefore, if these "duties" implicate the venerable principle enunciated in the United States Constitution, Fifth Amendment, Takings Clause, Appellant contends the "duties" imposed on a Guardian and conservator, and the services thereafter provided, also implicate "property interests" under the Takings Clause.

Here, the court appointed Guardian and Conservator of Alice Shaw Baker's great niece, Appellant Lisa Fisher,² spent in excess

² Appellant Lisa Fisher is a California Attorney in Good Standing who traveled to South Carolina repeatedly to assist Ms. Shaw Baker and to ensure compliance with the probate courts

of 450 hours to help Ms. Shaw Baker, spent in excess of \$14,000.00 to travel and assist Ms. Shaw Baker, and placed her own life and law practice on hold to help Ms. Shaw Baker maintain her independence and avoid institutionalization.

The Probate Court's orders not only ignore this significant sacrifice, they go a step farther by making sua sponte orders which were intended to freeze not only Ms. Shaw Baker's monies but Appellant's.³ These "Freeze" orders were also executed without any testimony or affidavits presented by Respondent Bessie Huckabee⁴ without any witnesses, and most significantly, without any evidence to support the findings of the probate court. (See *Neely v. Thomasson*, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005) [probate court's findings of facts may not be disturbed unless a review of the record discloses there is no

orders.

³ These orders of November 9, 2011 also retell the earlier order that J. Heyward Harvey control assets in the name of Appellant and the conservatorship estate. Appellant contends that these orders and issues have been properly raised in the Appeals filed by Appellant and Betty Fisher. To avoid duplication, Appellant is not repeating the arguments relating to the Appointment and initial freeze orders, but she does not waive the underlying orders that precipitated these "freeze" orders.

⁴ Hereinafter referred as "Respondent" or "Bessie Huckabee". Appellant does not waive her contention that Respondent does not have standing. She is not a beneficiary of the estate, and there is a pending action for her removal as informally appointed administrator. (See S.C. Code Ann. § 62-1-201(20) ["interested party" definition]; S.C. Code § 62-5-309; S.C. Code Ann. § 62-7-706 [beneficiary may seek removal].)

evidence to support them].)

As such, the record shows the Orders violate the principles set forth in Rule 65 and under Constitutional Principles enunciated in the Due Process and Equal Protection clauses.

Appellant respectfully contends that these principles mandate reversal of both Orders.

II.

STATEMENT OF FACTS

On February 25, 2009, Alice Shaw Baker died. Her great niece, Appellant, had helped her since involuntary commitment proceedings were initiated without notice to her family. When it was discovered they conserved her, Appellant rushed to her side. After a hearing, on October 25, 2008, Appellant was appointed her guardian and conservator.

Ms. Shaw Baker had worked hard her entire life. She demonstrated a life long commitment to charitable activities, especially animal charities. Prior to her death, she revoked her will and reaffirmed her desire that all of her property benefit these animal charities.

She was greatly loved by her family, evidenced by Appellant's repeated travels from California to help Ms. Shaw Baker maintain her independence and avoid institutionalization. Since Ms. Shaw Baker's death, Appellant has executed her duties

to protect and preserve Ms. Shaw Baker's estate pending final determination of the proper appointment of the personal representative (or special administrator) by the South Carolina Supreme Court.

On July 17, 2009, Appellant filed a Motion for Approval of Fees and Expenses as Guardian and Conservator. No objection was filed. The Probate Court never ruled on the motion.

Despite the pending Appeal before the Supreme Court, on August 17, 2011, the Probate Court heard Respondent's Motion for Appointment of Special Fiduciary. Respondent presented no evidence, testimony, or request for judicial notice. The Probate Court refused to allow Appellant to testify. Thereafter, the court appointed J. Heyward Harvey, Esquire as Special Fiduciary without notice to all parties. This matter is currently on appeal. (See case nos. 2011-CP-10-7819 and 2011-CP-10-7821)

On October 7, 2011, Appellant filed a "Renewed Motion for Approval of Fees and Expenses as Guardian and Conservator" ("Renewed Motion").

Attached to her Renewed Motion, Appellant re-submitted an itemization of 465.85 hours she spent assisting Ms. Alice Shaw-Baker prior to and during Appellant's formal appointment as Guardian and Conservator. She also itemized expenses she incurred. Again, no objections were filed by any party. Nevertheless and again, the court did not grant a hearing on the matter.

On October 14, 2011, this Court issued the formal Order denying Appellant's Renewed Motion, and issuing sua sponte orders freezing Appellant's Bank accounts and the denying certain of Ms. Fisher's other Motions.

On October 20, 2011, Appellant filed two motions seeking to alter or amend the Orders pursuant to Rule 59. These motions were decided without a hearing.

On November 9, 2011, the Probate Court signed two separate orders denying Appellant's rule 59 motions. Appellant's counsel received written notice of the orders on November 21, 2011.

On November 21, 2011, Appellant timely filed her "Notice of Intent to Appeal."⁵

⁵ The time for filing said *Notice of Intention to file Appeal* is 10 days after written entry of notice, here November 21, 2011, on the Rule 59 motion.

Therefore, said time was extended pursuant to SCRCP 59(f) and SCACR 203(b)(1) by Appellant's Motion for Reconsideration. (See also Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion.")

III.

PROBATE ORDERS

1. *Orders Denying Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator*

The order of October 14, 2011 was a cumulative order regarding all of the Motions, i.e. "Motions for Reconsideration and Opposition of Probate Court Order Appointing Special Fiduciary, Motion to Strike, and Renewed Motion for Approval of Expenses of Guardian and Conservator."

In said order, the Probate Court made no findings regarding the Motion, and denied it in its entirety.

2. *Orders after Rule 59 Motion on Fees Petition*

The Probate Court's order dated November 9, 2011, "Denial of Motion to Alter or Amend Denial of Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator" made the following Finding of Facts and Conclusions of Law in pertinent part:

"This matter comes before the Court on a motion to Alter or Amend Denial of Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator dated October 20, 2011 by Lisa Fischer [sic], by and through her attorney, John Hughes Cooper, Esq. Lisa Fischer [sic] moves this Court to Alter or Amend its October 14, 2011 denial of her Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator.

At this time, having reviewed the Motion and the record, the Court hereby denies Lisa Fischer's [sic] Motion to Alter or Amend Denial of Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator

dated October 20, 2011. 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. Fischer withdrew monies from the Conservatorship account without having the legal fiduciary authority to do so. There is ongoing litigation in the Estate of Alice Shaw-Baker and the court has appointed J. Heyward Harvey, Esq. As Special Fiduciary during the pendency of the litigation to take control of all accounts in the name of Alice Shaw-Baker, and until Attorney Harvey takes control of the said accounts, no further transactions are authorized. THEREFORE, IT IS ORDERED ADJUDGED AND DECREED THAT: The Motion to Alter or Amend Denial of Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator dated October 20, 2011 is hereby denied." (Emphasis added)

3. Orders after Rule 59 Motion re: Orders Freezing Assets

The Probate Court order dated November 9, 2011, entitled "Denial of Motion to Alter or Amend the Orders Freezing Assets Dated October 14, 2011:

"..At this time, having reviewed the Motion and the record, the Court hereby denies Lisa Fischer's [sic] Motion to alter or Amend Orders Freezing Assets dated October 20, 2011. 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. Fischer [sic] withdrew monies from the Conservatorship account without having the legal fiduciary authority to do so.

THEREFORE, IT IS ORDERED ADJUDGE AND DECREED THAT:

1. The Motion to Alter or Amend the Orders Freezing Assets dated 10/20/11 is hereby denied;
2. That any assets in the name of the Alice Shaw-Baker Conservatorship and Lisa Fischer conservatorship or individually remains frozen;

3. That J. Heyward Harvey retains control of the assets in the name of the Alice Shaw Baker Conservatorship and Lisa Fischer [sic] conservatorship." (Emphasis added

IV. ARGUMENT

A. *Standard of Review*

It is well settled that the standard of review for Appeals from the probate court are governed by the provisions of the Probate Code. (Matter of Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993).) The Probate Code provides that a final order or decree of the probate court may be appealed to the circuit court. (S.C. Code Ann. § 62-1-308 (2009).)

Moreover, an issue regarding statutory interpretation is a question of law. (Univ. of S. Cal. v. Moran, 365 S.C. 270, 274-75, 617 S.E.2d 135, 137 (Ct. App. 2005)

If the proceeding in the Probate Court is in the nature of an action at law, neither the circuit court nor the appellate court may "disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." (Neely, *supra*, at 349-50).

Additionally, where a case raises a novel question of law, The court is free to decide the

question with no particular deference to the lower court. (I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000).)

As will be set forth herein, the court failed to set the matter for hearing and there was no objection to the request for fees, therefore "there is no evidence to support" the court's decision to deny Appellants's fees. (Patel v. Patel, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004) [An abuse of discretion occurs when the ruling lacks evidentiary support or is controlled by an error of law.]) And certainly no evidence to justify the deprivation of compensation for services rendered by Appellant, nor for an order intended to freeze her assets.

As in Browne, these interests are property for purposes of the Takings Clause, therefore Appellant contends deprivation of fees and expenses incurred on behalf of Ms. Shaw Baker and the subsequent Order freezing Assets must be reversed.

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B. *The Probate Court Abused its Discretion by Depriving Appellant of her Right to Reasonable Compensation and Reimbursement of Fees by Denying her Request for Fees*

1. Legal Authority

The South Carolina Probate Code provides for reasonable compensation to Guardians and Conservators appointed in protective proceedings.

With regard to Conservators, S.C. Code Ann. § 62-5-414 provides, "If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court (emphasis added)."

With regard to Guardians, S.C. Code Ann. § 62-5-312(b) provides in pertinent part, "Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances (emphasis added)."

In Dowaliby v. Chambliss, 344 S.C. 558, 544 S.E.2d 646 (Ct. App. 2001), the court stated that, "an appointed guardian may be able to recover expenses prior to the formal appointment if such expenditures benefitted the ward."

In the instant case, Appellant was appointed Guardian and Conservator and served Ms. Shaw-Baker in both capacities. Ms. Fisher assisted Ms. Shaw-Baker to remain in her home, and to avoid placement in an institution. This was a great benefit to Ms. Shaw-Baker, who often expressed that remaining in her home was her primary goal.

As set forth above, Appellant spent in excess of 25 hours a week to help Ms. Shaw Baker remain in her home, traveled from California, and ensured that the Probate Court's orders for expert examinations and 24 hour care were followed. To deprive Appellant of these fees is contrary to the public policy and purpose to protect and assist "protected persons." (S.C. Code Ann. § 62-5-101)

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2. The Services Provided to Alice Shaw Baker constituted "Property interests" protected under the Takings Clause.

Appellant contends that the services provided pursuant to the appointment of Guardians and Conservators to protect and assist the Elderly, i.e. protected person under S.C. Code § 62-5-101, implicates the Takings Clause of the Fifth Amendment to the United States Constitution. (See U.S. Const. amend. V ["[N]or shall private property be taken for public use without just compensation"] and South Carolina Constitution, Article 1, § 13.)

Appellant's services to Ms. Shaw Baker constituted a "property interest" entitling her to just compensation. As referenced above, the court in Brown, *supra*, implicates the Takings Clause mandating reversal, in light of Appellant's statutory entitlement to compensation for serving as Guardian and Conservator.

As the Brown court explained in relation to attorneys, a Conservator and/or Guardian are "conscripted" for the public good, and as the Probate Court's Order in effect requires Appellant to "donate funds out-of-pocket" to help a protected person (even if willingly for the benefit of a relative, as here),

Appellant is deprived of property in the form of money. Appellant respectfully argues that this implicates Fifth Amendment protection in conservatorship and guardianship proceedings. (See for example, State v. Smith, 747 P.2d 816, 842 (Kan. 1987); see also Armstrong v. United States, 364 U.S. 40, 49 (1960) (noting that the Takings Clause was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole").

C. The Probate Court's denial of Appellant's Request for Approval of Fees and Expenses is in Violation of the Equal Protection Clause

Appellant contends that denial of fees and expenses to Appellant treats her differently from other similarly situated citizens who have served as Guardians and Conservators and thereby violates the Equal Protection Clauses of the United States and South Carolina Constitutions. U.S. Const. Amend. 14; S.C. Const., Art. I, § 3.

Moreover, in this case, Appellant is the only person being deprived compensation for her services and reimbursement for funds expended on behalf of Ms. Shaw Baker. All other previously appointed individuals

received compensation from Ms. Shaw Baker's monies. The Probate Court approved Guardianship fees for Walter Kaufman, who served as Co-Guardian for Ms. Shaw-Baker in the early stages of this case, at a rate of \$120 per hour, in excess of \$4300.00. All other individuals involved with the guardianship/conservatorship received payment for this pre-death services, including Jane Orenstein, Mac Gibson, Esquire, the in-home caregivers, and Court appointed counsel, Peter Kouten (now, Bessie Huckabee's counsel). Appellant continues to object to Mr. Kouten's representation, due to the non-waivable conflict of interest.

(Even Appellant's counsel received payment of their attorney fees after noticed hearing.)

Most of these fees were paid without any formal petition and/or service of Request on Appellant.

It is well settled that "A judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." (Simpson v. Simpson, 377 S.C. 519, 560 S.E.2d 274, (S.C.App. 02/08/2008).)

In this instance, this court did not make any factual findings regarding the denial of Appellant's motion. Appellant was the person who came to her

great-aunt's aid, when her power of attorney (Bessie Huckabee) renounced her duties, turned Ms. Shaw Baker into Adult Protective Services, and abandoned her.

Appellant showed her love and respect for Ms. Shaw Baker by traveling repeatedly to see her, help her, and attend to her needs. Appellant did not charge for all of the time expended to help her aunt, nor did she request fees for the travel fees for her mother, so that Ms. Shaw Baker had family present for Christmas. However, the failure to seek fees for the extra time and effort she expended did not mean that Appellant was waiving her fees.

Furthermore, only Appellant's counsel fees were approved by a noticed hearing, all other individuals involved (e.g. Walter Kaufman, Jane Orenstein, Peter Kouten) received approval of their fees without hearing, and without any opportunity to object. Here, Appellant filed a proper motion for approval of her fees, which this court did not rule on, and now denies said motion without explanation. This mandates reversal.

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D. *The Probate Court Abused its Discretion by issuance of an Order intending to Freeze not only the decedent, Alice Shaw-Baker's, assets, but Appellant's*

1. Legal Authority Governing Freezing of Bank Accounts

Rule 65 (a) provides that "No temporary injunction shall be issued without notice to the adverse party."

(Emphasis added)

Subsection (b) also provides: "No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." (Emphasis added).

It is well settled that an order freezing the accounts is in the nature of an injunction. (See Grosshuesch v. Cramer, 367 S.C. 1, 5, 623 S.E.2d 833, 835 (2005) [interpreting order freezing assets as an injunction].)

Under the South Carolina Code, injunctions are immediately appealable. To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.

(See County of Richland v. Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002).)

In this case, no party requested these orders freezing the assets, there was no chance for irreparable harm (i.e. Appellant is bonded), and certainly the issues of likelihood of success and absence of an adequate remedy are not even considered in the orders or in the originating Motion for Appointment of Special Fiduciary.

Therefore, the law governing injunctions precludes any sua sponte injunctions, especially when there are no specific facts justifying it and no hearing on the matter. In this case, the broad language of the order also intends to implicate Appellant's personal accounts, which Appellant could not have foreseen. Appellant has been deprived of a proper hearing on the matter.

2. Appellant was Required to Retain Estate Property to a "Duly Appointed" Personal Representative.

Contrary to the Probate Court's conclusion that Lisa Fisher lacked "legal fiduciary authority" to protect and preserve Alice Shaw Baker's assets, the South Carolina Probate Code Section 62-5-425 (d) provides:

"(d) If a protected person dies, the conservator shall
... retain the estate for delivery to a duly appointed

personal representative of the decedent or other persons entitled thereto..." (Emphasis added)

Also, the South Carolina Probate Code section 62-7-707 provides that: "(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property. " (Emphasis added)

This emphasizes the statutory scheme which provides for a continuing duty of a fiduciary/conservator to hold property until it can be delivered to the proper person.

The well settled legal authority governing Statutory interpretation is:

"Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Collins Music Co., Inc. v. IGT, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000))."

Here, in light of the orders extending the time to turn over the assets of the Conservatorship, Appellant has at all times acted appropriately, and in furtherance of the statutory scheme to protect the property of Ms. Shaw Baker. The Probate Court's failure to acknowledge the continuing duty to protect the assets is contrary to the accepted duty of all fiduciaries, and is at the core of a "fiduciaries" standard.

3. The Doctrine of Laches Supports Appellant's Continued Protection of the Estate

Bessie Huckabee cannot now object that the Estate is not protected. Almost three years have passed since Ms. Shaw Baker's death. Had Appellant not acted pursuant to the statutory duties outlined in 62-5-425 (d), and protected the Estate, it would have sustained losses and been contrary to Ms. Shaw Baker's intent.

Under Hallums v. Hallums, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988), the doctrine of "Laches" is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." (Emphasis added)

Here, Bessie Huckabee knew that Ms. Shaw Baker owned real property, required insurance, and was in fact, the named Agent under both the Power of attorney for finances and healthcare. Bessie Huckabee abandoned Ms. Shaw Baker in her time of need, so Appellant helped her great aunt during her life-and made sure that at her death and pending the proper determination of her Wishes, these assets were not lost.

Therefore, Bessie Huckabee not only waived the argument that the property was not being properly taken care of, but consented to Appellant's continued protection of the estate pending final determination on Appeal by the doctrine of laches.

The disingenuous argument that Appellant was required to merely hold the assets pending transfer ignores the potential problems that would have resulted:

- A. No taxes would have been paid on the property leaving it vulnerable to a Tax sale;
- B. Insurance would have lapsed;
- C. No Estate tax returns would have been filed subjecting the Estate to fines and penalties;

D. And the value of the real property would have been dissipated.

4. The Probate Court Lacks Jurisdiction to Hear this matter, in light of the fact that the Circuit Court has Control over the Estate Matter and the Appeal is currently before the Supreme Court.

Since this Probate matter was removed to the Circuit Court, once the conservatorship was terminated, any recourse regarding the assets would be in the Circuit Court.

(Emphasis added)

However, Bessie Huckabee forced this action back to this Probate Court and avoid the very protections that Alice Shaw Baker's heir at law, Betty Fisher, sought by Removal of the Probate action to the Circuit Court.

This court's jurisdiction under South Carolina Probate Code 62-5-102 ended upon the death of Ms. Shaw Baker, and now authority is conferred in the Circuit Court as it administers the decedent's probate.

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***E. Due Process, Equal Protection, and the Takings Clauses
Under the Constitution Prohibit the Imposition of the
Order Freezing Assets***

The initial orders of October 14, 2011, and thereafter on November 9, 2011, improperly seek to freeze Appellant's bank accounts, even those not held on behalf of the conservatorship. These orders violate Rule 65 standards for injunctive relief. They were made without notice, include factual findings where no evidence was produced at the hearing and seek to invade Lisa Fisher's financial privacy and interfere with her ability to maintain her expenses.

The orders are in violation of Due Process laws. The requirements of due process include notice and an opportunity to be heard. (S.C. Dept of Soc. Serv. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).)

Ordering the freezing of these accounts without a hearing or evidence also denies Appellant's equal protection, and treats her differently from other similarly situated citizens who have served as Guardians and Fiduciaries thereby violates the Equal Protection Clauses of the United States and South Carolina Constitutions. U.S. Const. Amend. 14; S.C. Const., Art. I, § 3.

Freezing Appellant's personal and trust fund accounts also constitute a taking under both the South Carolina and

United States Constitutions. (See U.S. Const. Amend. V; S.C. Const. Art. I, § 13(A); See *Ex Parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011) (holding that a court-appointed attorney's service is property for purposes of the Takings Clause)).

V. CONCLUSION

It doesn't take the wisdom of Solomon to know that Appellant has an obligation to protect the life works of Alice Shaw Baker.

In this case, no party requested any orders freezing Ms. Shaw Baker's assets, and pending final resolution of this matter, the Orders place Ms. Shaw Baker's property in jeopardy. Appellant has maintained the property, and ensured that it is safe and secure. Allowing the property to sit, without being maintained, while strangers to the Estate, here-- Bessie Huckabee, fight over property that rightfully belongs to Alice Shaw Baker's intended beneficiaries, Animal Charities, would be harmful.

While this fight takes priority for Appellant, the Probate Court's second order denying her fees and costs will have the same harmful effect.

Appellant respectfully prays that this Honorable Court
reverse the Orders in this matter.

January 5, 2012



John Hughes Cooper, Esquire
P.O. Box 395
Sullivan's Island, SC 29482
(843) 883-9099
Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-7819

BETTY FISHER,)
Plaintiff,)

v.)

BESSIE HUCKABEE, as Personal)
Representative,)
Defendant.)
In the Matter of Alice Shaw Baker.)
2008-GC-10-088)

NOTICE OF APPEARANCE

FILED
2014 MAR 11 11:25
JULIE J. ARMSTRONG
CLERK OF COURT
Closed in dates Canceled

The undersigned hereby enters his appearance as counsel of record for Defendant Bessie Huckabee, as Personal Representative for the Estate of Alice Shaw Baker in the above captioned case. All papers to be served on the Defendant should be delivered to the undersigned at the address set out below.

Respectfully submitted,


Peter A. Kouten, Esquire
Kouten Law Firm, LLC
PO Box 340
Johns Island, SC 29457
ATTORNEY FOR DEFENDANT

FILED
2014 MAR 20 PM 12:20
JULIE J. ARMSTRONG
CLERK OF COURT

Charleston, South Carolina
March 7, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

LISA FISHER

~~BETTY FISHER,~~)

Plaintiff,)

v.)

BESSIE HUCKABEE, as Personal)
Representative,)

Defendant.)

In the Matter of Alice Shaw Baker.)
2008-GC-10-088)

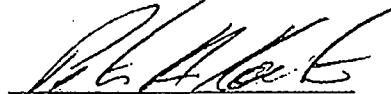
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-7821

NOTICE OF APPEARANCE

FILED
2014 MAR 20 PM 12:16
CLERK OF COURT
J. ARMSTRONG

The undersigned hereby enters his appearance as counsel of record for Defendant Bessie Huckabee, as Personal Representative for the Estate of Alice Shaw Baker in the above captioned case. All papers to be served on the Defendant should be delivered to the undersigned at the address set out below.

Respectfully submitted,



Peter A. Kouten, Esquire
Kouten Law Firm, LLC
PO Box 340
Johns Island, SC 29457
ATTORNEY FOR DEFENDANT

Charleston, South Carolina
March 7, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-8657

LISA FISHER,
Plaintiff,

v.

BESSIE HUCKABEE, as Personal
Representative,
Defendant.
In the Matter of Alice Shaw Baker.
2008-GC-10-088

NOTICE OF APPEARANCE

BY

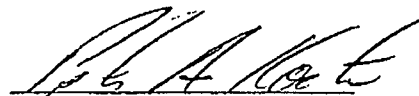
JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 11 PM 1:23

FILED

The undersigned hereby enters his appearance as counsel of record for Defendant Bessie Huckabee, as Personal Representative for the Estate of Alice Shaw Baker in the above captioned case. All papers to be served on the Defendant should be delivered to the undersigned at the address set out below.

Respectfully submitted,



Peter A. Kouten, Esquire
Kouten Law Firm, LLC
PO Box 340
Johns Island, SC 29457
ATTORNEY FOR DEFENDANT

Charleston, South Carolina
March 7, 2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Circuit Case No. 2011-CP-10-7819

FILED
2014 SEP 19 PM 12:22
JULIE J. AINSWORTH
CLERK OF COURT

BETTY FISHER Appellant

v.

BESSIE HUCKABEE.....Respondent

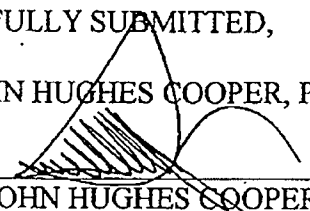
NOTICE OF APPEAL

Betty Fisher appeals the judgment of the Honorable J.C. Nicholson, Jr., dated August 14, 2014; and filed August 18, 2014, affirming the Probate Court order of September 28, 2011 in 2008-GC-10-088 appointing a Special Fiduciary, affirming the Probate Court order of October 14, 2011 in 2008-GC-10-088 denying Fisher's Motion to Set Aside Void Probate Court Order, and ending the Circuit Case. Appellant received written notice of entry of this judgment on August 22, 2014.

September 19, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

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ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Peter A. Kouten, Esquire

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Johns Island, SC 29457

843-670-3919

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Circuit Case No. 2011-CP-10-7821

FILED
2014 SEP 19 PM 12:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

LISA FISHER Appellant

v.

BESSIE HUCKABEE.....Respondent

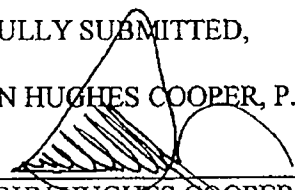
NOTICE OF APPEAL

Lisa Fisher appeals the judgment of the Honorable J.C. Nicholson, Jr., dated August 14, 2014, and filed August 18, 2014, affirming the Probate Court order of September 28, 2011 in 2008-GC-10-088 appointing a Special Fiduciary and denying Lisa Fisher's Motion to Strike and Opposing the Motion Appointing Special Fiduciary, affirming the Probate Court order of October 14, 2011 in 2008-GC-10-088 denying Fisher's Motion for Reconsideration of the Court's Order of September 28, 2011, ordering that Appellant Fisher has thirty (30) days from the date of the August 14, 2014 judgment to turn over estate assets to the appointed special Fiduciary, Heyward Harvey, and ending the Circuit Case. Appellant received written notice of entry of this judgment on August 22, 2014.

September 19, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

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843-670-3919

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Circuit Case No. 2011-CP-10-8657

FILED
2014 SEP 19 PM 12:22
JULIE L. ARMSTRONG
CLERK OF COURT
BY

LISA FISHER Appellant

v.

BESSIE HUCKABEE.....Respondent

NOTICE OF APPEAL

Lisa Fisher appeals the judgment of the Honorable J.C. Nicholson, Jr., dated August 14, 2014, and filed August 18, 2014, affirming the Probate Court order of November 9, 2011 in 2008-GC-10-088 denying Appellant's motion to amend the probate court's order freezing the estate assets, affirming the Probate Court order of November 9, 2011 in 2008-GC-10-088 denying the Appellant's motion to amend the court's order denying the approval of fees and expenses of guardian and conservator, and ending the Circuit Case. Appellant received written notice of entry of this judgment on August 22, 2014.

September 19, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

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Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Circuit Case No. 2011-CP-10-7821

FILED
2014 SEP 19 PM 12:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

BETTY FISHER Appellant

v.

BESSIE HUCKABEE.....Respondent

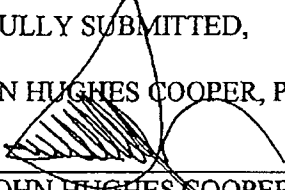
PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** upon Respondent Bessie Huckabee by depositing a copy of it in the United States Mail, postage prepaid, on September 19, 2014, addressed to her attorney of record Peter A. Kouten, Esquire, P.O. Box 340, Johns Island, SC 29457.

September 19, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

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STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHARLESTON 2008-GC-10088

IN THE MATTER OF ALICE SHAW-BAKER

BEFORE: THE HONORABLE TAMARA C. CURRY

DATE: August 17, 2011

TIME: 10:34 a.m.

LOCATION: Charleston County Probate Court
100 Broad Street, Room 3C
Charleston, SC

REPORTED BY: Ann P. Harris, NCRA Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

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15 Sullivan's Island, SC 29482
16 (843) 883-9335
17 shiplaw@jhcooper.com

18 (INDEX AT REAR OF TRANSCRIPT)

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STATE OF SOUTH CAROLINA IN THE PROBATE COURT
COUNTY OF CHARLESTON 2008-GC-10088

IN THE MATTER OF ALICE SHAW-BAKER

BEFORE: THE HONORABLE TAMARA C. CURRY
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REPORTED BY: Ann P. Harris, NCRA Merit Reporter

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1 APPEARANCES OF COUNSEL:
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16 (INDEX AT REAR OF TRANSCRIPT)
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1 THE COURT: Ladies and gentlemen, this
2 is case number 2008-GC-10-008 in reference to Alice
3 Shaw Baker. We have Attorney Peter Kouten, who has
4 filed the motion with the Court to appoint a
5 special fiduciary for the conservatorship assets.

6 Are there any preliminary matters we
7 need to begin with?

8 MR. COOPER: Your Honor, I would remind
9 the Court that on May 18th, we filed a motion for a
10 90-day extension, which is still before the Court.
11 Mr. Kouten objected in his filing to that, and, of
12 course, Mr. Kouten filed his motion to appoint a
13 special fiduciary. We have on June 1st filed a
14 motion to strike Mr. Kouten's motion. So there is
15 actually three motions before the Court.

16 THE COURT: We didn't notice the other
17 two. Are you all waiving notice on the other two
18 issues? The notice we sent out was just for that
19 one issue, even though those other two matters have
20 been filed before the Court. Are you all ready to
21 argue the other two motions?

22 MR. KOUTEN: Judge, my motion was in
23 response to the motion for extension, so we will
24 waive any notice if we want to hear it today.

25 THE COURT: That's fine. Thank you.

1 Are you ready to proceed?

2 MR. KOUTEN: I am, your Honor. Thank
3 you.

4 May it please the Court, Peter Kouten
5 for personal representative, Bessie Huckabee. Your
6 Honor, on May 11th, 2009, this Court signed an
7 order discharging Lisa Fisher from her duties as
8 conservator. That Court ordered that she provide
9 an estate accounting, including all account
10 activity. Finally, that order stated that the
11 conservator shall turn over the estate assets
12 within 15 days. That order, dated May 11th, 2009,
13 was not appealed and at this point could not be
14 appealed.

15 The conservator did, however,
16 subsequent to execution of the Court's order, seek
17 a motion for an extension in delivering the estate
18 assets to the personal representative. That first
19 extension was June of 2009. From there, the
20 respondent filed a series of motions for a
21 extension indicating that the conservator wanted to
22 hold the estate assets so that they can turn over
23 those assets to the proper party.

24 The issue here is that the conservator,
25 who has been discharged by this Court, has been

1 continuing her activities as conservator without
2 this Court's authority. The conservator filed the
3 final accounting on May 27th, 2009, which was
4 required by this Court. From that time, over
5 two years ago, the conservator took no action to
6 follow up with the Court to show that the funds
7 were still properly being accounted for. This
8 Court asked the conservator to file these
9 subsequent accountings, and when she did finally
10 respond to the Court's request, it became clear
11 that the discharged conservator did not cease in
12 her actions as conservator.

13 What we would have expected, in
14 addition to the timely filing of these annual
15 accountings, is possible references to interest
16 earned on accounts. What we did find when the
17 discharge conservator did finally file her
18 accounting is that she improperly amended her final
19 accounting, which ran through her date of
20 discharge.

21 THE COURT: She improperly what?

22 MR. KOUTEN: She amended her
23 accounting. She did file a final accounting on
24 May 27th, 2009, as was required by this Court. It
25 ran through May 26th, 2009, and that is labeled

1 final accounting. When responses were made to this
2 Court to indicate that those funds being held in
3 trust were actually still there, she filed an
4 amended accounting that changed the dates, which
5 included the final accounting, and then she filed
6 an accounting for 2010. The problem that we have,
7 your Honor, is not only was that accounting
8 improperly amended, it ran through May 29th -- or
9 May 26th, 2009, and it was labeled final
10 accounting.

11 Her next accounting, as someone who is
12 holding these funds in trust, would be from
13 May 27th, 2009, until the end of the year. So that
14 is an improper filing.

15 In addition to that, your Honor, by
16 filing that amended accounting, after her
17 discharge, she increased the disbursements from the
18 estate by a hundred thousand dollars. She
19 transferred 80,500 from the estate after her
20 authority ceased. She closed the bank account with
21 the Bank of America after her authority had ceased.
22 She executed documents with Smith Barney and
23 received those proceeds.

24 MR. COOPER: Your Honor, I have an
25 objection. Certainly Mr. Kouten in his motion does

1 raise the issue about whether or not annual
2 accountings were filed, and since that time, as he
3 has just stated, they have been filed, but I think
4 it is beyond the scope of this hearing to get into
5 the merits of whether or not those accountings are
6 accurate and those issues. That seems to be way
7 beyond -- at some point there should be a hearing
8 if there are contested issues about whether the
9 accountings are accurate or inaccurate, but this
10 doesn't seem to be the place for that, and so I
11 would object to getting into those issues. Thank
12 you, your Honor.

13 THE COURT: Attorney Kouten, your
14 response?

15 MR. KOUTEN: Your Honor, I would
16 respond in saying that is exactly correct. We
17 don't know whether these accountings are accurate.
18 What we do know is that --

19 THE COURT: Your argument to his
20 response in limiting --

21 MR. KOUTEN: They are filed with the
22 Court. They weren't part of the Court's file when
23 we filed our motion. The basis of appointing a
24 special fiduciary is directly related to the fact
25 that activity is continuing in this account,

1 properly or improperly, and that they are necessary
2 to show that a special fiduciary is needed in this
3 case.

4 THE COURT: I am going to allow
5 limited, but what I am not going to allow is for
6 you to go into specificity, but your arguments as
7 to why a special fiduciary should be appointed but
8 not with specificity amounts and just generalities.

9 MR. KOUTEN: Thank you, your Honor.

10 So without specificity, there is
11 indication that since the conservator has been
12 discharged, there have been activities in those
13 accounts held in trust by the discharged
14 conservator. The conservator proceeds are to be
15 held in trust for the estate. The conservator
16 asked that she be allowed to hold these funds in
17 trust. She was discharged of all authority. She
18 didn't seek through this Court to maintain any
19 authority to act on behalf of the estate, and she
20 has been acting on behalf of the estate without
21 authority. We ask that the Court pursuant to
22 62-7-704(e) appoint a special fiduciary to accept
23 the estate assets and be given the authority to
24 administer, and that no extensions further be
25 granted. Thank you, your Honor.

Page 9 1 THE COURT: Thank you. 2 Attorney Cooper? 3 MR. COOPER: Yes, your Honor. May it 4 please the Court, as I said, there are three 5 motions pending before this Court, and the first 6 one was our motion for a 90-day extension filed on 7 May 13th. 8 On May 20th, Mr. Kouten objected to any 9 extension and moved to appoint a special fiduciary. 10 On June the 1st, we moved to strike 11 Mr. Kouten's motion based on Rule 81, which makes 12 the Rules of Civil Procedure applicable in Probate 13 Court. 14 MR. KOUTEN: Objection, your Honor. 15 THE COURT: What's the basis of your 16 objection? 17 MR. KOUTEN: We did not waive notice on 18 that, and there has been no hearing set for the 19 motion to strike. 20 MR. COOPER: I think a motion to strike 21 his motion that we are here on a hearing about 22 certainly has to be a part of this hearing. We 23 have moved to strike that because of his failure to 24 comply with Rule 11. 25 At any rate, I'll just state it for the	Page 11 1 it is also clear that he had a duty to consult with 2 us before filing a motion for appointment of a 3 special fiduciary. At any rate, as I say, there 4 are four filings before the Court, four different 5 dates of filings. The May 13th is at our request 6 for motion for a 90-day extension. 7 His objection and motion to appoint on 8 May 20th. 9 On June 1st, we moved to strike under 10 Rule 11(a) and Rule 81, and we also at that time 11 filed the annual accountings for 2008 and '09 and 12 2010, as requested by the Court. 13 And then the fourth filing was 14 August 12th. We had a motion -- an objection that 15 we filed to his motion for appointment. 16 Now, I would like to not reiterate 17 everything that is in our briefs, your Honor, 18 because you have those, but what I would like to do 19 is just comment briefly on the issue about the 20 annual accountings. Procedurally under Rule 81 and 21 Rule 11(a), Mr. Kouten's motion is defective 22 because it doesn't comply with Rule 11(a), and we 23 did file a motion to strike, which is the proper 24 course for us to take under the circumstances. 25 In the meantime, with regard to the
Page 10 1 record, your Honor, and you can decide. It seems 2 like it certainly should be taken up at a certain 3 time. 4 THE COURT: Give me a few seconds, 5 please. 6 MR. COOPER: Yes, your Honor. 7 THE COURT: Your motion to strike is 8 only related to the accounting and not to the 9 appointment of a special fiduciary? 10 MR. COOPER: Yes, your Honor. 11 THE COURT: I am going to allow you to 12 deal with your motion to strike, but it's only 13 limited -- the heading appears to be related to 14 both issues, but in terms of his request for the 15 appointment of a special fiduciary, he has a right 16 to file that motion with the Court. 17 Now, in regards to the accounting, I am 18 just trying -- what I'll do, I'll allow you to make 19 your arguments, and then the Court will just make a 20 determination. 21 MR. COOPER: Yes, your Honor. Let me 22 correct one thing. I believe my motion to strike 23 was as to both because he had a duty to consult as 24 to both. It is clear that the accounting, that 25 issue is moot because we filed the accountings, but	Page 12 1 annual accountings, they have been filed, and so 2 that issue is moot, and that's the substantive and 3 practical effect of that part of it, is that the 4 accountings have been filed as requested by the 5 Court. 6 Now, one other comment I would like to 7 make is that back in May of 2009, your Honor 8 discharged Ms. Fisher from further duties as 9 conservator. However, within a timely fashion she 10 did request an extension, which was granted, and 11 further extensions, and I think there has been six 12 extensions granted so far. And the reason for this 13 is that Ms. Fisher wants to be sure that she turns 14 the assets over to the proper party, and the reason 15 there is a question about the proper party is 16 because in the estate case, which your Honor will 17 remember has been removed to the Circuit Court, 18 then was on appeal to the Court of Appeals and is 19 now before the South Carolina Supreme Court on writ 20 for cert., involves the issues of whether or not 21 Bessie Huckabee is properly appointed as PR, 22 whether or not someone else should be appointed as 23 PR. There is also a motion pending for a special 24 administrator to handle the estate. And there is a 25 motion in the Circuit Court still with regard to a

1 special administrator that has never been heard.
 2 So it's our position, your Honor, that, you know,
 3 until the Circuit Court, the Supreme Court, whoever
 4 ultimately makes that decision about who is going
 5 to handle the estate of Alice Shaw-Baker in the
 6 estate case, Ms. Fisher can't just hand the assets
 7 over to potentially the wrong person.

8 THE COURT: So let me ask you a
 9 question.

10 MR. COOPER: Yes, your Honor.

11 THE COURT: The Court discharged her,
 12 and so what we have been requesting are annual
 13 accountings. Technically she is no longer able to
 14 act in her fiduciary capacity as conservator.
 15 There has never been a motion filed to have her
 16 restored in the interim, so when we look at the
 17 accountings, then everything should be status quo,
 18 and there should be, other than interest, no
 19 activity because she doesn't have the authority,
 20 and no one has the authority to act on behalf of
 21 the conservatorship because there is no more
 22 conservatorship except the fact that those moneys
 23 need to be accounted for. So when you look at and
 24 one of the arguments has to do with the accuracy of
 25 the balances in his petition. So why is there a

1 difference, other than interest, in the
 2 conservatorship when she is now discharged and can
 3 no longer act as conservator?

4 MR. COOPER: Well, your Honor, let me
 5 just say that in addition to having these various
 6 savings accounts, funds, bank accounts, those types
 7 of things, there is also real estate involved.

8 THE COURT: Correct. But doesn't that
 9 go to the argument why there needs to be someone
 10 appointed in the interim so that -- like I am
 11 looking at one of the accountings, and I am seeing
 12 that there is some administration bond. Well, if
 13 she is no longer the conservator and discharged,
 14 should the bond be coming out of the estate? I see
 15 home maintenance. Who technically has the
 16 authority to deal with all of the payments, the
 17 taxes, and the repairs if she is discharged, and
 18 there technically is no conservator, and they are
 19 not being paid out of the estate?

20 MR. COOPER: Your Honor, I see the
 21 Court's concern. What Ms. Fisher has been doing in
 22 good faith, in May of 2009, she was discharged as
 23 conservator.

24 THE COURT: Correct.

25 MR. COOPER: She asked an extension to

1 turn over the assets. And that was granted.

2 THE COURT: Correct.

3 MR. COOPER: Obviously, during that
 4 time, whether she is officially conservator, she is
 5 responsible for those assets.

6 THE COURT: But legally, technically,
 7 in an estate when a person is alive, you have
 8 conservators appointed. Once that person dies,
 9 those assets should go in the estate through either
 10 a special administrator, a personal representative,
 11 but there has to be someone legally in the middle
 12 whether or not there is litigation or not. And so
 13 my question is in what capacity is she legally
 14 acting if she is no longer the conservator and
 15 those assets are not with either a special
 16 administrator or personal representative? I
 17 understand your argument about her responsibility,
 18 but legally, in what authority are these payments
 19 being done when there should be a legal entity who
 20 has the legal responsibility to deal with the
 21 estate whether or not it is through the
 22 conservatorship or the estate during the litigation
 23 period that you all are currently in? And I really
 24 think that that is the real issue in the midst of
 25 the litigation.

1 MR. COOPER: Your Honor, I don't
 2 disagree that that is the issue. Ms. Fisher, who
 3 is an attorney in California, who has been admitted
 4 by the Court here to be involved in the estate
 5 action, since she has been handling these, can she
 6 speak to the Court?

7 THE COURT: No, this is a motion, and
 8 this is really between the attorneys, and I just
 9 want to know what your position is, legal position,
 10 as to what her legal authority is to still disburse
 11 moneys when in fact the conservatorship has -- when
 12 she has been discharged, and the only thing the
 13 Court has been looking for are the annual
 14 accountings.

15 MR. COOPER: Well, let me ask the
 16 question first. My question is, that I'm not
 17 certain what the name of it is, but I know that --
 18 I know that the Court is going to hold her
 19 responsible for the proper administration of those
 20 assets and the protection of the estate, and
 21 whether or not the Court wants to call that, you
 22 know, an implied trusteeship, whatever, but she
 23 certainly has a duty and is bonded to properly
 24 administer those assets, and that is what she has
 25 been trying to do.

1 I would like to also comment that
2 although a conservator is required annually to file
3 an annual accounting, here we had extensions of
4 time for her to turn over the assets, but she
5 wasn't technically a conservator.

6 THE COURT: And that is my question.
7 So she is not technically the conservator. There
8 is no personal representative legally who is -- who
9 has the legal responsibility to still pay assets
10 because when a person dies, technically it should
11 be done through their estate and not through the
12 conservatorship. So even if there is a contest,
13 either she could have sought to be appointed the
14 special administrator to pay the funds or to pay
15 for the expenses or an independent third person,
16 but in reality it should not be through the
17 conservatorship because that person is deceased,
18 and so really the funds should be in the estate
19 division through either a third independent person
20 but should not be held, and if it is held, it
21 should be held in status quo until someone next
22 door or in the estate division is appointed because
23 the conservatorship technically should end at the
24 time of death, and there technically is a
25 discharge.

1 MR. COOPER: Your Honor, let me just
2 say that certainly what she has been doing is to
3 maintain the assets in the status quo.

4 THE COURT: But under what legal
5 authority, because she doesn't have -- her
6 certificates would have ended. Even though the
7 Court has granted the extensions, the extension was
8 not for the full conservatorship. It was just to
9 turn the funds over and to do a final accounting,
10 but funds are actually being written out, and so
11 she is signing them under what authority? Is it
12 still in the conservatorship checking account,
13 which technically should have ended at death. And
14 that is my question. In what capacity is she
15 signing the checks, because the discharge says she
16 no longer has a certificate of appointment
17 indicating that she is a conservator once the Court
18 did the discharge.

19 MR. COOPER: I understand, your Honor.

20 THE COURT: So is there still a
21 conservatorship checking account that still exists?

22 MR. COOPER: Yes, your Honor. I am
23 told there is.

24 THE COURT: You can continue.

25 MR. COOPER: Okay. I would just like

1 to point out to the Court that, you know, within a
2 relative short time after the Court asked for the
3 accountings, Ms. Fisher did the accountings, and
4 they are filed with the Court, and they are
5 presumed to be accurate, although certainly
6 whenever this period ends and the assets are turned
7 over, certainly there is going to be an opportunity
8 for any interested parties that would be
9 appropriate to challenge the accountings or
10 challenge how the funds were handled or challenge
11 any of the expenditures to make those objections,
12 and there can be a hearing on it, and Ms. Fisher is
13 fully bonded still to the one and a half times the
14 value of the liquid assets in the estate. The
15 assets are protected as a practical matter.

16 If the Court would feel better
17 appointing Ms. Fisher in some capacity other than
18 conservator, we would certainly be open to that,
19 but what we believe, your Honor, is that the assets
20 are protected, the status quo of the house and the
21 other assets have been preserved. Ms. Fisher, you
22 know, has not done anything wrong. She has
23 properly protected the estate assets until it can
24 be determined by the Supreme Court and Circuit
25 Court as to who they should be turned over to.

1 And the choice for this Court is to
2 interrupt the status quo by handing the assets over
3 to a special fiduciary, as suggested by Mr. Kouten,
4 or to continue the status quo where the assets are
5 protected by Ms. Fisher's bond and where there's no
6 wrongdoing been shown, and she has properly handled
7 the assets throughout.

8 I would say, your Honor, that you know,
9 these extensions -- the Court has granted six
10 extensions for her to continue to hold the assets.
11 Surely the Court didn't think she was not going to
12 pay the insurance on the house. Surely the Court
13 didn't think she wasn't going to pay the legitimate
14 expenses --

15 THE COURT: Well, because I am not
16 privy to what is happening with the estate, I had
17 no way of knowing whether or not certain assets
18 were being funneled through the estate and whether
19 or not the Circuit Court had authorized -- what
20 normally happens is the general payment, in order
21 to secure the assets and make sure that the assets
22 are not depleted. So I can't tell you that I was
23 privy to what was happening in the estate division
24 until, and so that's not an accurate statement.

25 MR. COOPER: Well, I will just say

1 that, you know, certainly the property has to be
2 maintained in the interim, and that has been done.

3 THE COURT: Where is the litigation in
4 Circuit Court? There is no personal representative
5 appointed; am I correct? Or has there been one
6 appointed?

7 MR. COOPER: There was a personal
8 representative that was informally appointed in the
9 Probate Court. That was challenged in the Circuit
10 Court.

11 THE COURT: There was also a motion
12 made in the Circuit Court for appointment of a
13 special administrator.

14 THE COURT: Was a special administrator
15 appointed?

16 MR. COOPER: No, none of that happened,
17 and the whole thing went up on appeal to the Court
18 of Appeals, and it is now on cert. to the South
19 Carolina Supreme Court. There is still pending in
20 the Circuit Court, I believe, a motion to appoint
21 a special administrator or to have a separate
22 personal representative of Ms. Fisher -- not
23 Ms. Lisa Fisher but Ms. Betty Fisher appointed, but
24 anyhow, there are motions for appointment of her as
25 personal representative. So the whole issue about

1 who is going to serve has not been resolved.
2 That's the bottom line. It hasn't been resolved in
3 the Supreme Court, and it hasn't been resolved in
4 the Circuit Court.

5 THE COURT: And so the Circuit Court
6 didn't appoint anyone in the interim to do anything
7 in relation to the estate?

8 MR. KOUTEN: Bessie Huckabee is in
9 place.

10 THE COURT: So she is still personal
11 representative?

12 MR. KOUTEN: That's correct, your
13 Honor.

14 MR. COOPER: That is on appeal, your
15 Honor.

16 THE COURT: But technically she is
17 still personal representative?

18 MR. KOUTEN: That is correct.

19 THE COURT: With no authority to do
20 anything?

21 MR. KOUTEN: Well, that was the initial
22 appeal. That was the initial Court's ruling. We
23 sought modification of that. The Court granted
24 modification to allow her to do administrative
25 acts. That was the only thing that was hers as to

1 that motion. That particular motion, which granted
2 her the authority to do administrative acts and to
3 not disburse, and also to get bonded, that one
4 issue is on appeal. The Court of Appeals found in
5 favor of the lower court. The Court of Appeals
6 denied a rehearing. In the Court of Appeals
7 response and order, it said that those other
8 issues, which Attorney Hughes just said, this is a
9 pending motion for appointment of a special
10 administrator. It has not been heard. They
11 continue to argue to the higher courts that it has
12 been, and it is on appeal. The only thing on
13 appeal is the motion to reconsider the breadth and
14 width of her authority as personal representative.

15 MR. COOPER: I disagree with that, your
16 Honor, but I would just say that, you know --

17 THE COURT: So technically there is a
18 personal representative, but that is on appeal?

19 MR. COOPER: There has been an informal
20 appointment of a personal representative, and
21 without notice to the heirs that were in the
22 petition. In other words, when the --

23 MR. KOUTEN: Objection, your Honor.
24 The answer to the question is that there is a
25 personal representative. This is an argument that

1 is not before this Court.

2 MR. COOPER: Can I be heard, your
3 Honor?

4 THE COURT: Yes, I am going to allow
5 him to speak. Yes, sir.

6 MR. COOPER: Thank you, your Honor. We
7 are directly on appeal right now in our --

8 THE COURT: You have already gone
9 through Circuit Court, Court of Appeals, and now
10 your current motion is before the Supreme Court?

11 MR. COOPER: Correct. And Mr. Kouten
12 has his view of the evidence, but, you know, the
13 facts are clear, that they didn't -- in the
14 petition for informal appointment of Ms. Bessie
15 Huckabee, Mr. Kouten didn't give proper notice to
16 the heirs, that they knew of, in name of Betty
17 Fisher.

18 THE COURT: But those are issues that
19 are on appeal, correct?

20 MR. COOPER: That's right; they are on
21 appeal.

22 THE COURT: I am just trying to
23 determine procedurally where we are.

24 MR. COOPER: Procedurally where we are,
25 we have a dispute over who should be personal

Page 25

1 representative, and that issue is still on appeal.
 2 In addition to that, once the appeal is decided,
 3 still pending in the Circuit Court is another
 4 motion having to do with appointment of a special
 5 administrator, Frank Barnwell, or appointment of
 6 Betty Fisher as personal representative. So those
 7 motions have not been resolved in the Circuit Court
 8 level. So it is just our opinion that this Court
 9 really doesn't have jurisdiction to deal with that
 10 because all of that has either been removed to the
 11 Circuit Court and/or is on appeal.
 12 THE COURT: Correct, and I agree with
 13 that. I am interested in reference to what is
 14 happening with the conservatorship accounts.
 15 MR. COOPER: Right, that's right, your
 16 Honor.
 17 THE COURT: And that is why I was
 18 asking procedurally where you were.
 19 MR. COOPER: Right. Well, procedurally
 20 that's where we are. Some motions are still
 21 pending, and the Circuit Court hasn't been heard,
 22 and some motions are on appeal to the Supreme
 23 Court, all of them having to do with who should
 24 handle this estate once it is turned over. Our
 25 position is that there has been no showing, and

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1 then maybe at a later hearing Mr. Kouten can show
 2 where Ms. Fisher has done something wrong, but I am
 3 not aware of it, and I don't think he will ever be
 4 able to show that because I think she has handled
 5 the assets properly.
 6 I do think in hindsight, 20/20
 7 hindsight, your Honor, probably we should have come
 8 to the Court and gotten some specific authority,
 9 but I think under the circumstances, she is going
 10 to have the responsibility to maintain the
 11 properties, and the Court is going to have to, you
 12 know, impose some sort of implied trust on her.
 13 THE COURT: But you have never
 14 petitioned the Court asking the Court to grant her
 15 any type of implied trust.
 16 MR. COOPER: I haven't petitioned yet,
 17 your Honor, you are right, but that doesn't mean
 18 that Ms. Fisher has done anything improperly.
 19 The other thing that I would say,
 20 though, is that she is fully bonded. There has
 21 been no showing that she has done anything wrong or
 22 that the estate assets were in jeopardy in any way,
 23 and we think to preserve the status quo with her
 24 administering them is a better way to deal with it
 25 when, if the Court would like, you know, to appoint

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1 her as special fiduciary, special administrator,
 2 some other title to give her authority from this
 3 point on, you know, when it ends, there will be a
 4 bonding company standing behind her, she will
 5 answer all of the questions as to how she handled
 6 everything, and then the Court will make some
 7 decision, but the estate assets are going to be
 8 protected by the bond, your Honor, and we just
 9 think this is a way better way to do it to preserve
 10 the status quo rather than breaking off in the
 11 middle and switching horses to someone else.
 12 Your Honor, my client, Lisa Fisher,
 13 also tells me there is a concept in the law called
 14 executor de son tort. I am not familiar with it,
 15 but it is her position -- it is our position that
 16 that would alleviate any need to come in to have
 17 some special -- her be given special authority to
 18 just protect the estate assets since she has the
 19 responsibility to her bonding company to properly
 20 administer the estate assets and to protect the
 21 real estate and so forth. And this is true, your
 22 Honor, only because we had the proper motions for
 23 an extension. I would like to make that. Had we
 24 not gotten motions, extensions of the time to turn
 25 over the assets -- certainly if we had kept them

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1 longer than the Court had ordered them, we would --
 2 you know, we would have run afoul of the Court's
 3 protection, but since the Court had extended the
 4 time, we had to do what was reasonable in the
 5 meantime to take care of the estate assets, and I
 6 just think that it is going to make it much clearer
 7 at the end of the process as to, you know, how the
 8 assets were handled if Ms. Fisher is allowed to
 9 continue administering them until turnover.
 10 THE COURT: Well, in response to that,
 11 I mean, the Court was granting the extensions, but
 12 we did not receive any additional accountings other
 13 than the 2009 until we received these accountings
 14 that were brought before the Court's attention in
 15 June of 2011. And so there would have been no way
 16 for the Court to have been aware, after granting
 17 extensions, that payments and expenses were
 18 actually still being paid out of the
 19 conservatorship accounts because the last time I
 20 looked, the last accounting prior to the one that
 21 was filed in June was filed with this Court.
 22 MR. COOPER: May of 2009.
 23 THE COURT: May of 2009.
 24 MR. COOPER: At the end of the
 25 conservatorship, we filed that within the time

1 allowed by the Court --

2 THE COURT: Correct, so --

3 MR. COOPER: And after that -- if I
4 could be heard, your Honor.

5 THE COURT: Well, excuse me, because I
6 was talking first.

7 MR. COOPER: I am sorry.

8 THE COURT: What I said was that what
9 we had was what was filed in 2009. So the Court
10 was granting extensions, but that was on the basis
11 that those funds were not being expended in the
12 conservator capacity, and we would have had no way
13 of knowing that but for the fact that you filed
14 these additional accountings a couple of months
15 ago. You can continue.

16 MR. COOPER: Your Honor, I would just
17 point out that in hindsight certainly it would have
18 been better to file annual accountings, but I will
19 point out that the statute requires a conservator
20 to file annual accountings, but, you know, Ms.
21 Fisher, you know, was discharged as the
22 conservator. So there was no technical statutory
23 requirement for her to file those, and the Court
24 never asked until I believe it was April of this
25 year, 2011, asked for the accountings, and we

1 promptly filed them with the Court.

2 THE COURT: So you are saying you
3 weren't receiving annual letters from the Court,
4 because I think we have copies in the file where
5 requests for annual accountings were actually going
6 out.

7 MR. COOPER: No, your Honor, I never
8 received those. My client says she didn't receive
9 them either. Certainly if we had received those,
10 we would have complied with them, your Honor.

11 THE COURT: Okay. Anything further?

12 MR. COOPER: We would just say, your
13 Honor, that there are expenses, taxes, insurance,
14 various expenses for real estate, and those have
15 been paid, and those have been expended out of the
16 account, but we have receipts for all of those, all
17 of them are legitimate expenses, and nothing has
18 been expended that was not supposed to, and they
19 were paid timely, your Honor, to avoid penalties
20 and interest and things of that nature, as your
21 Honor knows, that would accrue on those if they
22 weren't paid timely. So the IRS tax returns have
23 been done, the property taxes have been paid, all
24 legitimate expenses of insurance and other repairs
25 and so forth have been done. So the property has

1 been kept up.

2 Your Honor, at the end, let me just say
3 that if your Honor decides to deny Mr. Kouten's
4 motion, we do have another motion for extension I
5 have prepared for your Honor's consideration.

6 THE COURT: Attorney Kouten?

7 MR. KOUTEN: Thank you, your Honor.

8 In the words of Attorney Cooper, we
9 think this is a better way to do it. What about
10 the authority of this Court? They state the reason
11 for extensions is to turn over the assets to the
12 proper party. The discharged conservator is an
13 attorney. She understands legal duties. She
14 surely understands the word "discharge." They
15 state that she has done nothing wrong, but she has.
16 She is asking the Court to allow her to continue to
17 do wrong, to act without authority. A single look
18 at the accounting indicates that she is acting
19 without authority.

20 As to the lack of notice, your Honor,
21 we ask the Court -- we asked Attorney Cooper on
22 October 12th, 2010, we wanted an accounting. He
23 did not recognize that as the proper authority
24 because he does not recognize Bessie Huckabee. He
25 does not recognize the Court's authority that she

1 is the personal representative. We sent him a
2 subpoena for same accountings in November. It
3 doesn't recognize the subpoena of the Circuit
4 Court. Lisa Fisher herself asked this Court, who
5 discharged her, consider and approve my final
6 accounting. As an attorney, she understands that
7 is complete and total discharge. She is asked to
8 hold a box of money. The Court allows it. She has
9 abused this Court's allowance in granting her
10 simple request to hold the estate funds. She has
11 not recognized or given any weight to the Court's
12 order to discharging. She has not recognized or
13 given any weight to the Court revoking all of her
14 authority to act under any circumstances in her
15 capacity as a conservator.

16 THE COURT: And what is your argument
17 regarding why she should not be appointed the
18 special fiduciary?

19 MR. KOUTEN: First, your Honor, is that
20 she has been discharged by this Court. This Court
21 in its order stated that she is no longer to act as
22 the conservator and that she provide an accounting.
23 In lieu of petitioning this Court to pay insurance,
24 upkeep of houses, do maintenance, she took it upon
25 her own authority. As someone who is an attorney,

1 knowing that she doesn't have the rights and the
 2 duties to do that, that's wrongdoing, Judge. And
 3 then the accounting that she files indicates that
 4 there has been a hundred thousand dollars spent,
 5 after she has been removed, with no request from
 6 this Court to approve these fees, no request from
 7 this Court to allow her to act. This is a dispute.
 8 It is a dispute between a personal representative,
 9 it is a dispute between a decedent's will, and it
 10 is a respondent holding on to the basket of money,
 11 which is fine if we know that that basket of money
 12 is safe, and if we had gotten an accounting showing
 13 that the interest accrued and that the money is
 14 safe, that's fine, we wouldn't even here. She is
 15 spending the money. She is acting without
 16 authority. Somebody has to do it. And if she is
 17 acting without an authority before this Court, not
 18 recognizing the Court's authority, we would prefer
 19 that someone be appointed who does recognize this
 20 Court's authority. We would ask that a special
 21 fiduciary be appointed to receive the estate
 22 assets, to review detailed accountings. These
 23 accountings may be five line items that accumulate
 24 to a hundred thousand dollars. Who knows where
 25 that money is? They say: Well, there has been no

1 wrongdoing; why change horses in midstream? That
 2 is not an accounting, and that would certainly put
 3 anyone uneasy as to where these funds are.
 4 Further, they refused to give us a copy of the
 5 accountings. They did respond in providing
 6 accountings in response to this motion. They
 7 didn't respond to this Court's writing them letters
 8 in January asking, "Please provide an accounting."

9 We ask that the Court appoint a special
 10 fiduciary on behalf of the estate until such time
 11 as the contested issues may be resolved. And as
 12 respondent has admitted that she has acted
 13 unilaterally without this Court's authority, we ask
 14 that the Court grant any further relief as the
 15 Court deems appropriate.

16 THE COURT: Anything further? Attorney
 17 Cooper?

18 MR. COOPER: Your Honor, without going
 19 through all of them, there are a lot of things that
 20 Mr. Kouten said in terms of factual representations
 21 about the expenditure and so forth, we disagree
 22 with and certainly we think are beyond the scope of
 23 this hearing.

24 THE COURT: Okay. Thank you.

25 MR. COOPER: Your Honor, also, I would

1 just like to remind the Court that we did file an
 2 objection pointing out that we believe that
 3 granting Mr. Kouten's relief is beyond the
 4 authority of the Court.

5 THE COURT: Thank you.

6 In regards to the motion to strike, the
 7 Court is going to deny that particular motion. The
 8 Court believes that it would be in the best
 9 interest if -- well, first of all, the Court
 10 believes that the conservatorship should be closed.
 11 We believe that it would be in the best interest of
 12 a third independent special fiduciary to be
 13 appointed in order to file, in order to receive the
 14 assets until the litigation is resolved and the
 15 estate decision in regards to the appointment of a
 16 personal representative.

17 The Court believes that Ms. Fisher did
 18 not have the duty to act in a conservator capacity
 19 once she had been discharged. The Court is going
 20 to appoint Attorney Heyward Harvey to serve as the
 21 special fiduciary in this particular matter, and
 22 the Court is going to deny the motion for an
 23 extension.

24 And so the Court is going to require
 25 that Ms. Fisher turn over any and all assets to

1 Attorney Harvey within 15 days of the date of this
 2 Court's order.

3 Attorney Kouten, we ask that you
 4 prepare that order, to provide a copy to Attorney
 5 Cooper, and then at that particular time if there
 6 are any concerns or questions regarding the assets
 7 since the time of Ms. Fisher's discharge, the
 8 Special Fiduciary Harvey can file any motions or
 9 petitions that he desires with the Court.

10 Anything further?

11 MR. KOUTEN: Nothing, your Honor.

12 MR. COOPER: Thank you, your Honor.

13 THE COURT: Thank you.

14 (The hearing was concluded at 11:22
 15 a.m.)

CERTIFICATE OF REPORTER

I, Ann P. Harris, Certified Merit
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate, and
complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 3rd day of December
2011 at Charleston, Charleston County, South
Carolina.

Ann P. Harris, RMR
My Commission expires
June 23, 2018

LISA FISHER,
PLAINTIFF,
VS.
BESSIE HUCKABEE,
DEFENDANT.

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, July 16, 2014, Commencing at 10:22 a.m.

560

APPEARANCES OF COUNSEL

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John Robinson, Esquire

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EXHIBITS

[None]

PROCEEDINGS

THE COURT: Who's here for who on the Fisher
versus Huckabee?

MR. COOPER: John Hughes Cooper. I'm here for
Betty Fisher in 7819, and Lisa Fisher in 7821 and
8657.

THE COURT: And Betty Fisher in the other one?
You represent all three plaintiffs; right?

MR. COOPER: Yes, Your Honor.

THE COURT: And who's here on behalf of the
Huckabees?

MR. KOUTEN: Your Honor, Peter Kouten for Bessie
Huckabee as personal representative. Today attorney
Heyward Harvey is here -- he was the main special
fiduciary in the lower court's order -- his counsel,
John Robinson. And then counsel for Bessie Huckabee
individually is here, Brook Wills.

THE COURT: These are appeals from probate
court?

MR. COOPER: Yes, Your Honor.

THE COURT: Is this the same similar issue about
the -- I had before --

MR. COOPER: It's related --

THE COURT: -- a year and a half ago about the
issue was -- I'm trying to remember who was the --

1 MR. COOPER: Alice Shaw Baker is the deceased
2 and there was an adult protective action that was
3 brought by Lisa Fisher.

4 THE COURT: I think the question was who was the
5 devisees under the statute.

6 MR. KOUTEN: The underlying action is the will
7 contest, Your Honor. That's correct.

8 THE COURT: Right. Okay. Is this separate from
9 that, or is this the same case, or what is it?

10 MR. COOPER: It's separate but related.

11 THE COURT: Pardon?

12 MR. COOPER: It involves the same deceased, Your
13 Honor, but this is an appeal from the probate court.
14 In other words, the probate court conserved Alice Shaw
15 Baker during her life --

16 THE COURT: Because that last case, they were
17 trying to remove the administrator, if I remember
18 correctly, the one I'm referring to.

19 MR. KOUTEN: There's a couple going on, Your
20 Honor. One is obviously the determination and
21 validity of the will appointing a personal -- a
22 special administrator. The most recent one was an
23 action against the friends of the decedent under the
24 OMNIBUS Adult Protection Act.

25 THE COURT: I don't remember which one it was.

1 Which one do you want to hear first? Are they
2 all the same issue, all three cases?

3 MR. COOPER: They're related but not the same
4 issue, Your Honor. 7819 and 7821 are very related and
5 more related than 8657.

6 THE COURT: Which one do you want to do first?

7 MR. COOPER: Well, we could start with the 7819,
8 the lowest number, Betty Fisher versus Bessie
9 Huckabee.

10 THE COURT: So 7819 and 7821 are very similar,
11 you told me?

12 MR. COOPER: Yes, Your Honor. They're both
13 challenging the order of September 28th, 2011, by
14 which --

15 THE COURT: That's the probate court order?

16 MR. COOPER: Yes, Your Honor. It's the probate
17 court order that appoints Mr. Harvey as special
18 fiduciary.

19 THE COURT: Be glad to hear you.

20 MR. COOPER: Yes, Your Honor.

21 Well, we -- I'll just say that we've briefed
22 this extensively and we assume the Court has those
23 briefs and I'm not going to go into it.

24 THE COURT: Yes, I've got the briefs. I have
25 not looked at them but I have got them here. I will

1 probably have to look at them before I make a
2 decision. But go ahead.

3 MR. COOPER: Yes, Your Honor.

4 THE COURT: If you can summarize the briefs,
5 that would be very helpful.

6 MR. COOPER: That's what I'm going to attempt to
7 do, Your Honor.

8 THE COURT: You don't have to reiterate
9 everything that's in there, okay, because I will read
10 them.

11 MR. COOPER: Thank you.

12 THE COURT: Or my law clerk and -- we both will
13 probably read them.

14 MR. COOPER: Thank you, Your Honor.

15 Basically what happened was that in May of 2009,
16 several months after Alice Shaw Baker died -- Ms. Lisa
17 Fisher was the conservator during Alice Shaw Baker's
18 lifetime, and several months after Alice Shaw Baker
19 died the Court relieved Ms. Fisher of her duties as
20 conservator and ordered at that time that Lisa Fisher
21 turn over the assets to the personal representative.
22 Upon motion, the Court --

23 THE COURT: Who was the personal representative,
24 so I can get the names right.

25 MR. COOPER: The personal representative,

1 informally-appointed personal representative, was
2 Bessie Huckabee.

3 THE COURT: Was Bessie Huckabee. Okay.

4 MR. COOPER: And the probate court ordered Lisa
5 Fisher to turn over the assets. But Ms. Fisher timely
6 made a motion to extend the time out, to an extension
7 of time, to turn over the assets based on the fact
8 that the issue of whether or not Bessie Huckabee was
9 the properly-appointed personal representative was
10 before the Court of Appeals. And so there was a --
11 there's a problem, from Ms. Fisher's standpoint,
12 because she is obligated to turn it over to the
13 correct -- the duly-appointed personal representative.
14 And if there is an issue as to whether the personal
15 representative was properly appointed --

16 THE COURT: And that was in front of the Court
17 of Appeals. What did the Court of Appeals do?

18 MR. COOPER: Well, the Court of Appeals declined
19 to change the personal representative. Basically,
20 that has to await trial on the will contest. And the
21 reason is is that the will appoints or -- or nominates
22 Bessie Huckabee. But the will, we -- our position is
23 the will was revoked and so we have to have a trial on
24 the will contest to know whether or not Bessie
25 Huckabee is the duly-appointed personal

1 representative.

2 And Ms. Fisher, of course, is bonded one and a
3 half times the value of the assets. And so it's our
4 position to the probate court that, you know, the
5 assets are protected. She's fully bonded. And she
6 has a duty -- not only authority, but the duty, under
7 the probate code trust division. Even after you've
8 resigned or after you are removed as a conservator,
9 you still have the duty and the authority to protect
10 the trust assets and to turn them over to the duly-
11 appointed personal representative. In this case,
12 because of the will contest issues, those have to be
13 resolved before we can determine whether Bessie
14 Huckabee is the duly-appointed personal
15 representative.

16 THE COURT: Well, have you had the will contest?

17 MR. COOPER: No, Your Honor.

18 THE COURT: Why not?

19 MR. COOPER: Well, it went up on appeal to the
20 Supreme Court, came back down. We had some discovery
21 period. Then there is another issue that's on appeal
22 to the Court of Appeals right now, and that has to be
23 resolved before we can get to the jury trial. It's a
24 jury trial on the will contest.

25 And so at the time that these orders were

1 issued, it was before the issue -- all these issues
2 were before the South Carolina Supreme Court. And,
3 therefore, it's our position that the court didn't
4 have -- the probate court did not have jurisdiction to
5 appoint Mr. Harvey or to appoint a special fiduciary
6 because those issues were being dealt with by the
7 South Carolina Supreme Court at that time, which was
8 considering cert from the Court of Appeals.

9 THE COURT: Have they -- did they accept cert?

10 MR. COOPER: They denied --

11 THE COURT: They denied cert --

12 MR. COOPER: -- they denied cert and the case
13 came back down. But that was after we had taken these
14 appeals. So the question is is were these orders
15 appropriate when issued. And our --

16 THE COURT: So your position is even though the
17 Court of Appeals had -- I assumed the Court of Appeals
18 ruled against removing her; right? That's what you
19 told me?

20 MR. COOPER: They ruled against -- they declined
21 to rule on one of the issues, and then on the other
22 issue they ruled against her.

23 THE COURT: And then cert was requested?

24 MR. COOPER: Requested and then ultimately
25 denied. And so then it came back down.

1 THE COURT: So your position is since cert was
2 requested, the probate court didn't have jurisdiction
3 to hear it until that cert was determined one way or
4 the other?

5 MR. COOPER: Correct. And --

6 THE COURT: And I assume the probate judge took
7 a different position, since these orders were issued.

8 MR. COOPER: They took a different position,
9 Your Honor, and we think incorrectly.

10 THE COURT: What was their position on that
11 issue?

12 MR. COOPER: The Court --

13 THE COURT: That that cert that was not --
14 didn't deprive them of jurisdiction, or that's a
15 separate issue, or what?

16 MR. COOPER: Well, to be honest, I can't
17 remember exactly what Judge Curry decided about that.
18 I don't think she dealt with it in her order. She did
19 ask about it in the hearing, and we brought it up, and
20 we filed a motion for reconsideration, but she
21 basically just appointed Mr. Harvey as special
22 administrator -- fiduciary. Excuse me.

23 THE COURT: So your position is that order is
24 null and void because they didn't have jurisdiction,
25 i.e., because of the cert issue before the Supreme

1 Court?

2 MR. COOPER: I believe it was the cert before
3 the Supreme Court. But certainly --

4 THE COURT: The request for --

5 MR. COOPER: -- it was in the appellate court
6 system.

7 THE COURT: The request for cert.

8 MR. COOPER: Right. It was in the appellate
9 court system at that time, either at the Court of
10 Appeals or the Supreme Court. I can't honestly
11 remember. But we did bring that up. And so we think
12 that the probate court did not have jurisdiction.

13 In addition to that, Your Honor, there was a
14 statutorily-required notice of twenty days and
15 Mr. Kouten, on behalf of Bessie Huckabee, did not give
16 the proper notice and so the Court in the hearing --

17 THE COURT: Statutory notice of twenty days for
18 what?

19 MR. COOPER: To consider a motion to appoint a
20 special fiduciary.

21 THE COURT: Okay.

22 MR. COOPER: And so I can't say that -- I can't
23 say that Lisa Fisher didn't get notice, because I did
24 get notice for her. But as an interested party and a
25 member of the family, Betty Fisher did not get the

1 statutorily-required notice.

2 Also, a member of another interested party in
3 this is the Attorney General's office as protector of
4 animal charities. In other words, Alice Shaw Baker
5 was all about animals. She loved animals. She was
6 really focused on animals, and everybody knew and
7 knows that that was -- you know, her desire was that
8 everything, her house, all her stuff, go to these
9 animal charities. And so the Attorney General is
10 involved in the will contest case, and they were not
11 given notice that there would be a special fiduciary
12 appointed, as well. So there's a notice issue. Not
13 with regard to all parties, but at least with regard
14 to Betty Fisher and with regard to the Attorney
15 General.

16 THE COURT: Well, was the Attorney General
17 officially involved in it or --

18 MR. COOPER: They were not involved in -- they
19 were involved in the will contest action.

20 The way this worked, Your Honor, is during Alice
21 Shaw Baker's lifetime, the case, which is 2008-88,
22 which is the case -- see, these orders are all issued
23 in the conservatorship case which had, at that time,
24 been over for some two years. And so actually the
25 Court is issuing orders in the conservatorship case

1 when the conservator -- you know, simultaneously we
2 have the will contest and the -- you know, all of the
3 estate litigation. This is a totally separate case in
4 the probate part of the probate court, the estate
5 division, I guess, rather than the conservatorship
6 division. But these orders that we're appealing all
7 arose out of the conservatorship division.

8 And it's our position, Your Honor, that when a
9 conservator -- in South Carolina, when a conservator
10 either resigns or is removed the conservator still has
11 not only the authority to protect the assets but the
12 duty to protect the assets until they can be handed
13 over to the proper -- the duly-authorized personal
14 representative. And the problem that Ms. Fisher has,
15 she's bonded and if she gives it over to Bessie
16 Huckabee and it's ultimately determined that Bessie
17 Huckabee is not the duly-authorized personal
18 representative but an informally-appointed personal
19 representative, you know, without proper notice and so
20 forth, then she could be liable for turning them over
21 to the wrong personal representative or the wrong
22 party. So that's her position, is that she was going
23 to keep them. She had the authority to do so, under
24 the South Carolina Probate Code, and the duty to do
25 so.

1 And so -- and the Court, the probate court,
2 granted I believe it was three or four different --
3 maybe more than that -- ninety-day extensions.
4 Multiple ninety-day extensions were granted to Lisa
5 Fisher to just hold onto the assets until the duly-
6 appointed personal representative could be determined
7 and she could hand them over to the right person.

8 And so this is not an issue where she didn't get
9 the extension. She got all of the extensions, every
10 ninety days we got another extension, until finally
11 approximately two years after we had been getting
12 these extensions, Bessie Huckabee and Mr. Kouten filed
13 a motion to appoint a special fiduciary but no notice
14 given at all as to who the, you know, special
15 fiduciary might be. We had no notice of that. And we
16 think, technically, we should have gotten a notice of
17 who, you know, would be appointed so we could be heard
18 on that as to whether we agree. And we didn't know
19 that the Court might appoint --

20 THE COURT: Well, underlying all this, were the
21 opposing parties thinking that Fisher was squandering
22 assets? Or what was the basic controversy about on
23 the fact that she didn't turn over the assets? They
24 don't think she was protecting the assets properly?
25 Or why did --

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1 MR. COOPER: They filed --

2 THE COURT: -- the Court appoint a special
3 conservator?

4 MR. COOPER: They filed no objection. But at
5 the -- just before this hearing, they did raise the
6 issue that no annual accountings had been filed..
7 Well, if you're a conservator, you have to file annual
8 accountings. Ms. Fisher had been relieved. I know I
9 represent a lot of conservators and we get a notice
10 from probate court, you know, about December, saying,
11 you know, by the end of January you've got to file
12 your annual accounting. We never got anything like
13 that. Had we been asked, of course we would have done
14 it right away.

15 But in 2011, Mr. Kouten did raise that issue and
16 we agreed we'll do the accountings, and we did them.
17 And what they show, of course, is -- Mr. Kouten wanted
18 to say, oh, they're spending money. Well, we paid the
19 taxes. We paid for the insurance premium. There's a
20 piece of property, real estate that's involved, with a
21 house on it, and so we paid the necessary expenses.
22 And Ms. Fisher is bonded to one and a half percent of
23 the assets. If it turns out she did something wrong,
24 of course the bond will take care of it. But, you
25 know, I can assure you I believe that she has done

1 nothing wrong and done everything to protect these
2 assets.

3 THE COURT: But the allegations are she has done
4 something wrong?

5 MR. COOPER: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 MR. COOPER: But I will say that there was
8 allegations but there's no affidavits. There's no
9 proof. At this hearing we went to in the probate
10 court, there were no affidavits. There's no -- no
11 evidence was offered. We offered to testify and the
12 judge would not allow it. She didn't want to take any
13 testimony at all. So these orders are -- even though
14 they're required to be backed up by evidence, she
15 makes findings with no evidentiary basis. And all
16 this, of course, is briefed, Your Honor. I'm just
17 trying to hit the highlights.

18 THE COURT: I understand.

19 MR. COOPER: But it seems to me that there is a
20 jurisdictional issue, there's a notice issue, and then
21 there's no evidence to back up the orders appointing
22 Mr. Harvey.

23 One other thing is evident from the fact that no
24 evidence was taken. In order to appoint a special
25 fiduciary, the code provides that there needs to be an

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1 emergent need to do that. And how can you find that
2 it was an emergent need if you don't make any findings
3 of fact that are based on affidavits, evidence,
4 something, sworn testimony? Any of that could have
5 been done. But we get to the hearing and --

6 THE COURT: Were affidavits produced?

7 MR. COOPER: Not on behalf of appointing a -- I
8 think we had an affidavit opposed to it, but I don't
9 think there's any support for the findings that the
10 Court makes that there was an emergent need to protect
11 the assets.

12 THE COURT: Well, was testimony taken?

13 MR. COOPER: No, Your Honor.

14 THE COURT: Well, let me back up. What's the --
15 the will, I assume, is -- who was the deceased?

16 MR. COOPER: Alice Shaw Baker.

17 THE COURT: Alice Shaw Baker. I assume her will
18 left her assets to some -- as you said, to some animal
19 charitable organization and the will contest is to
20 contest that so it will go to her I guess
21 administrative heirs or --

22 MR. COOPER: No, Your Honor. There's a will --

23 THE COURT: What is the will contest about? I
24 guess that's --

25 MR. COOPER: The will contest about [phonetic]

1 is whether the will remains valid or whether it was
2 revoked by Alice Shaw Baker during her lifetime.

3 THE COURT: It's a question whether it's valid
4 or revoked?

5 MR. COOPER: Yes, Your Honor.

6 THE COURT: So if it's -- and your position is
7 it was revoked or it was valid?

8 MR. COOPER: It was revoked.

9 THE COURT: And then it would go to the heirs?

10 MR. COOPER: It would go to the heirs, Your
11 Honor.

12 THE COURT: So that's the underlying dispute of
13 all this; is that correct?

14 MR. COOPER: As I --

15 MR. KOUTEN: That's the way I see it, Your
16 Honor.

17 MR. COOPER: As I remember the will, that's
18 right.

19 Now, just so the Court is aware, the only
20 remaining family that I'm aware of is in the courtroom
21 here today, Betty Fisher and Lisa Fisher, and they
22 want -- if not to themselves, they want it to go to
23 the animal charities. And there's assets that don't
24 go by the will. There are retirement accounts with
25 beneficiaries. There's all sorts of -- it's pretty

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1 complex. It's not a huge amount of money but it's a
2 complex assortment of assets. And some of it goes by
3 the will, some of it is in beneficiary designations
4 during her lifetime, and things like that. But at any
5 rate, everybody knew that -- you know, that Alice Shaw
6 Baker --

7 THE COURT: Well, has there ever been an order
8 ordering I guess Ms. Fisher to turn over the assets
9 and remove her as conservator? Or is that what's on
10 appeal?

11 MR. COOPER: No, that's not on appeal. The
12 probate court removed her as conservator and ordered
13 her to turn over --

14 THE COURT: So she's out but she just hasn't
15 turned over the assets --

16 MR. COOPER: She hasn't turned over the assets.

17 THE COURT: -- because that issue is on appeal?

18 MR. COOPER: No, Your Honor.

19 The Court -- and I believe it was either fifteen
20 days or thirty days they ordered the assets to be
21 turned over. We approached the Court with a motion
22 for extension of time until the proper person to turn
23 them over to could be determined, because Ms. Fisher
24 would be in jeopardy if she turns them over to the
25 wrong person.

1 THE COURT: So that's the reason the probate
2 judge appointed a new conservator, to turn the assets
3 over to that conservator?

4 MR. COOPER: No. For two years after that, they
5 kept extending the time. At first she was ordered to
6 turn them over within thirty days. Once we explained
7 that the issue of who the proper person to turn them
8 over to was on appeal, we asked for ninety days. They
9 gave it to us. We asked for another ninety days.
10 They gave it to us. It stayed on appeal for some
11 time. And we continued to ask until I believe it was
12 about May of 2011, something like that. And this is
13 long after May of 2009. And at that time, we wanted
14 another extension. Mr. Kouten brought up the issue of
15 the annual accountings and so we produced the annual
16 accountings. And then he made the motion to appoint a
17 special fiduciary. But the special fiduciary is not -
18 - even according to the order, the assets are less
19 secure.

20 And no offense intended to Mr. Harvey, but he's
21 not bonded. Ms. Fisher is bonded to one and a half
22 times the value of the assets. And so it seems like
23 the assets are much better protected with Ms. Fisher
24 than with Mr. Harvey or someone else that's not
25 bonded.

1 THE COURT: So your position is the assets can't
2 be turned over until you have the will contest?

3 MR. COOPER: Until we know who the duly-
4 authorized --

5 THE COURT: Duly authorized --

6 MR. COOPER: -- representative is.

7 [Off the record momentarily]

8 THE COURT: So that's what's on appeal, the real
9 representative versus personal representative; is that
10 correct?

11 MR. COOPER: It's not on -- it's not on -- yes.
12 That's on appeal now, but it was not --

13 THE COURT: That's on appeal now.

14 MR. COOPER: -- was not on appeal back when
15 these orders were issued.

16 THE COURT: But that's on appeal now; right?

17 MR. KOUTEN: Your Honor --

18 MR. COOPER: Yes, Your Honor.

19 MR. KOUTEN: -- if I may?

20 THE COURT: Is that in the -- where is it in the
21 Court of Appeals?

22 MR. COOPER: The reply brief has just been
23 filed, initial reply brief.

24 THE COURT: Well, that was what I was trying to
25 remember earlier, that case.

1 Okay. But go ahead.

2 MR. KOUTEN: Thank you, Your Honor.

3 If I may, counsel for the court-appointed
4 personal representative -- and when she was appointed,
5 a temporary restraining order was brought against her.
6 You signed an order, form order, that says she's
7 restrained from all things. That puts her in a
8 position of liability. She can't do anything. We
9 came back and asked for modification, allow her to do
10 administrative things, marshal assets and so forth,
11 and you found that reasonable and that was your order.

12 They appealed that in the Court of Appeals.
13 They appealed it to the Court of Appeals on -- they
14 upheld your order on both instances. When cert was
15 sought, it was denied. That issue --

16 THE COURT: Well, let me ask y'all this
17 question. Does the request for cert -- does the
18 interlocutory -- is it interlocutory or not, or do
19 y'all know?

20 MR. KOUTEN: In this instance I believe it is
21 interlocutory. But further, it is completely
22 unrelated to what these appeals have to do with.
23 These appeals have to do with conservatorship assets,
24 not personal-representative matters. So the appeals
25 here today are that upon the death --

1 THE COURT: So his position on the interlocutory
2 request for the cert is in a separate -- is in the
3 case of --

4 MR. KOUTEN: Completely unrelated, Your Honor.

5 THE COURT: Unrelated. That's the issue about
6 the -- what was it?

7 MR. KOUTEN: The appointment of a personal
8 representative.

9 THE COURT: Right. Versus real representative.

10 MR. KOUTEN: Now, your -- that is a complete
11 other issue where just prior to the expiration of the
12 statute of limitations three years from the date of
13 death, they brought an action under the OMNIBUS Adult
14 Protection Act stating that she was somehow abused by
15 certain people. I was named in that action. The
16 Court found that they had three years to be appointed
17 a special personal representative, to be appointed a
18 special administrator, to contest this will. And the
19 way they stand right now is they don't stand. They
20 don't have standing. And so it was dismissed. That's
21 on appeal right now.

22 The issue at bar is that upon the death of Alice
23 Shaw Baker her conservator, Lisa Fisher, a niece, who,
24 by the way, is an attorney, was supposed to seek
25 discharge and say, hey, my person is dead, this needs

1 to be closed. She didn't do it. We asked through the
2 Court, motion, petition, and the Court ordered her to
3 seek discharge. She was discharged. Upon discharge,
4 her accounting was filed through date of service. So
5 we do have an accounting. She's discharged.

6 Everything is complete. She was ordered to turn over
7 the assets. She approached the Court through motion
8 of extension and said, we want to hold the assets
9 until a proper party is put in place. We believe
10 there is a proper party put in place. Bessie Huckabee
11 is court-appointed personal representative. Under
12 your authority, she has the authority to marshal
13 assets and do administrative things but she can't
14 dispose of property. But she has the authority of the
15 Court as personal representative right now. Just
16 because they don't believe that doesn't mean that
17 she's got liability to turn over those assets.

18 So through a series of motions for extension,
19 without notice to us, the probate court kept approving
20 them. The reason was to hold these assets until a
21 proper party could be found, to hold in a safe place,
22 to put in a strongbox as, you know, trust, to hold in
23 trust.

24 We asked for a subsequent accounting because
25 they've had the assets for going on two years. The

1 only accounting we have is upon their discharge. They
2 refused to recognize our authority. The Court then
3 did send them a letter. I have a copy of the letter
4 with the Court requesting an accounting from them for
5 the period of time she held those assets. They didn't
6 respond to the Court. We filed for an accounting and,
7 prior to the hearing, they supplied their accounting.

8 The final accounting they supplied had one
9 number. The subsequent accountings was first an
10 amended accounting, for the year-to-date, indicating
11 that monies were spent in excess of \$85,000 were
12 spent.

13 Here's the bottom line, Judge. She's an
14 attorney. She understands discharge. She understands
15 duties and responsibilities. She sought discharge and
16 she was terminated and she filed a final accounting.
17 She's spending money.

18 The Court order -- or the transcript said --
19 this is what Judge Curry said: the Court believes
20 that Ms. Fisher did not have the duty to act in a
21 conservator capacity once she was discharged. The
22 Court is going to appoint attorney Heyward Harvey to
23 serve as a special fiduciary in this particular matter
24 and the Court is going to deny the motion for an
25 extension.

1 So what the Court is saying is that we need
2 somebody to take these funds, she's spending them, she
3 shouldn't spend them, take them to Heyward Harvey.
4 That is what is on appeal. Additionally on appeal is
5 motion to reconsider. And it's all interrelated with
6 this one hearing to have those funds put in a position
7 where they're protected.

8 Now, Attorney Cooper argues that maybe the State
9 of South Carolina doesn't really know what the proper
10 thing is, we're bonded, he says, we're -- you know,
11 we're responsible people, we'll just do what we want
12 to do. And that's not how it works. The way it works
13 is that you follow this book right here. And this
14 book says you're discharged, if you ask to hold onto
15 the money, you hold onto it in a strongbox and you
16 don't spend it. There weren't any affidavits
17 provided, but their accounting showed that they're
18 spending the money. That was all Judge Curry needed.
19 And so with that, she appointed a special fiduciary.

20 And I don't know what else to say. I mean, I
21 can go into different facts presented by counsel, as
22 far as the will contest, as far as -- it's been five
23 years. I certainly would like to have a jury hear
24 this contested will, and whether it was revoked or
25 not, by someone who was incapacitated and had a

1 guardian conservator appointed to her. That day has
2 yet to come.

3 As it turns out, they really don't have
4 standing. And in the end, we believe they won't have
5 standing and the assets will go to where Alice Shaw
6 Baker wanted them to go: to her friends.

7 I'm going to ask the Court to uphold the Court's
8 order.

9 THE COURT: But this order was issued in the
10 conservator case; right?

11 MR. KOUTEN: That is correct.

12 THE COURT: I mean, why is the conservator case
13 even pending, since she's deceased?

14 MR. KOUTEN: It is not. It's --

15 THE COURT: I mean, how -- why are they even
16 issuing orders in that case?

17 MR. KOUTEN: The only reason it's continuing is
18 that they refuse to turn over the money, albeit with
19 the Court's --

20 THE COURT: Well, has a probate judge ever
21 ordered her to turn it over?

22 MR. KOUTEN: Yes, they have, Judge.

23 THE COURT: And what happened --

24 MR. KOUTEN: That's the order on appeal.

25 THE COURT: -- to that case?

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1 MR. KOUTEN: That's the order on appeal.

2 THE COURT: That's what's on appeal?

3 MR. KOUTEN: No. This is what they're appealing
4 today, right now, here, at bar.

5 If I may approach?

6 THE COURT: Yes, sir.

7 MR. KOUTEN: This is an order dated September
8 28th, order appointing a special fiduciary.

9 [Whereupon, Mr. Kouten proffers documents to the
10 Court]

11 MR. KOUTEN: If you will note, Judge, the Court
12 has ordered them to turn over the assets.

13 [Whereupon, the Court reviews documents]

14 THE COURT: I'm just going to have to read it
15 and try to wade through some of this. It's sort of --
16 y'all have got it very interwoven. But go ahead.

17 MR. KOUTEN: It is interwoven, Your Honor, and I
18 apologize for that.

19 THE COURT: Why hasn't the will contest gone to
20 trial?

21 MR. KOUTEN: There has been --

22 THE COURT: What's on appeal in that issue?

23 MR. KOUTEN: Dispositive motion after
24 dispositive motion by --

25 THE COURT: I mean, why hasn't that gone to

1 trial, jury trial?

2 MR. KOUTEN: Your Honor, I --

3 THE COURT: I'm assuming you're going to do it
4 in circuit court?

5 MR. COOPER: Well, we have an appeal, Your
6 Honor, from -- an order that declined to disqualify
7 Mr. Kouten, and I believe that that was your order,
8 because Mr. Kouten served as court-appointed for Alice
9 Shaw Baker during her lifetime and then it's our
10 position he's taking a position after that --

11 THE COURT: That's in the will contest file?

12 MR. COOPER: Yes, Your Honor. And so that's on
13 appeal now. And we've --

14 THE COURT: What else is on appeal on that -- on
15 the will contest issue? Just was not failure to
16 remove him?

17 MR. COOPER: Failure to remove Mr. Kouten.

18 THE COURT: That's the only thing that's under
19 appeal?

20 MR. COOPER: That's -- yes, Your Honor.

21 MR. KOUTEN: But in this case 17 -- or 7819 is
22 appeal of that order you're holding. For simplicity
23 purposes, the notice of intent to appeal indicates
24 that they're also appealing under 7819, an October
25 14th order. That was a motion to reconsider, which

1 was denied. So basically it's the same issue --

2 THE COURT: Right.

3 MR. KOUTEN: -- do I turn it over or do I not.

4 And that is just the 7819. And we believe she acted
5 without authority, that is wrongdoing, and we believe
6 that the assets should be turned over in furtherance
7 of the lower court's order. And I would say that that
8 actually extends to 7821. The only distinction is
9 that Lisa Fisher, as conservator, filed one --

10 THE COURT: Well, why don't you associate a
11 lawyer and let that lawyer go try the will case?

12 MR. KOUTEN: Again, Your Honor?

13 THE COURT: I said why don't you associate a
14 lawyer and y'all go try the will case and get this
15 controversy over with?

16 MR. KOUTEN: Your Honor --

17 THE COURT: I mean, the issue of you being
18 removed is on appeal but I'm not so sure that would be
19 interlocutory to another lawyer trying the will case
20 and getting it over with and y'all be done with this.

21 MR. KOUTEN: There's no question, Judge, and
22 that's been done.

23 THE COURT: Pardon?

24 MR. KOUTEN: That's been done. Attorney Wills
25 represents the beneficiaries of the estate.

1 THE COURT: Well, why don't you move and get the
2 thing tried?

3 MR. WILLIS: Your Honor --

4 THE COURT: I mean, that's the underlying issue.
5 It needs to be resolved at some point in time before
6 all this other goes away.

7 MR. WILLIS: Correct.

8 THE COURT: When are you going to set it for
9 trial?

10 MR. WILLIS: That's what we'll do today.

11 THE COURT: Pardon?

12 MR. WILLIS: We'll do that today.

13 THE COURT: I'm going to have to wade through
14 all this. Okay?

15 MR. COOPER: Yes, Your Honor.

16 If I could just remind the Court there is a
17 transcript of what took place at the hearing, but --

18 THE COURT: Did you provide that to me?

19 MR. COOPER: It's been filed. It was filed with
20 the Court.

21 THE COURT: It is?

22 MR. COOPER: Yes, sir.

23 THE COURT: I assume it's here.

24 MR. COOPER: I would assume so. But we'll be
25 happy to provide it, if you don't have it.

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1 THE COURT: Well, let me ask you this. I
2 understand these are in the conservatory case; right?
3 MR. COOPER: Yes, Your Honor.
4 THE COURT: The will contest is on appeal?
5 MR. COOPER: Correct.
6 THE COURT: Now, how --
7 MR. KOUTEN: Judge --
8 THE COURT: I'm sorry?
9 MR. KOUTEN: The will contest has not been
10 brought. The will contest has not been heard.
11 THE COURT: But your removal is --
12 MR. KOUTEN: Yes.
13 THE COURT: -- in that case number, is what I'm
14 saying.
15 MR. KOUTEN: Our motion in that case number,
16 Judge.
17 THE COURT: Right.
18 MR. KOUTEN: Yes, sir.
19 THE COURT: That's on appeal. How can that be
20 interlocutory to the conservatory on a separate case?
21 MR. COOPER: Your Honor, there is --
22 THE COURT: How can that -- how is that
23 possible? I mean, you've got two cases going.
24 MR. COOPER: That's right.
25 THE COURT: So how can the appeal in one case be

1 interlocutory to a separate case? Please explain that
2 to me.

3 MR. COOPER: I'm not -- well, at the time -- at
4 the time that Judge Curry issued the orders that are
5 on appeal here before you today, at that time the
6 Court of Appeals or the Supreme Court, one of them,
7 was dealing with the issue of who was -- whether or
8 not Bessie Huckabee was the duly-appointed --

9 THE COURT: And they came back and said, we
10 can't determine that until you do the will contest.

11 MR. COOPER: Correct.

12 THE COURT: Okay?

13 MR. COOPER: Correct. But at the time -- at the
14 time that Judge Curry ruled, she has ruled that she's
15 going to appoint a special fiduciary at a time when
16 the whole issue of who should be the -- there was a
17 motion for a special --

18 THE COURT: The Court of Appeals has not kicked
19 that back saying, we're not going to rule on that
20 until y'all have a will contest; right?

21 MR. COOPER: Ultimately, that's what they did.
22 But at the time she made these rulings, it was up in
23 the air as to who -- you know, whether or not Bessie
24 Huckabee would be removed, whether or not somebody
25 else would be duly appointed. There were all kind of

1 issues out there dealing with who would take the money
2 from the conservatorship and to administrate it in the
3 -- in the will.

4 THE COURT: All right. Okay.

5 MR. COOPER: And so, in other words, at that
6 time, all that was on appeal. We had a motion to
7 appoint a special administrator, Frank Barno
8 [phonetic]. We had a motion that Bessie Huckabee --
9 Betty Fisher be appointed as personal representative
10 to replace Bessie Huckabee.

11 THE COURT: Right.

12 MR. COOPER: There were motions to remove Bessie
13 Huckabee based on various things, failure of notice.
14 See, they got her appointed initially by not giving
15 any notice to the only living -- the direct heir,
16 Betty Fisher, was not given those. They went to
17 probate court and got the heir, Bessie Huckabee,
18 appointed without even putting down there on the form
19 that she had living relatives.

20 MR. KOUTEN: Judge --

21 MR. COOPER: And so you have a non relative --

22 THE COURT: Well, they got it pursuant to the
23 will, didn't they?

24 MR. KOUTEN: It is pursuant to the --

25 THE COURT: It's pursuant to the will. And the

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1 will gave everything, I assume, from what you said, to
2 a foundation for animals. This is under the will. So
3 what's wrong with that?

4 MR. COOPER: It actually gives it to Kay
5 Passalay Slade [phonetic], because she was running one
6 of these animal rescue --

7 THE COURT: Well, I mean, but they moved before
8 the probate court to approve the will, I would assume;
9 right?

10 MR. KOUTEN: That's correct, Your Honor.

11 THE COURT: So what's wrong with that? I mean,
12 you're insinuating to me there's something wrong with
13 that.

14 MR. KOUTEN: Statutorily, there's nothing wrong
15 with that, Judge. We had --

16 THE COURT: I understand. Let me hear
17 Mr. Cooper. I'll listen to you.

18 MR. KOUTEN: Yes, sir.

19 THE COURT: I mean, what's wrong with that,
20 Mr. Cooper?

21 MR. COOPER: It was our position that -- well,
22 they failed to follow the statute in giving notice to
23 Betty Fisher. In other words, she's the living --

24 THE COURT: Was she an advisee under the will?

25 MR. COOPER: I'm not sure about that.

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1 THE COURT: Well, who do you have to give notice
2 to, other than advisees under the will? I will move
3 under the will to appoint an executor and notify the
4 advisees. Who do you have to give notice to under the
5 statute?

6 MR. COOPER: I believe that you have to give
7 them to the family, even --

8 THE COURT: Well, I don't know. I'm asking a
9 question. I don't know what the probate statute says.
10 Does the statute say, I've got a will, I've got an
11 advisee, I've got an executor, you file the will to
12 prove the will? Does the statute say that in addition
13 to that, you've got to notify all the family members?

14 MR. COOPER: The heirs.

15 THE COURT: The heirs?

16 MR. COOPER: Yeah. The heirs and the --

17 THE COURT: Well, they're not heirs under the
18 will.

19 MR. COOPER: No. But if the will is knocked
20 out, if it's revoked --

21 THE COURT: Well, that's a separate problem.
22 You can come contest it. But you're insinuating they
23 did something wrong, and they didn't.

24 MR. COOPER: No.

25 THE COURT: You filed a will to prove the will,

1 you got an executor, you got the advisees, and you
2 asked the Court to approve it. Now you say you didn't
3 get notice for filing. But you had the right to come
4 in and contest the will, which you've done. So what
5 is wrong with that?

6 MR. COOPER: Well --

7 THE COURT: You keep insinuating they've done
8 something wrong by doing that, and I don't understand
9 your argument.

10 MR. COOPER: Well, there is a statute, Your
11 Honor, that says that when they go for informal
12 probate, even if there's a will that you have to give
13 notice to the known heirs and the devisees under the
14 will. So the known heirs have to be given notice.
15 They knew about Betty Fisher but they didn't give
16 notice --

17 THE COURT: Well, technically, are they heirs
18 under the will? I mean, you keep trying to confuse
19 the administration of a non-will estate versus a will
20 estate. Are they required to give notice to the heirs
21 if it was no will?

22 MR. KOUTEN: Your Honor --

23 MR. COOPER: I believe they --

24 MR. KOUTEN: -- the probate code says --

25 MR. COOPER: -- are, Your Honor.

1 THE COURT: Okay. Yes, sir?

2 MR. KOUTEN: The probate code says that once you
3 are appointed, the first document you send out is
4 what's called an information to heirs.

5 THE COURT: Right.

6 MR. KOUTEN: That form is subsequent to
7 appointment. It goes to not only to the devisees of
8 the will, but those who would be if the will was
9 invalid. And we did provide that subsequent to
10 appointment.

11 THE COURT: And then they have an opportunity to
12 come in and contest; right?

13 MR. KOUTEN: And they did. After --

14 THE COURT: That's what I thought.

15 MR. KOUTEN: And we did send them that
16 information to heirs subsequent to appointment.

17 THE COURT: All right.

18 MR. COOPER: But all that, Your Honor, was
19 ultimately determined against us in the Court of
20 Appeals. But it was on appeal when these orders were
21 issued, and we just think that when the Court of
22 Appeals or the Supreme Court is considering who should
23 be administering these assets, it's not for the
24 probate court to come back in in a conservatorship
25 action when the conservatorship has already ended.

1 And by statute --

2 THE COURT: I understand your argument.

3 MR. COOPER: Yes. I --

4 THE COURT: Let me -- I'm going to have to read
5 it. Thank y'all very much.

6 MR. KOUTEN: Thank you, Judge.

7 MR. COOPER: Your Honor, there are separate
8 orders that are issued in 8657.

9 THE COURT: I'll look at all of them. I've got
10 all three files right here.

11 Have you got any separate arguments on the -- I
12 believe --

13 MR. COOPER: Your Honor, we don't have any
14 separate arguments --

15 THE COURT: I mean, have you got any separate
16 arguments on -- okay. Let me find the -- what's the
17 other remaining one?

18 MR. COOPER: 8657.

19 THE COURT: Have you got any separate arguments
20 under 8057?

21 MR. COOPER: 8657, Your Honor. And, yes, we do
22 have a lot of separate arguments.

23 THE COURT: What's different about that order?

24 MR. COOPER: Well, this order doesn't have
25 anything to do with appointment of Mr. Harvey. There

1 are two orders here. There's one motion that we have
2 for Ms. Fisher, Ms. Lisa Fisher, to be paid for her
3 work as conservator and the Court, without any
4 findings, denied that. And of course it's
5 well-briefed in our brief. But, you know, she was --
6 everybody else, attorneys, guardians ad litem,
7 everybody else in the case, has been paid. Ms. Fisher
8 filed this motion to be paid for her work while she
9 was conservator, and that was denied. Again, it was
10 properly motioned with affidavits. There was no
11 objection filed by Mr. Kouten, or by anybody else, and
12 the Court, without just cause, has denied those fees.

13 THE COURT: All right. What else?

14 MR. COOPER: The other thing -- the other thing,
15 Your Honor, is that the Court, after appointing
16 Mr. Harvey as special fiduciary, issued a series of
17 freeze orders. Now, those freeze orders, you know, we
18 feel like are inappropriate, with regard to Alice Shaw
19 Baker's estate, for a lot of reasons that we've
20 already argued here today.

21 But in addition to that, the freeze orders
22 specifically freeze Ms. Lisa Fisher's personal bank
23 accounts and there's no -- there was no reason, no
24 justification, for that. There was no evidence to
25 support any of these orders that the Court has. The

1 Court specifically, in the transcript, denies us the
2 opportunity to allow Ms. Fisher to testify. And so
3 it's just -- we just don't see how in the world --
4 again, there was no notice that she's going to issue
5 any freeze order. She froze all the bank accounts not
6 only of Alice Shaw Baker and Lisa Fisher as
7 conservator, but she's freezing Lisa Fisher's personal
8 bank accounts. Now, it didn't have any real effect
9 because Lisa Fisher didn't have any accounts here in
10 South Carolina personally --

11 THE COURT: She froze the account in South
12 Carolina? I assume it was an account in South
13 Carolina she froze?

14 MR. KOUTEN: Your Honor, there were several --

15 THE COURT: Hold on a second.

16 MR. COOPER: I believe they're -- I believe
17 they're in California.

18 THE COURT: What personal accounts did she
19 freeze of Ms. Fisher, is what I'm asking.

20 MR. COOPER: Well, none of them have -- I don't
21 think they've actually been impacted. But the order
22 does say that. And --

23 THE COURT: Well, which ones? What accounts?

24 MR. COOPER: It says accounts, Lisa Fisher
25 individually. And it seems like to me there's no

1 basis for that.

2 THE COURT: Well, does she have any individual
3 accounts in South Carolina?

4 MR. COOPER: No, Your Honor.

5 THE COURT: So she doesn't have any, so what's
6 the big deal?

7 MR. COOPER: All of the accounts I believe are
8 in California, Judge.

9 THE COURT: Well, the probate judge doesn't have
10 any authority to freeze her personal account in
11 California.

12 I mean, so what's the -- so what, is my question
13 to you. If she didn't have an account in South
14 Carolina and the probate judge froze it improperly, so
15 what --

16 MR. COOPER: Well, Your Honor --

17 THE COURT: -- is my question to you.

18 MR. COOPER: I'm not sure what effect it
19 actually had in terms of -- but it's improper for the
20 Court to order that.

21 THE COURT: Well, it may be. But so what?

22 MR. COOPER: Well, so we've appealed and we're
23 here on appeal, Your Honor, and you're here to
24 consider --

25 THE COURT: I mean, if there's nothing to

1 freeze, what's the big deal --

2 MR. COOPER: Well, there were a lot of assets --

3 THE COURT: -- other than y'all want to squabble
4 with each other?

5 MR. COOPER: There were assets of Alice Shaw
6 Baker that were frozen.

7 THE COURT: Well, that's a separate problem.
8 Anything else on that --

9 MR. KOUTEN: Judge --

10 THE COURT: -- before I listen to the other
11 side?

12 MR. COOPER: No, Your Honor.

13 THE COURT: All right. Thank you very much.
14 Yes, sir?

15 MR. KOUTEN: For your convenience, Your Honor,
16 the two orders in this case --

17 [Whereupon, Mr. Kouten and Mr. Cooper confer]

18 MR. KOUTEN: If I may approach?

19 THE COURT: Yes, sir.

20 [Whereupon, Mr. Kouten proffers documents to the
21 Court]

22 MR. KOUTEN: In addition to those, there are
23 several orders freezing assets that the Court did sua
24 sponte. I had no idea that they were even in
25 existence. I didn't get copies of them. They are

1 fully consistent with the Court's order. The Court --
2 it does not show in the transcript how the Court
3 reacted to these funds being spent after discharge.
4 But having heard the case and then sua sponte later
5 issuing six or eight orders freezing assets, the Court
6 took that very seriously.

7 THE COURT: Are the assets -- is the -- is that
8 accounting somewhere in this paperwork?

9 MR. KOUTEN: I do -- it is not, Judge, but here
10 they are here, if I may approach again.

11 THE COURT: Let me have it. Let me look at it.

12 MR. KOUTEN: Here are all the orders freezing
13 the assets.

14 [Whereupon, Mr. Kouten proffers documents to the
15 Court]

16 THE COURT: But where is the one -- the final
17 accounting where the \$88,000 was spent? Is that part
18 of any of these orders?

19 MR. COOPER: No, Your Honor, it's not part of
20 the orders.

21 And, you know, again --

22 THE COURT: Well, is it part of my file, is what
23 I'm asking.

24 MR. KOUTEN: It is, Judge. There's --

25 THE COURT: That's all I want to know.

1 MR. KOUTEN: -- an 800-page return, and it is a
2 part of the file.

3 THE COURT: Okay. That's fine. That's all I
4 wanted to know.

5 THE COURT: All right. Anything else?

6 MR. KOUTEN: There are three accountings: one
7 is upon discharge; one is a separate 2009 accounting;
8 and one is -- or separate 2009 and 2010. Therein you
9 will find where the discharge conservator was spending
10 estate assets without authority. So those will be --

11 THE COURT: I'm sure that's why the freeze was
12 issued.

13 MR. KOUTEN: Yes, sir.

14 THE COURT: Thank y'all very much.

15 MR. COOPER: Your Honor, one thing for the
16 record?

17 THE COURT: Thank you very much. I've heard
18 enough.

19 I'll review it. I'll review your memorandums.
20 I'll make them a part of the record. Okay? Thank
21 y'all very much.

22 MR. COOPER: Thank you.

23 [HEARING CONCLUDES AT 11:13 A.M.]

24

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Fisher v. Huckabee
Appeal
July 16, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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SC Court of Appeals

I, the undersigned Mia Perron, Circuit Court
Reporter for the 9th Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of the hearing
before the Honorable J.C. Nicholson, Jr., on Wednesday,
July 16, 2014.

I do further certify that I am neither kin nor
counsel to any of the parties and have no interest in the
outcome of this action.

Dated this 6th day of December, 2014.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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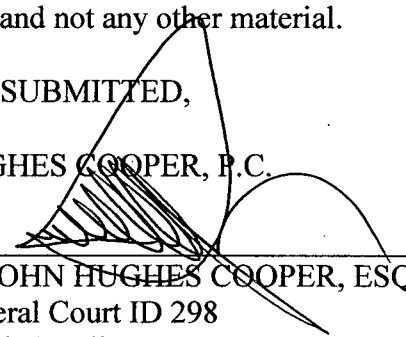
CERTIFICATE OF COUNSEL

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

November 19, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

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

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

NOV 23 2015

Circuit Case No. 2011-CP-10-8657

SC Court of Appeals

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

PROOF OF SERVICE

I certify that I have served the **Consolidated Record on Appeal** upon Respondent Bessie Huckabee by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2015, addressed to her attorney of record Peter A. Kouten, Esquire, P.O. Box 340, Johns Island, SC 29457.

November 19, 2015 RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

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