

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
Tamara Curry, Probate Court Judge

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

RECEIVED
RECEIVED
DEC 11 2015
SC Court of Appeals
SC Court of Appeals

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

FINAL REPLY BRIEF OF APPELLANT

JOHN HUGHES COOPER, ESQUIRE
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335
(Attorney for Appellant)

TABLE OF CONTENTS AND AUTHORITIES

Table of Contents	2
Table of Authorities.....	4
INTRODUCTION.....	6
ARGUMENT	
1. The Circuit Court’s Failure to consider Appellant’s Statement of Grounds prior to Oral Argument was an abuse of discretion and deprivation of due process.....	6
2. At the time of the hearing, All Actions were Stayed in the Circuit Court because of the Appeal in the South Carolina Supreme Court, therefore the Probate Court was without Power to Grant the Motion for Special Fiduciary.....	10
3. The Probate Court’s Order Appointing A Special Fiduciary acted to Review another Judge’s Order in violation of Rule 60 and Law.....	11
4. The Probate Court did not have Legal Authority to Appoint a Special Fiduciary, and it amounted to Appellant’s Removal without Statutory or Due process notice and a Right to Be heard.....	12
5. It was an Abuse of Discretion for the Court to Grant Respondent’s Motion when she did not have standing. Motion which Amounts to a Removal without Cause of Appellant.....	13
6. The Conservatorship Estate ended at Alice Shaw Baker’s Death, therefore Probate Court had no Jurisdiction to exercise any control over Her Estate.....	13
7. The Probate Court Abused its Discretion in Failing to Rule on Appellant’s Objections	14
8. There was No Emergent Need to Appoint a Special Fiduciary to Protect the Estate of Alice Shaw Baker, and no evidence to support any finding that Appellant did not have Authority to Pay Expenses.....	15

TABLE OF CONTENTS CONT'D

9.	The Court was Precluded from Appointing a Special Fiduciary under the principal of Laches.....	16
10.	The Probate Court Abused its Discretion in Refusing to Strike Respondent's Motion to Appoint Special Fiduciary due to Respondent's Failure to Comply with Rule 11, SCRCP.....	17
11.	The Probate Court Abused its Discretion in Failing to Grant Appellant's Extension of Time to Deliver Property.....	17
12.	The Probate Court Erred in hearing the Motion to Appoint a Special Fiduciary when Proper Notice had Not Been Given, in violation of Statutory and Constitutional law.....	18
CONCLUSION.....		19

TABLE OF AUTHORITIES

Decisional Law:

<i>Blanton v. Stathos</i> , 351 S.C. 534 542, 570 S.E. 2d 565, 569 (2002).....	18
<i>Dean v. Kilgore</i> , 437 S.E. 2d 154 (1993)	9
<i>Dukes & Dukes v. Hygrade Food Products</i> , 236 S.C. 69 (1960).....	11
<i>Eagles v. S.C. Nat'l Bank</i> , 301 S.C. 402, 408 (Ct. App. 1990).....	6, 9
<i>Eldridge v. City of Greenwood</i> , 308 S.C. 125, 127.....	8, 16
<i>Ex Parte Dibble</i> , 279 S.C. 592 (1983).....	14
<i>First Union National Bank v. FCVS Communications</i> , 321 S.C. 496, 469 S.E. 2d 613 (1996).....	9, 10, 14, 15
<i>Hite v. Thomas & Howard Co.</i> , 305 S.C. 358, 360, 409 S.E. 2d 340, 341 (1991).....	8, 14
<i>Greenfield v. Greenfield</i> , 245 S.C. 604, 610, 141 S.E. 2d 920, 923 (1965).....	9, 14
<i>Limehouse v. Hulsey</i> , 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013).....	18
<i>Pye v. Estate of Fox</i> , 369 555, 565 (2006)	16
<i>S.C. Dep't of Soc. Serv. v. Holden</i> , 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).....	18
<i>State v. Najjar Debrece Byers</i> , 392 S.C. 438 (2011).....	13
<i>Universal Benefits, Inc. v. McKinney</i> , 349 S.C. 179, 183, 561 S.E. 2d 659, 661 (2002).....	18
<i>Watson v. Underwood</i> , 407 S.C. 443 (2014).....	8, 11, 12, 13, 14, 15, 17

Other Decisional Law:

<i>FCC v. WJR, The Goodwill Station, Inc.</i> 337 US 265 (1949).....	6
<i>McConnell v. Akins</i> , 586 S.E.2d 688 (2003).....	10
<i>Schenk v. US</i> , 249 US 47 (1919).....	6

TABLE OF AUTHORITIES CONT'D

South Carolina Rules:

Rule 11, SCRCP.....	17
Rule 60, SCRCP.....	10
Rule 203, SCACR.....	10, 13
Rule 209, SCACR.....	6, 10, 11, 13
Rule 212, SCACR.....	6, 10, 11, 13

South Carolina Statutes:

S.C. Code Ann. § 14-3-330(4).....	8, 14
S.C. Code Ann. § 62-1-401.....	18
S.C. Code Ann. § 62-1-306.....	12, 14
S.C. Code Ann. § 62-1-308 (c).....	8, 10, 13
S.C. Code Ann. § 62-3-614.....	18
S.C. Code Ann. § 62-5-402.....	11, 14
S.C. Code Ann. § 62-5-415.....	12
S.C. Code Ann. § 62-5-416.....	11
S.C. Code Ann. § 62-5-425.....	7, 10, 14
S.C. Code Ann. § 62-7-708.....	18
S.C. Code Ann. § 62-7-707.....	7, 10, 14

INTRODUCTION

Appellant Lisa Fisher (“Appellant”) replies to Respondent Bessie Huckabee’s (“Respondent”) brief regarding Respondent’s motion for appointment of a Special Fiduciary. Her 3 page motion, without attachments, without exhibits, without verification, without any evidence has led to the necessity of Appellant outlining 12 errors of law. While it is always wise to hear both sides of the story before making a judgment, here Respondent only wants her side heard and ignores the appropriate issues and continues to reference material outside the record. (See Rules 209 and 212, SCACR).

It’s been said, “The charcter of every act depends upon the circumstances in which it was done”,¹ here Appellant has continued to fight for Alice Shaw Baker. The fight is for the proper administration of her estate and the protection of her assets. As the initial brief sets forth and this reply brief attempts to distinguish the facts as improperly set forth by Respondent,

ARGUMENT

- 1. The Circuit Court’s Failure to Consider Appellant’s Statement of Grounds prior to Oral Argument was an abuse of discretion and deprivation of due process.**

Respondent’s brief begins with a pattern of ignoring appellant’s arguments. The entirety of Respondent’s brief is replete with these blatant attempts to undermine the argument by merely failing to respond to them.

In Appellant’s opening brief, she argued in part that procedural due process mandated informed and substantial discussion in the oral argument as supported by *FCC v. WJR, The Goodwill Station, Inc.* 337 U.S. 265, 272 (1949). The Circuit Court had, upon review of the case, the ability to make necessary findings as set forth in *Eagles v. S.C. Nat’l Bank*, 301 S.C. 402

¹ See Justice Oliver Wendell Holmes, *Schenck v. U.S.* (1919), discussing issues of free speech, but Appellant contends also applicable when reviewing the actions by Appellant.

(1990). Therefore, Appellant contends that the Circuit Court's lack of review of the briefings made oral argument ineffective—she could not address the Court about the important questions it may have had, or humbly may say, should have had. This is not a case where Appellant's arguments are based on frivolous questions of law—it is in its most pure sense, a simple question of the Probate Court's jurisdiction. Did the Probate Court have any jurisdiction to hear, decide, interfere with the decedent's estate which had already been subject to Betty Fisher's formal petition to open the estate and thereafter removed to the Circuit court? If not, all of these alleged violations by the Probate Court were just salt in the wound, because the court should not have made any decisions. The statutory and constitutional violations just emphasized the lack of fair procedures and hearing in this case.

So Appellant's assertions that the subsequent judgment by the Circuit Court affirming the order was corrupted by the lack of proper argument is error. Respondent's argument in her brief fails to even address this argument, instead sidelining the issues into irrelevant arguments about interlocutory orders, making of inaccurate statements of law, and conclusionary support for the probate court's "finding" of emergent need.

Respondent fails to address these issues, because there is no legal basis supporting the decisions. The lack of appropriate argument is aggravated by the foundation of Respondent's case— a 3 page motion, lacking any evidentiary support—which has necessitated this appeal. Procedural safeguards should have prevented Respondent from getting into the hallowed court doors, or at least prevented these orders by noting the complete lack of evidence. Alice Shaw Baker's entire estate was essentially removed from the proper care of her conservator by the order, despite clear statutory authority supporting her duty to deliver assets to the proper personal representative under S.C. Code Ann. § 62-5-425 . Thereafter, the probate court appoints a stranger to the estate with the potential increase of costs and loss of principal to the decedent's estate. On

its face, it lacks any protection for Alice Shaw Baker's estate, and ultimately her intended beneficiaries.

Respondent relies heavily on the argument that the order involved in this case is interlocutory and not immediately appealable. However, courts have found that :“An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation.” (See *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E. 2d 340, 341 (1991).) *See also* § 14-3-33)(4), *Eldridge v. City of Greenwood*, 308 S.C. 125, 127 [injunctions immediately appealable.]

The basis for Respondent's argument is the unsupported conclusion that a Motion for Special Fiduciary is interlocutory, and not immediately appealable. As authority for her position, Respondent cites *Watson v. Undercook*, 407 S.C. 443 (2014), however this case does not support his position. Instead, it supports Appellant's position, and contains language directly instructive:

“An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation.” (See *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E. 2d 340, 341 (1991).)

Jurisdictional questions of this nature mandate review by this court, as it will continue to rear its ugly head in future proceedings, if the Special Fiduciary were to take over the control of the estate, undermining Betty Fisher's removal of estate proceedings to the Circuit Court.

Respondent failed to address any of these issues in her briefing.² As such , Appellant contends that Respondent's failure to respond to the issues raised, should be deemed as a

² Respondent filed no briefings in the underlying Circuit Court appeal, and instead her counsel merely appeared at oral argument with “unclean hands” attempting to influence the court without any legal argument. Appellant relies on the law. Respondent's counsel attempts to garner favors in this case. First by forum shopping to the Probate court, and then appearing without substantive briefing in the Circuit Court appeal. Therefore, Respondent's refusal to address these important questions, should not be rewarded.

confession that appellant's position is correct. (See *First Union National Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E. 2d 613 (1996).)

Moreover, Respondent's attempts to imply wrongdoing by Appellant are false and misleading. For instance, Respondent's counsel asserts that Appellant's cite to *Eagles v. S.C. National Bank*, 301 S.C. 402 (1990) was inaccurate. Indeed, he directly claims that: "Appellant fails to mention that Eagles further states that, although the appeals court may make finding [sic] with its own view, the standard of review followed was whether there is any evidence which 'reasonably supports' the circuit court's findings." (See Respondent's brief, pp. 7-8) Review of the case, does not reveal that the *Eagles* court makes that statement, although the case in *Dean v. Kilgore*, 437 S.E. 2d 154 (1993) does stand for that proposition. With that said, it does not change the facts in this case.

Finally, Respondent's conclusions that the probate court found "Emergent need" can not be a finding, when there was no notice, no evidence, no affidavit, no verification, nor any testimony. Respondent concludes that the Court Order of September 28, 2011 constitutes sufficient findings of fact, and that the order was somehow proper. Respondent argues that the probate court can do virtually *anything*. However, it is well settled that "The probate court is a court of limited jurisdiction owing its present existence to creation by statute rather than the Constitution, and as such, can exercise only such powers as are directly conferred upon it by legislative enactment..." (See *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E. 2d 920, 923 (1965).) Therefore, when Betty Fisher sought a formal probate—all jurisdiction ended in these protective proceedings, and the probate court could not exercise its jurisdiction over Alice Shaw Baker's assets.

//

2. **At the time of the hearing, All Actions were Stayed in the Circuit Court because of the Appeal in the South Carolina Supreme Court, therefore the Probate Court was without Power to Grant the Motion for Special Fiduciary.**

Respondent again references *Watson v. Underwood*, as support for the position that the probate order is interlocutory. He repeats this throughout his briefing, and he continues to fail to address appellant's arguments. Appellant again requests that the court treat the failure to respond to the issues raised as a confession that appellant's position is correct. (See *First Union National Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E. 2d 613 (1996).)³ Respondent's counsel did not present any admissible evidence to the probate court, did not brief the appeal to the Circuit court, and now seeks to reference records in violation of the Rules of this court (i.e. records from the estate action).⁴

The issue raised in this section, that when there was a pending appeal, no party that authority under Rule 203, SCACR and S.C. Code Ann. § 62-1-308 (c) precluded bringing any motion while the matter was on the Estate matter was on appeal.

Respondent concludes that the "conservatorship assets" are somehow different from the Estate assets, which was subject to removal to the Circuit Court, despite the affirmative duty of Appellant to deliver assets to the **"duly appointed personal representative of the decedent or other persons entitled thereto"** under § 62-5-425.

³ There are 3 appeals in this matter, consolidated for purpose of the record, 2014-002020 and 2014-002034. Appellant is forced to argue many of the same arguments, which have no bearing on the issue—which is the jurisdiction of the probate court.

⁴ See Appellant's Motion to Strike filed 7/22/15. Respondent seeks to reference records not presented to the probate or Circuit Court. Georgia courts have discussed the problems with allowing facts outside the record even in argument. The court in *McConnell v. Akins*, 586 S.E.2d 688 (2003) stating: "The law forbids introduction into case, by way of argument, facts which are not in the record and are calculated to prejudice party and render trial unfair." It is well established by the rules of the court, Rules 209 and 212, SCACR, that this court is not to consider any alleged fact not cited in the record. Here, there is nothing in the record to allow the court to jump to this conclusion, and Appellant respectfully requests that the court ignore these improper conclusions.

As a matter of law, the orders must be reversed.

3. The Probate Court's Order Appointing A Special Fiduciary acted to Review another Judge's Order in violation of Rule 60 and Law.

In Appellant's opening brief, she argued that a court can not interfere with another court's order which is the subject to the pending litigation. (See Rule 60, SCACR; See also *Dukes & Dukes v. Hygrade Food Products*, 236 S.C. 69 (1960).) Here, there are orders in the Estate Case and pending proceedings for the removal of Huckabee and appropriate appointment of a Special Administrator. Therefore, the probate court's interference by issuance of a new order appointing a Special Fiduciary is improper.⁵

Here, Respondent merely reargues *Watson v. Underwood*, *supra*, claiming again that the Order appointing Special Fiduciary is interlocutory. He further takes the position that a court can take all actions "reasonably necessary", however Appellant contends the law does not support a court's unfettered discretion to issue *any* orders. The probate court still must comply with jurisdictional issues, Statutory and Constitutional Provisions, and basic principles that a court must make "appropriate orders" (e.g. S.C. Code Ann. § 62-5-416(C).) Therefore, Respondent's analysis of *Ex Parte Dibble*, 279 S.C. 592 (1983) is without merit.

Finally, Respondent's reference to § 62-5-402 is misplaced. There is no dispute that the probate court has jurisdiction over conservatorship. However, upon Alice Shaw Baker's death, all

⁵ In this section, Respondent's counsel again attempts to interject improper and unsupported narrative without reference to the record and in a conclusionary and inaccurate manner. Appellant has filed a Motion to Strike. The court in *McConnell v. Akins*, 586 S.E.2d 688 (Ga. 2003) held: "The law forbids introduction into case, by way of argument, facts which are not in the record and are calculated to prejudice a party and render the trial unfair." It is well established by the rules of the court, Rules 209 and 212, SCACR, that this court is not to consider any alleged fact not cited in the record. Here, there is nothing in the record to allow the court to jump to these conclusion, and Appellant respectfully requests that the court ignore these improper conclusions. (See Filed Motion to Strike)

matters are to be resolved *in the Estate matter* which was subject to removal to the Circuit Court. Therefore, the probate court had no authority to act to appoint a Special Fiduciary, because it had no authority over the assets.

Therefore, the orders must be reversed.

4. The Probate Court did not have Legal Authority to Appoint a Special Fiduciary, and it amounted to Appellant's Removal without statutory or due process notice and a Right to Be heard.

The effect of the Order Appointing a Special Fiduciary is that it removed Appellant without cause. This is not an interlocutory order. (See S.C. Code § 62-5-415 [removal of conservator for good cause, upon notice and hearing]; see S.C. Code § 14-3-330)

Interlocutory orders as argued by Respondent and referenced in *Watson v. Underwood*, *supra*, do not apply. Courts have found that : “An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation.” (See *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E. 2d 340, 341 (1991).

Respondent goes on to argue that Appellant was removed, by the prior discharge. However, as a matter of practice, discharge and removal are quite different. Removal demands “good cause”, and a conservator is discharged as a matter of law upon the death of a conservatee. (See S.C. Code Ann. § 62-5-306 (1987) (terminating the authority of a guardian upon the death of the ward).)

Respondent continues to argue issues not in the record regarding her status as “personal representative.” Moreover, her conclusion that Appellant has some “idea that she has been wronged” is misplaced. Appellant continues to argue that the probate court lacked jurisdiction to make these orders, this is in itself–wrong, improper, and illegal. The statements made about Appellant are false and lacking in foundation. Yet, Appellant’s goal is to seek redress for her great

aunt, who was greatly loved. Standing up for Alice Shaw Baker to ensure that her desires concerning her assets and estate plan to benefit animal charities is the main importance. Appellant is alive and able to make her own decisions, Alice's death rocked her family and led to this fight over monies that neither Responder or her cohorts are entitled to. Once Alice Shaw Baker knew that these individuals lied about owning animal charities, she rightly revoked her will. The probate court has no authority to involve itself in these proceedings, and thus the orders must be reversed.

5. It was an Abuse of Discretion for the Court to Grant Respondent's Motion when she did not have standing. Motion which Amounts to a Removal without Cause of Appellant.

Appellant continues to object to Respondent's failure to address the issues in this case. The issues of *Watson v. Underwood, supra*, have no merit in the context of Appellant's argument.

The issue raised in this section, that when there was a pending appeal, Bessie Huckabee lacked standing to bring this motion. She was in violation of the stay under Rule 203, SCACR and S.C. Code Ann. § 62-1-308 (c) precluded bringing any motion while the matter was on the Estate matter was on appeal.

Respondent's narrative is improper and references documents not part of the record in violation of Rules 209, SCACR and Rule 212, SCACR.

As a matter of law, the orders must be reversed.

6. The Conservatorship Estate ended at Alice Shaw Baker's Death, therefore Probate Court had no Jurisdiction to exercise any control over Her Estate.

Appellant repeats her argument against *Watson v. Underwood, supra*, as the Order Appointing Special Fiduciary is not an interlocutory order.

Respondent continues to argue that the probate court can do virtually *anything* . However, it is well settled that "The probate court is a court of limited jurisdiction owing its present

existence to creation by statute rather than the Constitution, and as such, can exercise only such powers as are directly conferred upon it by legislative enactment..." (See *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E. 2d 920, 923 (1965).)

By statute, the guardianship/conservatorship expired upon Alice Shaw Baker's death. (See S.C. Code Ann. § 62-5-306 (1987). The circuit court has jurisdiction over her estate.

Since Appellant is duty bound to maintain the property pending final "receipt" by the proper Personal Representative (S.C. Code Ann. § 62-5-425(d)), the probate court can not interfere with that duty, in light of the Circuit Court's jurisdiction over Estate assets..

Therefore, Appellant contends that Respondent's failure to address these issues in her brief, instead making representations in her brief about Appellant, about non-existent findings of the probate court, that were never made and which was not cited to in the record, can not stand. (See *First Union National Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E. 2d 613 (1996) [failure to address issues upon appeal grounds for deeming Respondent's confession.])

Appellant respectfully asks this court to reverse said orders.

7. The Probate Court Abused its Discretion in Failing to Rule on Appellant's Objections .

Respondent fails to address this issue at all during her briefing. She continues to argue *Watson v. Undersood*, *supra*, *Ex parte Dibble*, and the conservatorship statute under 62-5-402, which Appellant has repeatedly addressed in these briefings. However, the blatant failure to address the issues raised by this briefing warrants this court's attention.

As set forth in Appellant's initial brief, 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. The motion was 3 pages, no

affidavits, no verifications, and no testimony at the hearing. Therefore, the court literally accepted Respondent's counsel's wrongful allegations, and granted his motion without addressing the serious objections brought by Appellant. (See R.285, 310, 313, 318, 321, Motion to Strike, transcript, and Objections to Orders filed herein.) The court refused Appellant's counsel's request to speak, and refused to allow Appellant to speak. (R. 553, R.T., 16: 7-14)

The probate court's failure to issue orders regarding Appellant's objections obviously prejudiced her and the state of the hearing. (See *State v. Najjar De'breece Byers*, 392 S.C. 438 (S.C. 05/23/2011)).

The court's refusal mandates reversal.

8. There was No Emergent Need to Appoint a Special Fiduciary to Protect the Estate of Alice Shaw Baker, and no evidence to support any finding that Appellant did not have Authority to Pay Expenses.

Appellant continues to object to Respondent's failure to address the issues in her briefing. She further requests that the court issue findings pursuant to *First Union National Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E. 2d 613 (1996) that find Respondent's failure to address issues upon appeal are grounds for deeming confession. Appellant's initial briefing outlined her contentions, and respondent's failure to address them causes unnecessary repetition to preserve her objections to this briefing.

The principles set forth in *Watson v. Underwood, supra.* and the jurisdiction during the life of a conservatee are not grounds which address the authority of Appellant to protect the assets of Alice Shaw Baker. This is fully briefed in Appellant's initial brief. Appellant briefly reminds the court that pending final resolution, the court can rely on the statutory requirements for a conservator or on acts as a fiduciary/trustee where a trustee has the power under S.C. Code Ann. § 62-7-707 "**to protect the trust property.**" (Emphasis added). Respondent can not legitimately

argue that upon discharge, Appellant had no duty to protect the property. Such a policy could hurt the elderly and most vulnerable disabled populations.

Alice Shaw Baker's property is protected, and has been protected through these proceedings, so the probate court's conclusion that Appellant was not able to pay expenses is in error. Without Appellant's protections, the real property taxes would not be paid, insurance would not be paid, and lack of maintenance of the property would all substantially reduce the value of the property. These are exactly the types of protections anticipated by S.C. Code Ann. § 62-7-707.

Therefore, said orders must be reverse.

9. The Court was Precluded from Appointing a Special Fiduciary under the principal of Laches.

Respondent again raises the *Watson v. Underwood* claim that this issue involves an interlocutory order, however the law is clear that "An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation." (See *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E. 2d 340, 341 (1991).) Moreover, these orders act as an injunction preventing appellant from acting to protect Alice Shaw Baker's property pending final determination. These type of orders are always immediately appealable. (See § 14-3-33)(4), *Eldridge v. City of Greenwood*, 308 S.C. 125, 127 [injunctions immediately appealable.]

Instead of addressing the issues in this section of the brief, Respondent uses her space to make false claims and speculate about the underlying claims. E.g. Respondent's assertion that Laches was not raised in the lower court is wrong. Review of the record on appeal will reveal that Appellant raised it in her *Motion for Reconsideration*, p. 19. Therefore, his reliance on *Pye v. Estate of Fox*, 369 S.C. 555, 565 (2006) is misplaced.

Finally, Respondent's *ad hominem* attacks of Appellant to try and imply wrongdoing is merely a tactic to avoid addressing Appellant's argument. There is no record or evidence that the probate court made any findings that there was a "breach of court's trust in her." Moreover, the narrative that follows is not in the court records, and again should not be considered as they do not factually address the issues in the case.

10. The Probate Court Abused its Discretion in Refusing to Strike Respondent's Motion to Appoint Special Fiduciary due to Respondent's Failure to Comply with Rule 11, SCRCP

As explained above, *Watson v. Underwood*, 407 S.C. 443 (2014) does not apply. Appellant contends that in part because of the lack of jurisdiction by the lower court, the order appointing a Special Fiduciary is immediately appealable.

Further, Appellant continues to object to Respondent's counsel's narrative, the failure to site to the record, the conclusionary statements, and arguments that were waived (e.g. any failure under Rule 11 was waived, especially if the court were to interpret Respondent's *Motion for Special Fiduciary* as a responsive pleading.) There are no facts and/or a manipulation of facts used to justify Respondent's wrong doing.

Also, Respondent's conclusion that "the lower court, based on the accountings and arguments of Appellant's counsel found that the appointment of a special fiduciary was emergent" is not based on any statements by the court or the record on appeal.

Therefore the orders must be reversed.

11. The Probate Court Abused its Discretion in Failing to Grant Appellant's Extension of Time to Deliver Property.

Appellant objects to the reference to *Watson v. Underwood, supra*. Appellant continues to object to the lack of authority by Respondent in addressing the issues of this case. Responding

merely provides a narrative, not before this court with continued attacks on appellant. Further, Respondents asserts legal positions without authority as to the conclusion. For instance, “The Appellant did not seek extension to continue to act as the conservator after her discharge.” Appellant contends that Respondent’s failure to cite to any authority that she was required to do so. Rather, there is authority that Appellant was duty bound to preserve the money to turn over to the proper Estate representative.

12. The Probate Court Erred in hearing the Motion to Appoint a Special Fiduciary when Proper Notice had Not Been Given, in violation of statutory and constitutional law.

At Alice Shaw Baker’s death, probate court had exclusive jurisdiction over the estate assets. Respondent contends that she was not required to give notice under S.C. Code Ann. § 62-3-61, however subsection (b)(2) requires notice and a hearing. (See also § 62-3-106)

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).)

Respondent’s assertion is without legal authority, even common sense would dictate that family is entitled to notice if someone new is seeking appointment. Respondent’s continued failure to respect issues of notice mandate reversal.

(Appellant again objects to *Watson v. Underwood*, *supra* The Probate Court did not have jurisdiction to hear the motion for Special Fiduciary, and as such the order must be reversed.⁶

⁶ See *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E. 2d 659, 661 (2002) [noting that a judgment is void if rendered by a court “which lacked subject matter jurisdiction or personal jurisdiction”) Moreover, even when a probate court has subject matter jurisdiction over the dispute, its jurisdiction can be divested. (See *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013). All of these issues together mandate compliance with the statute.

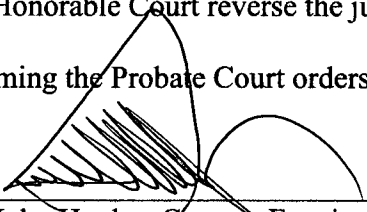
And even if there was authority for a Motion, under constitutional and statutory notice provisions Respondent was required to give Appellant notice. (See §62-7-704(e) and § 62-3-614; § 62-1-401 [requires 20 days notice and a hearing].)⁷

Therefore, the orders must be reversed.

CONCLUSION

Appellant respectfully prays that this Honorable Court reverse the judgments of the Probate Court and the Order of the Circuit Court affirming the Probate Court orders.

December 8, 2015



John Hughes Cooper, Esquire
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464
shiplaw@jhcooper.com
(843) 883-9099
Attorney for Appellant

Other Counsel of Record:

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457

⁷ A fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. (See *Blanton v. Stathos*, 351 S.C. 534 542, 570 S.E. 2d 565, 569 (2002).)

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
Tamara Curry, Probate Court Judge

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

RECEIVED

DEC 11 2015

SC Court of Appeals

LISA FISHER.....Appellant

v.

BESSIE HUCKABEE.....Respondent

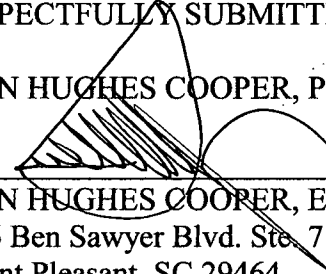
CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

December 8, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

843-883-9099; fax 843-883-9335

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

Appellate Case No. 2014-002028

Circuit Case No. 2011-CP-10-7821

RECEIVED

DEC 11 2015

SC Court of Appeals

LISA FISHER Appellant

v.

BESSIE HUCKABEE.....Respondent

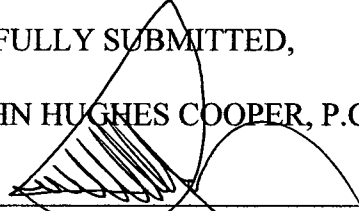
PROOF OF SERVICE

I certify that I have served the **Final Brief of Appellant and Final Reply Brief of Appellant** upon Respondent Bessie Huckabee by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2015, addressed to her attorney of record Peter A. Kouten, Esquire, P.O. Box 340, Johns Island, SC 29457.

December 9, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR APPELLANT