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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

DEC 18 2015

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

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

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

LISA FISHER.....Appellant,

v.

BESSIE HUCKABEE.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

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

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

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

the court had written to Lisa Fisher seeking an annual accounting after her discharge based on the fact that she was holding the funds. Lisa Fisher did not respond to the request in a timely matter. The Respondent corresponded with counsel for the Appellant seeking the requested accounting from Lisa Fisher and no response was had. Lisa Fisher sought additional extension when the previous extension expired and Respondent objected to the extension based on lack of accounting. The Respondent sought to appoint a special fiduciary. Prior to the hearing from which this appeal comes, Appellant and Lisa Fisher sought motion to strike Respondent's motion based on S.C. Rules of Civil Procedure notice requirement. Proper notice was given to the conservator. Appellant is not a party to whom notice was required. Prior to hearing on Motion for Appointment of Special Fiduciary, Lisa Fisher filed an amended final accounting three years after she was discharged as conservator and an accounting for the following calendar year, 2010. Lisa Fisher, who is a lawyer in California and who alleges to practice in the area of conservatorships in her home state, clearly represented in her account filings to the probate court that she continued to act in matters affecting the estate. She expended funds after she was discharged as conservator. "The court discharged her" (R. _____ Transcript Page 13, Line 11), and Lisa Fisher "can no longer act as conservator." (R. _____ Transcript Page 14, Lines 2 and 3) Further, counsel for Appellant at the motion hearing indicated that "we just think this is a better way to do it" (R. _____ Transcript Page 27, Lines 8 and 9) The Appellant continues to expend estate assets without court authority and is unapologetic. The court asked whether the discharged conservator might have sought permission from the court to act in certain matters. (R. _____ Transcript Page 26, Lines 13 and 14) Lisa Fisher did not nor has she since. The lower court granted the motion appointing a special fiduciary. The lower

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

STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court's Failure to Consider Appellant's Statement of Grounds prior to Oral Argument, and Failure to reverse the Probate Court's Order amount to an abuse of discretion and a deprivation of due process?
2. Did the Pending Appeal in the South Carolina Supreme Court Preclude the Probate Court from Appointing a Special Fiduciary?
3. 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.
4. Once a Personal Representative is Appointed, Does the Probate Court have Jurisdiction to Appoint a Special Fiduciary under Probate Code § 62-7-704 (e)?
5. 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?
6. 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?
7. 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?
8. 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?
9. 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?
10. 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, SCRCP?
11. Did The Probate Court's Abuse its Discretion in Failing to Grant Appellant's Extension of Time to Deliver Proper?
12. 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?

ARGUMENTS

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

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

The circuit court, as appeals court in this matter, did not abuse its discretion nor did it deprive the Appellant due process. Here, the Appellant comes to the conclusion that the trier of fact did not consider the statement of grounds. There is no indication by the appellate court that it did not consider the statement of grounds. The trier of fact indicated, in the transcript, that it had not read Appellant's Brief prior to hearing and further indicated that he would do so prior to ruling. Further, Appellant argues that because the appeals court upheld the lower court's ruling, it abused its discretion and somehow deprived the Appellant due process.

Appellant cites Eagles v. S.C. National Bank by stating that the circuit court, sitting as an appellate court, has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. 301 S.C. 402, 408 (Ct. App. 1990) Appellant fails to mention that Eagles further states that, although the appeals court may make finding with its own view, the standard of review followed in Eagles was whether there is any

evidence which “reasonably supports” the circuit court's findings. Id. (See also Dean v. Kilgore 437 S.E.2d 154 (Ct. App. 1993))

Finally, Appellant argues that the probate court made no findings of fact. The probate court found an “emergent need for authority as to these estate assets.” Conservatorship of Alice Shaw-Baker, Probate Court Order 9/28/2011 p.2, last line

Therefore, the Court should uphold the ruling of the lower court based on findings of fact which reasonably support the lower court’s ruling and Appellant’s appeal on this issue should be denied.

2. Did the Pending Appeal in the South Carolina Supreme Court Preclude the Probate Court from Appointing a Special Fiduciary?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court’s order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

Appellant’s other issues on separate appeal have no relationship to the case at bar. The Appellant has filed an appeal with the Supreme Court on an estate matter and said appeal has nothing to do with the assets of the conservatorship of Alice Shaw-Baker. Further, the appointment of a special fiduciary has no effect on the outcome of Appellant’s Supreme Court appeal. As there is no nexus between the appointment of special fiduciary or

conservatorship assets and Appellant's other appeal, the Court should uphold the lower court's ruling and Appellant's appeal on this issue should be denied.

3. 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.

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the order appointing special fiduciary is not void. Counsel on several occasions discussed the matters of appointment of special administrator or financial intermediary appointment prior to the filing of the motion to appoint special fiduciary. The Appellant failed to appreciate that the motion for special fiduciary was a responsive pleading to the discharged conservator's motion for extension to hold estate assets. Each of the Conservator's motions for extension did not contain the required Rule 11 affirmation and the personal representative was never delivered a copy of the motion prior to the court's approval. Further, the lower court, based on the accountings and arguments of Appellant's counsel found that the appointment of a special fiduciary was emergent.

Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other

protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator was continuing to expend funds. Under the circumstances, the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reason, the lower court's order should be upheld.

4. Once a Personal Representative is Appointed, Does the Probate Court have Jurisdiction to Appoint a Special Fiduciary under Probate Code § 62-7-704 (e)?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the order appointing special fiduciary was based on the accountings, which revealed that Appellant was spending the conservatorship funds after she was discharged. Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator

was continuing to expend funds. Under the circumstances, the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reason, the lower court's order should be upheld.

5. 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?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the Respondent has standing as the court-appointed personal representative for the estate of Alice Shaw-Baker. In the event the Appellant brings the will contest to trial and until a court rules that Bessie Huckabee is no longer the personal representative, she has standing and is the person with authority to administer the estate of Alice Shaw-Baker.

Appellant argues that the appointment of special fiduciary is a removal without cause, however, she has been discharged as conservator, which, of itself is a removal. Appellant was granted an extension to hold funds of the conservatorship, in trust, and she has been spending the conservatorship assets without court authority. Appellant has no basis to push forward any idea that she has been wronged. She has been discharged as conservator. For the above reasons, the lower court's order should be upheld.

6. 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?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the order appointing special fiduciary is not void. Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator was continuing to expend funds. Under the circumstances, the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reasons, the lower court's order should be upheld.

7. 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?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of

the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the lower court, based on the accountings and statements of Appellant's counsel, found that the appointment of a special fiduciary was emergent. Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator was continuing to expend funds. Under the circumstances, the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reason, the lower court's order should be upheld.

8. 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?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the

estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

In response to this issue, the lower court found that the conservator had been discharged and, as such, she had no authority to act on behalf of the conservatorship. Appellant sought to hold funds of the conservatorship and based her extensions to turn over estate funds on the argument that she was awaiting a court order in the pending petitions. She abused the court's grant by continuing to expend funds which were under her charge. The Appellant is an attorney. She certainly understands the word discharge. The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator was continuing to expend funds. The lower court did not extend authority to the Appellant to act as trustee and Appellant had no authority to act as trustee. Under the circumstances and with authority granted to the probate court under S.C. Probate Code Sections 62-5-416(c) and 62-7-704(e), the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reasons, the lower court's order should be upheld.

9. 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?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special

fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

"Generally, an issue must be raised to and ruled upon by the circuit court to be preserved." Pye v. Estate of Fox, 369 S.C. 555, 565 (2006) (citing Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24 (2004)) Here, Appellant raises the issue of laches. This issue was never raised at the lower court and has not been preserved. For this reason, the issue at bar on appeal should be dismissed.

In response to this issue, the order appointing special fiduciary was the result of the discharged conservator spending the conservatorship funds while seeking to hold the funds until certain matters have been adjudicated. Appellant looks to blame the personal representative for not recognizing Appellants breach of the court's trust in her. The personal representative was diligent in her review of the court's file and recognized the court's correspondence seeking an up to date accounting. It was the personal representative who contacted the Appellant's counsel and sought the accounting. It was the personal representative who sought review prior to issuance of another extension. The Appellant finally filed the court-requested accountings which revealed that Appellant was improperly expending conservatorship funds. For the above reason, the lower court's order should be upheld.

10. 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, SCRPC?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of

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Counsel on several occasions discussed the matters of appointment of special administrator or financial intermediary appointment prior to the filing of the motion to appoint special fiduciary. The Appellant failed to appreciate that the motion for special fiduciary was a responsive pleading to the discharged conservator's motion for extension to hold estate assets. Each of the Conservator's motions for extension did not contain the required Rule 11 affirmation and the personal representative was never served a copy of the motion prior to the court's approval. Further, the lower court, based on the accountings and arguments of Appellant's counsel found that the appointment of a special fiduciary was emergent.

Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. Ex Parte Dibble 279 S.C. 592 (1983) The probate court has exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated. South Carolina Probate Code §62-5-402(1) Here, the lower court recognized conflicts in the final accounting and the amended final accounting and realized that the discharged conservator was continuing to expend funds. Under the circumstances, the court, in furtherance of protecting the assets of the estate, placed emergent authority in a special fiduciary. For the above reason, the lower court's order should be upheld.

11. Did The Probate Court's Abuse its Discretion in Failing to Grant Appellant's Extension of Time to Deliver Proper?

An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights. Watson v. Underwood 407 S.C. 443 (2014) The lower court's order appointing a special fiduciary is not a final order. In fact, the order appointing a special fiduciary is a safeguard protecting estate assets for future distribution of those to whom the estate will be distributed. For this reason, the order appointing special fiduciary is interlocutory and, therefore, Appellants issues on appeal should be dismissed.

Appellant seeks to extend her authority beyond what is ordered by the probate court when Appellant's motion for extension is sought. The motion for extension allows the Appellant to indicate reason(s) for seeking extension. The Appellant sought extension to hold funds. The Appellant did not seek extension to continue to act as the conservator after her discharge. Once the court was informed that the Appellant was acting without authority, the special fiduciary was appointed. Based on Appellant's continued penchant for blaming the personal representative and now the probate judge for her continued improper acts after her discharge, it may be appropriate to remand this issue for sanctions. The Appellant is a licensed lawyer in California who has pro hac vice status in South Carolina. For these reasons, the Appellant should be denied relief and the lower courts order upheld.

12. 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?

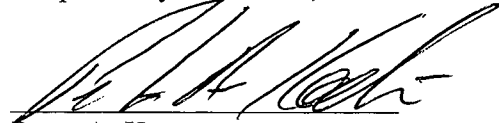
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In response to this issue, the Attorney General is a party to the estate matters based on Appellants Amended Petition filed in 2009 which allege constructive trust. This matter is a conservatorship matter as the funds have yet to be received by the estate, therefore, the Attorney General of South Carolina is not an interested party. Additionally, Betty Fisher is not an interested party to this conservatorship action nor has she requested notice to any conservatorship actions. Betty Fisher has argued in her petition for appointment of personal representative that she should be appointed, however, she has yet to be granted any authority, and therefore, she is not an interested party who deserves notice to the conservatorship matter. Appellant cites S.C. Probate Code Section 62-3-614. There is no inherent notice requirement for the Attorney General of South Carolina or Betty Fisher under the statute cited. For these reasons, Appellant should be denied on this issue and the lower court's order should be upheld.

CONCLUSION

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

Respectfully submitted,



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December 15, 2015

CERTIFICATE OF COMPLIANCE

Counsel herein certifies that the Final Brief complies with Rule 211(b)

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Probate Court

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

Appellate Case No. 2014-002028
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LISA FISHER,

Appellant,

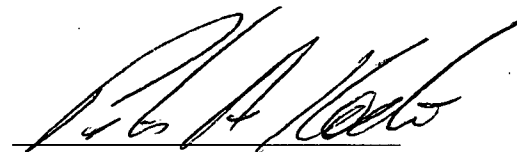
v.

BESSIE HUCKABEE,

Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief upon counsel for Appellant by U.S. Mail, on December 15, 2015, at 1476 Ben Sawyer Blvd., Mt. Pleasant, SC 29464.



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