

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

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**CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748**

SEP 08 2016

SC Court of Appeals

**In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight,
(deceased), and Norman Robert 'Bobby' Knight, III, Appellants,**

v.

**Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney,
Claimant, Respondents.**

**Appellants' Reply Brief
(Special Administrator)**

**J. Seth Whipper
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TABLE OF CONTENTS

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIESii

STATEMENT OF THE ISSUES ON APPEAL.....1

STATEMENT OF THE CASE2

ARGUMENTS

I. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN
AS SPECIAL ADMINISTRATOR4

CONCLUSION 7

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

CASES

Beach First National Bank v. Estate of Gurnham (In re Estate of Gurnham), 407 S.C. 194, 754 S.E.2d 875 (2014).....5

Hatchell-Freeman v. Freeman, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000).....5

Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013).6

STATUTES

S.C. Code Sec. 62-3-611.....3

OTHER AUTHORITIES

STATEMENT OF THE ISSUES ON APPEAL

1. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS
2. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS SPECIAL JUDGE
3. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE
4. LOWER COURTS ERRED BY FAILING TO APPLY THE LAW OF UNCLEAN HANDS TO A CLAIM FOR EQUITABLE RELIEF
5. LOWER COURTS ERRED BY FAILING TO RECOGNIZE THE LAW OF AUTOMATIC STAY PURSUANT TO S. C. CODE SEC. 62-1-308(c)
5. LOWER COURTS ERRED BY FAILING TO APPLY THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTRACT
7. LOWER COURTS' ALLOWANCE OF RESPONDENTS' CLAIM IS AGAINST THE GREATER WEIGHT OF THE EVIDENCE AND AN ABUSE OF DISCRETION
8. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT TONNEY'S CLAIM FOR REPAYMENT WAS TIMELY FILED
9. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT CHLOE TONNEY HAD SATISFIED THE LEGAL REQUIREMENTS FOR CASE-IN-CHIEF
10. LOWER COURTS ERRED BY REIMBURSING RESPONDENT TONNEY FOR ATTORNEY FEES IN PARENTS' FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT
11. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

STATEMENT OF THE CASE

In 2004, relations between Norman R. Knight, Jr., Mildred C. Knight, and their daughters, Chloe Knight-Tonney and Linda Jones became adversarial. In 2004, Mr. and Mrs. Knight revoked their Power-of-Attorney to their daughters. In 2004, the Charleston County Department of Social Services investigated the Knight home pursuant to allegations of elder abuse. In 2004, the investigation was terminated and the allegations were classified as unfounded.

Relations between the parties continued to deteriorate, becoming litigious and contentious. While an appeal was pending in the Circuit Court, Mr. Knight was removed from the home in 2006.

On January 20, 2009, Respondent Tonney filed a claim for reimbursement of moneys expended allegedly for the care of her father, Norman R. Knight, Jr. The Special Administrator, Beatrice E. Whitten, disallowed the claim and on or about April 20, 2009, Respondent filed a petition to allow the claim. After several years of litigation and appeals, on November 28, 2012, Beaufort County Probate Judge, Kenneth E. Fulp, Jr. was appointed Special Probate Judge for Charleston County exclusively for the Estate of Norman R. Knight Jr.

On May 29, 2013, Appellants filed a Summons and Complaint seeking the removal of the Special Administrator. On July 17, 2013 the initial set of motions were argued and an order filed on July 29, 2013. Appellants were the only movants; all motions were denied. On December 13, 2013, Appellant filed and served an Amended Complaint to Remove the Special Administrator. Numerous pre-trial motions were filed and argued. Appellant filed two series of Motions to Dismiss, Motion to Compel

Discovery with issues of redaction, Motion to Amend Complaints and other motions regarding venue, all filed in pre-trial. On December 17, 2013, a motion hearing by phone was held and an order issued on December 23, 2013. This hearing was significant because the Court held certain documents had to be unredacted to comply with Appellants' motion to Compel. A second set of pre-trial motions were argued by telephone on January 6, 2014 and an order was filed on January 17, 2014. Appellants' Motion to Amend Special Administrator's Complaint was granted. Bishop Gadsden was allowed to withdraw its claim.

On April 22, 2014, Judge Fulp quashed Appellants' subpoena duces tecum to the Morgan Stanley Company, Morgan Smith-Barney. The subpoena required Morgan Stanley to provide information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie."

This matter was tried before the bench in non-jury for two separate days, March 31, 2014 and April 28, 2014. Including post-trial proceedings, i.e. written closing arguments, a final order was filed on July 11, 2014. After post-trial motions, a Notice of Intent to Appeal was filed on September 3, 2014 by the Estate of Mildred C. Knight, and Bobby Knight. This is an appeal of the orders of Special Probate Judge for Charleston County, Kenneth E. Fulp, Jr. and Common Pleas Court Judge, J.C. Nicholson, Jr. Judge Nicholson denied a Motion to Appeal on January 27, 2016 although Appellants did not file a "motion to appeal." Post-trial motions were denied with Notice of Entry of Judgment being received by Appellants on March 11, 2016.

ARGUMENTS

I. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

S.C.Code Sec. 62-3-611 lists five separate grounds for removing a Special Administrator. Appellants have offered solid evidence of at least three (3) of these items: (a) removal would be in the best interests of the estate; (b) the Special Administrator has disregarded an order of the Court; (c) has mismanaged the estate or failed to perform any duty pertaining to the office. Respondent Whitten relied on unsworn oral statements regarding the disposition of Mr. Knight's car (Mitsubishi, 1995) with no corroboration from Mrs. Knight; Respondent Whitten disregarded the Court's order to remove the Lis pendens on the marital property; Respondent Whitten failed to provide access to the AIG annuity that was co-owned by Mrs. Knight; and the kind of communications that were found in her file from the opposing party clearly indicate that the best interest of this estate would be accomplished by her removal. In an e-mail to Respondent Whitten from Tonney's attorney concerning motions filed by Appellants, Tonney's attorney states: "I was also thinking that some kind of timeline or explanation of the case history would be helpful. Did you do that already?" In a note written on a funeral program, Tonney informs Respondent Whitten that "We are grateful for you." Appellants cannot feel comfortable with this kind of exchange occurring without real time notice to them.

The Special Administrator is not nominated or selected by the testator. The protections and deference shown to Personal Representatives by our jurisprudence comes from our recognition of the testator's intent as the primary reference and guide

for satisfying the directives of a will. Respondent Whitten seeks to fully clothe the status of the Special Administrator in the esteem and regard of the Personal Representative, and that is not possible. The Personal Representative in this case was the wife of the decedent--married for nearly 59 years. She was his only widow; she was the natural mother of their three (3) children. Neither Mr. Knight, Jr. nor Mrs. Mildred C. Knight had any children outside of their marriage. The Special Administrator is a position created to aid the Probate Court in administering estates. "Estranged wife of decedent had priority of appointment as personal representative . . ." Hatchell-Freeman v. Freeman, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000). The Special Administrator is not a Personal Representative.

The emphasis on achieving the intent of the testator was not being made by Ms. Whitten, and Mr. Knight, Jr.'s will had become an afterthought. Ms. Whitten has offered only one alternative for dealing with Tonney's claim: sell the real estate where Bobby Knight lives. (R.p. 412:tr.p.375 L.15-17); (Tr. 7/17/13; p. 35 L.20-p. 36 L.11). The Special Administrator's behavior is wholly prejudicial to the interest of the Estate of Mildred C. Knight and Bobby Knight.

Respondent Whitten, at the trial level, relied on the "at law" principles espoused by Claimant Tonney. Tonney urged the trial court according to the standards set out in Beach First National Bank v. Estate of Gurnham (In re Estate of Gurnham), 407 S.C. 194, 754 S.E.2d 875 (2014), a case that raised questions of law. In her written closing argument, Respondent Whitten made no distinctions between the standards for assessing her issues and those of Claimant Tonney. According to the instructions of the trial court, all petitioners submitted their closing arguments first. This means

that Respondent Whitten was aware of Appellants' position that Tonney's claim sounded in equity before Whitten submitted her closing argument. Whitten made no mention of her matter being one in equity when she delivered her Closing Argument.

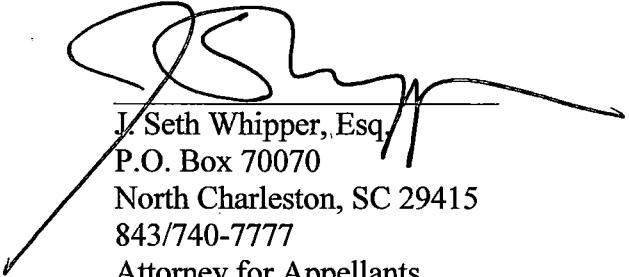
Respondent Whitten, in her own right, has failed to protect the estate. As noted earlier, Respondent Whitten was aware of the discord and rancor among the parties to this matter. Respondent Whitten had reason to challenge the allegations of abuse of the decedent. Respondent Whitten knew that decedent's assets at the time of his passing were marital property and devised to his spouse. Respondent Whitten knew that there is no Family Court order requiring payment of attorney fees to Tonney or the attorney representing her father in that court. Respondent Whitten knew that Mr. Knight died during the Family Court litigation and that litigation could not be prosecuted beyond that date. Respondent Whitten knew that certain retirement accounts were held in common or some similar status by Mr. and Mrs. Knight. Respondent Whitten knew that Mr. Knight, Jr. left a modest estate and a sole devisee who was wholly dependent on him for support. Notwithstanding these realizations, Respondent Whitten transferred an automobile belonging to Mr. Knight to Tonney's nephew who was not in the will. Whitten received and disbursed these common retirement funds without consultation with Mrs. Knight. Including the communications and the Lis Pendens, Respondent Whitten appears to be a cohort of the claimant, Tonney. Even a Personal Representative can get too close to the controversy. See Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013).

CONCLUSION

The Lower Courts' decisions should be reversed and Beatrice Whitten should be replaced.

Respectfully Submitted
WHIPPER LAW FIRM

September 6, 2016



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

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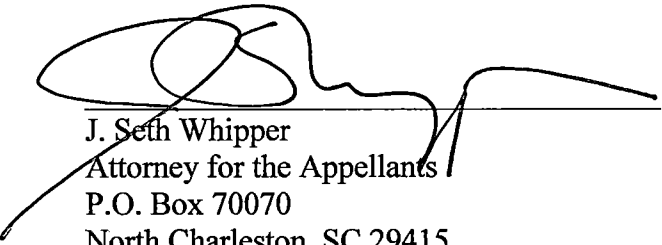
v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant,
Respondents,

PROOF OF SERVICE

I certify that I have served the Appellants' Reply Brief (Special Administrator) on Beatrice E. Whitten, Esquire and C. Mac Gibson Jr., Esquire by depositing a copy to them in the United States Mail, postage prepaid, on September 6, 2016, addressed to attorneys of record, Beatrice E. Whitten, Esquire, 1110 Queensborough Blvd, Mt. Pleasant, SC 29464 and C. Mac Gibson Jr., Esquire, 1118 Savannah Highway Charleston, SC 29407.

September 6, 2016


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September 6, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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U. S. MAIL ONLY

Re: **In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby' Knight, III, Appellants,**
v.
Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney,
Claimant, Respondents

Appellants' Case No.: 2016-000748
Appellants' Reply Brief – For Filing
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Dear Ms. Kitchings:

Find enclosed one original and one copy each of the above-referenced documents for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter, I am serving a copy of the same on C. Mac Gibson, Esq. and Beatrice E. Whitten, Esq. attorneys for Respondents.

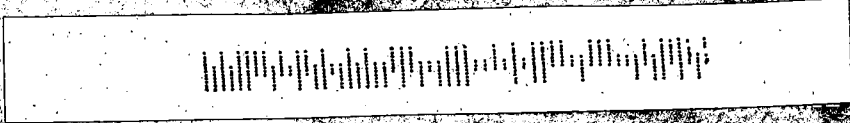
Sincerely,
WHIPPER LAW FIRM


J. Seth Whipper, Esquire

JSW/lfs

Enclosures

xc: Bobby Knight
Judith A. Brown
C. Mac Gibson, Jr.
Beatrice E. Whitten



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