

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable J.C. Nicholson, Jr., Circuit Court Judge

JAN 13 2017

SC Court of Appeals

Appellate Case No. 2014-002020
Ct. Court Case No. 2011-CP-10-7819

Betty Fisher, Appellant

v.

Bessie Huckabee, Respondent (2)

Lisa Fisher, Appellant

v.

Bessie Huckabee, Respondent (3)

RESPONDENT'S RETURN TO APPELLANTS'
PETITION FOR REHEARING

Peter A. Kouten
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Cases

Holcombe v. Hardee, 304 S.C. 522, 524, 405 S.E.2d 821, 822 (1991)..... 4

Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South
Carolina 309 (1999) (citing Arnold v. Carolina Power & Light Co.,
168 S.C. 163, 167 S.E. 234 (1933))..... 5

Statutes, Rules and Reference

Rule 221(a), SCACR 4

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S.C. Code Ann. § 62-1-302(a) (Supp. 2015)..... 4

ARGUMENT

In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. Rule 221(a), SCACR. The Appellants further argue that rehearing is proper in the event the Court fails to address certain arguments.

Appellants attack the Court's ruling that the probate court has the full authority to appoint a special fiduciary. This Court addressed every argument presented by Appellants to include the probate court's findings, jurisdiction, laches, and notice requirements. The Court recognized that there was adequate support in the record to allow this Court to make its own findings of fact. *Holcombe v. Hardee*, 304 S.C. 522, 524, 405 S.E.2d 821, 822 (1991) The Court recognized that there is overwhelming statutory authority for the probate court to protect estates, appoint fiduciaries and issue protective orders. See S.C. Code Ann. § 62-7-704(e) (Supp. 2015), S.C. Code Ann. § 62-5-402(1) (Supp. 2015), S.C. Code Ann. § 62-1-302(a) (Supp. 2015). The probate court had the authority to appoint a special fiduciary and this Court addressed all arguments of the Appellants.

Appellants attack the Court's ruling regarding failure to permit oral argument. In the probate proceeding, the Appellants were represented by their attorney. The probate court sought argument through counsel. On appeal, the Appellants provided a brief to the lower court and again were represented by counsel. As stated in the Order from which Appellants seek rehearing, "the circuit court heard the Fisher's arguments at the hearing." Further, the Appellant's memorandum was made part of the record. This Court found the Appellants were permitted to fully argue their case.

Appellants argue that there was no evidence presented by the Respondent regarding unauthorized depletion of the conservatorship account. The evidence appeared in the probate court file for Alice Shaw-Baker wherein a. Lisa Fisher was discharged as conservator having no authority to act as anything other than a safe-keeper of the funds, and b. Lisa Fisher provided accountings to the probate court which indicate that she was acting without authority in spending conservatorship funds. These facts were not overlooked or misapprehended. They were fully addressed by this Court.

The Appellants argue that the probate court is the improper court for remand. The issue on remand is properly remanded to the probate court based on the fact that the conservatorship is currently “open” although the subject of the conservatorship, Alice Shaw-Baker, has died. Issues regarding compensation in this matter is rightfully an issue of the conservatorship. In the event the probate court finds that compensation is appropriate, the claimant would then proceed with seeking payment of claim through the estate. The Appellant should not be granted rehearing on the remand issue.

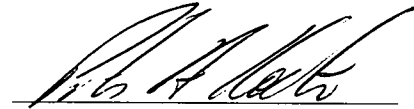
“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)).

Based on the arguments presented, the Court should DENY Appellant’s Petition for Rehearing.

CONCLUSION

For the reasons stated, this Court should uphold its ruling and DENY Appellant's Petition for Rehearing.

Respectfully submitted,



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January 11th, 2017

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January 11, 2017

The South Carolina Court of Appeals
ATTN: Jenny Abbott Kitchings
P.O. Box 11629
Columbia, South Carolina 29211

Re: Betty Fisher v. Bessie Huckabee AND Lisa Fisher v. Bessie Huckabee
Appellate Case #2014-002020

Dear Ms. Kitchings:

Please find enclosed Respondent's Return to Appellant's Petition for Rehearing and Proof of Service in the above referenced matter.

I have also enclosed additional copy to be clocked and returned in the envelope provided for my records. Please contact me if you have any questions regarding this filing.

Sincerely,


Peter A. Kouten

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CC: John Hughes Cooper, Esq. and Lisa Fisher, Esq. c/o John Hughes Cooper, Esq.

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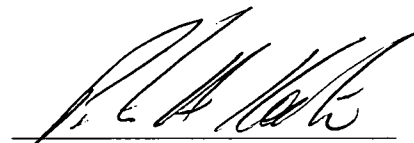
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Bessie Huckabee, Respondent (3)

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellants Petition for Rehearing upon counsel for Appellant by U.S. Mail, on January 11, 2017, at 1476 Ben Sawyer Blvd., Ste 11, Mt. Pleasant, SC 29464.



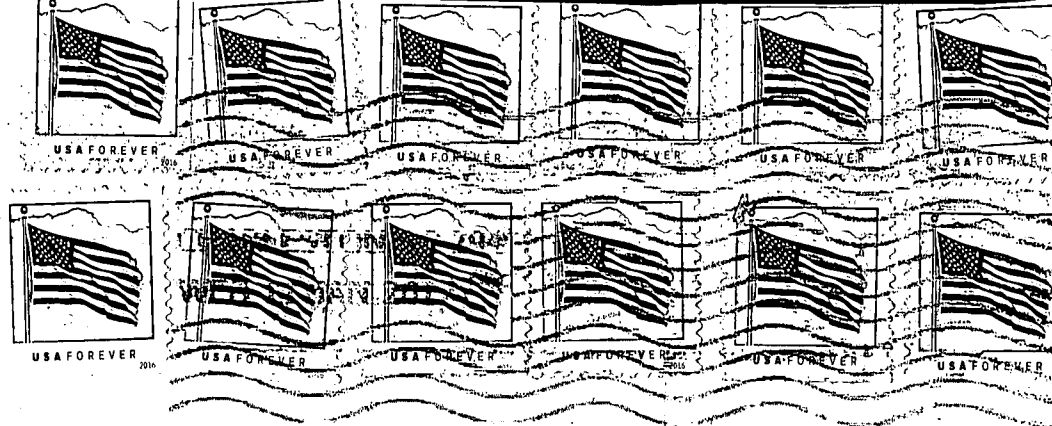
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