

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JAN 20 2017

**SC Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

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

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Case No. 2014-CP-10-5355

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IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR.,  
(deceased), and NORMAN ROBERT ("Bobby") KNIGHT, III,  
Appellants,

-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR,  
and CHLOE KNIGHT-TONNEY, CLAIMANT,  
Respondents.

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**FINAL BRIEF OF RESPONDENT  
SPECIAL ADMINISTRATOR, BEATRICE E. WHITTEN**

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Beatrice E. Whitten  
Special Administrator  
1110 Queensborough Blvd., Suite 100  
Mt. Pleasant, SC 29464

January 13, 2017

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**STATEMENT OF THE ISSUE**

THE PROBATE COURT CORRECTLY HELD THAT THERE WERE NO GROUNDS TO REMOVE THE SPECIAL ADMINISTRATOR.

## STATEMENT OF THE CASE

The decedent in this case, Norman Robert Knight, Jr., died on March 11, 2008. An estate was opened for him on March 19, 2008, with the Charleston County Probate Court. The Probate Judges for Charleston County recused themselves after being named defendants in a lawsuit brought by the Appellant, Robert (“Bobby”) Knight, III. The case was thereafter transferred by South Carolina Court Administration to the Dorchester County Probate Court, which appointed Beatrice E. Whitten as Special Administrator on December 15, 2008. After subsequent transfers and recusals by Probate Judges in Lexington and Berkeley Counties, The Honorable Kenneth E. Fulp, Jr., of Beaufort County, was assigned the case by Court Administration in 2012.

The matters under appeal were heard by Judge Fulp on March 31, 2014, and April 28, 2014. Judge Fulp issued his final order on July 11, 2014, ruling that a claim brought against the estate by Respondent Chloe Knight-Tonney was allowed in part, and leaving the Special Administrator in place.

The Appellant appealed both issues to the Charleston Court of Common Pleas. This appeal was heard by The Honorable J.D. Nicholson, who issued a denial of the Appellant’s appeal on January 27, 2016.

Respondent in this brief will address only the issue of the motion brought to remove the Special Administrator.

## ARGUMENT AND AUTHORITY

A Special Administrator is basically a personal representative appointed by the Probate Court when such “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.” S.C. Code Ann. § 62-3-614(2). A special administrator has the power of a general personal representative unless otherwise limited by the order of appointment. S.C. Code Ann. § 62-3-617.

The December 15, 2008, order of the Dorchester County Probate Court, appointing Beatrice E. Whitten as special administrator, states, “The Special Administrator has the power of a general Personal Representative pursuant to S.C. Code § 62-3-617.” (R.p. 50-55) The rules governing removal of a personal representative are therefore applicable to the issue of removing a special administrator.

The cause of action for removal of a personal representative is equitable in nature. As this equitable matter has been heard and decided by the probate court, and then affirmed by the circuit judge acting as an appellate court, the “two-judge rule” applies. This standard of review is whether there is any evidence which reasonably supports the circuit court’s findings. “In an action at equity, tried first by the master or special referee and concurred in by the trial judge, the findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence.” *Geddings v. Geddings*, 460 S.E. 2d 376, 378, 319 S.C. 213 (S.C. 1995); *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct.App.1993) (two-judge rule would apply in appeal from circuit court of an equity case originating in probate court where both courts agreed on material issues).

The legal standard for removal of a personal representative is a showing that such removal would be in the best interest of the estate, has disregarded an order of the court, has become

incapable of discharging her duties, has mismanaged the estate, or has failed to perform any duty of the office. S. C. Code Ann. § 62-3-611. The South Carolina Court of Appeals has further stated that “The power to remove a personal representative should be exercised with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud.” *Church v. McGee*, 705 S.E. 2d 481, at 343 (S.C. Ct. App. 2011), quoting *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920).

Appellant Bobby Knight failed to allege or prove any of the required grounds for removal of a personal representative. He made vague allegations both at trial and in appeals arguments. However, he failed to describe any damage or even prejudice caused to the estate by the current Special Administrator, even if his unproven assertions were considered true. In fact, Judge Fulp specifically found that continuing the Special Administrator’s appointment would be in the best interest of the estate. (R.p. 3, lines 15-16) Judge Nicholson affirmed this finding. (S.R.p. 2) There is no indication that these findings lack evidentiary support or that they are against the clear preponderance of the evidence.

South Carolina appellate courts have declined to remove a Personal Representative even in cases where there were allegations of self-dealing, maladministration or actual documented conflicts between Personal Representative and beneficiaries. See *Blackmon v. Weaver*, 621 S.E.2d 42, 366 S.C. 245 (S.C. 2005); *Reed v. S.C. National Bank*, 360 S.E.2d 527, 293 S.C. 357 (S.C.App. 1987). In this case, Judge Fulp considered all of the testimony and documentary evidence and found that Appellant Bobby Knight’s complaints about the Special Administrator, most of which he repeated in the Circuit Court appeal and again in this appeal, were factually unfounded. (R.p. 2, lines 3-5,

R.p. 3, lines 12-14) Judge Fulp's final order fully and fairly discusses and takes into consideration all of the evidence, leading to a logical decision which tracks all of the facts and fully complies with all legal standards. (R. pp. 15-18) His decision should be affirmed.

Respectfully submitted,



Beatrice E. Whitten, Respondent  
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Mt. Pleasant, SC 29464

Charleston, South Carolina

January 13, 2017

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-versus-

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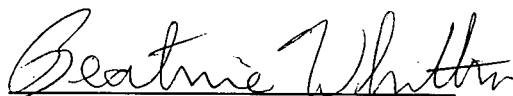
Respondents.

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**CERTIFICATE OF COMPLIANCE**

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



Beatrice E. Whitten  
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January 19, 2017

THE STATE OF SOUTH CAROLINA

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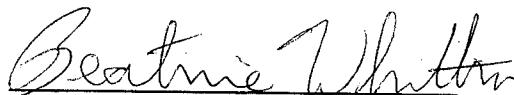
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January 19, 2017