

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-10-03010

In the matter of Alice Shaw-Baker

Betty Fisher and Lisa Fisher,

v.
RECEIVED

Bessie Huckabee, Kay Passailaigue Slade, Sandra Byrd, Henry McMaster, in his capacity as Attorney General of South Carolina, State Budget and Control Board, and South Carolina Retirement System, Inc.,

OCT 24 2017

SC Court of Appeals

PLAINTIFFS

DEFENDANTS

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(c), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX:

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
- Statement of Judgment by the Court:

This case was before the Court on October 18, 2017 for a hearing on Plaintiff's Motion for Order to Change Venue, Order Vacating the Date of Trial, and Order Staying Any and All Hearings

FILED
2017 OCT 19 PM 2:30
JULIE J. HARRISON
CLERK OF COURT

including Defendants' Motion for Summary Judgment, filed on August 2, 2017¹. Defendant filed a Memorandum in Opposition to this Motion on October 18, 2017. Present for the hearing were John Hughes Cooper, Esq. on behalf of Plaintiffs Betty Fisher and Lisa Fisher; W. Westbrook Wills, III, Esq. on behalf of Defendants Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd; and Jessica Crawley, Esq. on behalf of the Personal Representative Bessie Huckabee. Mary Frances Jowers, Esq. represents Henry McMaster in his capacity as Attorney General, however, she requested to be excused from attendance at this hearing and the Court granted her request.

Pursuant to their motion the Plaintiffs asked this Court to transfer venue of this case from Charleston County to Beaufort County. In support thereof, Plaintiffs argued that the Charleston County Probate Court has been disqualified and the case transferred to Beaufort County pursuant to an August 16, 2017 Order of the Supreme Court of South Carolina. Defendants disputed Plaintiffs' allegation that the Order transfers the case to Beaufort County. Defendants argued that the Order instead disqualifies all Charleston County Probate Judges from hearing any matters related to the case. The Court agrees that the Order merely disqualifies the Probate Judges of Charleston County from sitting as judges of probate in this matter, and further appoints the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or in the alternative, an Associate Probate Judge for Beaufort County, as special probate judge to sit in their stead. The Order does not, however, transfer the case to Beaufort County. At the inception of argument, Attorney for Plaintiffs, Mr. Cooper, conceded that his original argument was without support and withdrew Plaintiffs' motion to transfer venue on the basis that the August 16, 2017 Order of the Supreme Court mandates a transfer of venue.

Plaintiffs then amended their argument and asked the Court to transfer venue from Charleston County to Beaufort County, Berkeley County, or Dorchester County pursuant to S.C. Code Ann. § 62-1-303 and "in the interest of justice." Plaintiffs initially made a vague assertion that they believed they would not receive a fair and impartial jury trial in Charleston County. Plaintiffs then included an argument that a jury trial would be unfair because an associate judge of the Probate Court of Charleston County, Peter Kouten, is also a witness in their case-in-chief.² Defendants objected to the transfer of venue of this case from Charleston County asserting there is no proof a fair and impartial jury could not be selected and that a transfer in venue would work a significant hardship on the elderly litigants in the case. The Defendants further assert that prolonged travel of any sort could work a disability to these elderly parties and witnesses and have a preclusive effect. The court is further informed that all witnesses in this case reside in Charleston County. S.C. Code Ann. § 62-1-303 controls the transfer of venue in cases such as this one where the action is governed by the Probate Code but was removed from Probate Court to Circuit Court. See Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992). S.C. Code Ann. § 62-1-303 provides that a court may transfer proceedings to another court in the interest of justice. However, the Court does

¹ The parties consented to the motion being heard by telephone for their convenience as Attorney Cooper was out of town.

² Peter Kouten, Esq. began the practice of law in 2007. He was sworn in as an Associate Probate Judge on June 29, 2017. By Order of the Supreme Court dated July 28, 2017 he was given the authority to preside over the Charleston County Mental Health Court in the absence of Judges Irvin G. Condon and Tamara C. Curry. This Court has noted, however, that it is uncontested that he is a fact witness in this case and ethically no reference can be made to his current position in a manner in which to bolster the credibility of his testimony in that capacity due to his involvement as an attorney in this case. Further, there is no indication to this Court that Mr. Kouten has had any involvement in the current case in his official capacity as an Associate Probate Judge.

not find that justice would be served by transferring venue of this case from Charleston County three (3) days before trial. Plaintiffs have not met their burden in establishing prejudice as the result of a jury trial in Charleston County. The Court is unpersuaded by Plaintiffs' argument that jurors in Charleston County will be unfairly influenced or biased by the testimony of Peter Kouten in this case. "Normally, a party's popularity, influence, or reputation is not adequate basis, in and of itself, to justify a change of venue." Stevens v. Sun News, 267 S.C. 63, 69, 226 S.E.2d 236, 239 (1976). Further, the Court cannot discern any prejudice to the parties as they will have the full opportunity to observe jury qualification, participate in voir dire and exercise peremptory challenges during the jury selection process. Certainly any potential bias, prejudice or inability to sit as a fair and impartial juror can be determined through the process of jury selection. Moreover, this case was filed in 2009 and was set for a date certain two-week trial in Charleston County pursuant to the request of counsel on January 17, 2017. The Court held a status conference in this matter on February 15, 2017, and subsequently set the case for a two-week term beginning on October 23, 2017. Charleston County has allotted significant time and court resources to hear this case, and it would serve judicial economy for this case to go forward as scheduled in Charleston County. Further, transfer of venue would also impose a significant hardship on the elderly litigants in this case. Lastly, the significant age of this case dictates that it go forward as scheduled in Charleston County on October 23, 2017 as it would be inequitable to delay the trial of this case for an indeterminate amount of time pending transfer. Accordingly, the Court denies Plaintiffs' Motion to Transfer Venue pursuant to S.C. Code Ann. § 62-1-303. This case will proceed as scheduled on Monday, October 23, 2017 in Charleston County.

Plaintiffs asked the Court to stay this case because there is a pending appeal on an unrelated matter before the South Carolina Supreme Court wherein Plaintiffs seek disqualification of the attorneys W. Westbrook Wills, III, Esq. and Jessica Crowley, Esq, who also represent Defendants in the instant case. The parties notified this Court that the gravamen of the appeal before the Supreme Court involves standing. Rule 241 of the Appellate Rules of Procedure governs stays on appeal. This Rule provides that the "notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree, or decision." Rule 241(a), SCACR. Rule 241, does not, however, stay a case when an unrelated matter has been appealed. Plaintiffs thus have no basis in the law to support their request for a stay of this case. Accordingly, the Court denies Plaintiff's Motion to Stay.

Lastly, any pending motions regarding Summary Judgment, Bifurcation or any other matter will not act to delay the date certain trial of this case. Any pending motions may be heard in the discretion of the trial Judge as he may deem necessary.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Al J. J. J.
Circuit Court Judge

2128
Judge Code

10/19/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John Hughes Cooper, Esq.

ATTORNEY FOR PLAINTIFFS

W. Westbrook Wills, Esq.

Jessica Crowley, Esq.

Mary Frances Jowers, Esq.

ATTORNEY FOR DEFENDANTS

CLERK OF COURT

COURT REPORTER: RUTH WEESE