

THE STATE OF SOUTH CAROLINA

In the Supreme Court

Appellate Case No. 2017-000743

RECEIVED

JAN 23 2018

S.C. SUPREME COURT

Betty Fisher and Lisa Fisher.....Petitioners

v.

Bessie Huckabee.....Respondent

**RETURN BY PETITIONERS BETTY FISHER AND LISA FISHER
TO
RESPONDENTS' MOTION FOR EXPEDITED REVIEW**

JOHN HUGHES COOPER, ESQUIRE
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and

LISA FISHER, ESQUIRE
Pro Hac Vice
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(Attorneys for Petitioners)

COME NOW Petitioners Betty and Lisa Fisher ("Petitioners") file this return to address that Respondent Bessie Huckabee's January 3, 2018 Motion for Expedited Review ¹ of Petitioners' Petition for Writ of Certiorari.² We believe that expedited review will lead to speedy justice for Petitioners, because the legal issues raised in the Petition for Review mandate this Court's consideration and will provide needed guidance for the citizens of the State of South Carolina in setting forth a Conservator's duty and responsibilities on behalf of the vulnerable elderly.

With that said, Petitioners can not allow Respondent Bessie Huckabee's ("Respondent") Motion to go unchallenged due to its complete distortions of the facts which are not, and can not be, supported with any evidence.

While speedy justice is the desire of petitioners, Respondent Bessie Huckabee's motion seems to be an attempt to interfere and deprive Petitioners of their day in court on the underlying trial of the Constructive Trust and related causes of action ("Constructive trust trial") currently set for March 12, 2018 (Attached hereto is a true and correct copy of said order for date certain marked as Exhibit A). The important admissions by Respondent and Kay Passailague Slade set forth herein demand consideration.

Petitioners would not expect this court to give any less consideration of the important and substantial legal issues herein-- whether this case is expedited or heard in the normal course of business. However, for the reasons set forth, Petitioners respectfully request that the court take into consideration all of the implications of this

¹ Said motion was not received by counsel until January 16, 2018.

² Said motion is brought by Jessica L. Crowley who previously worked for former Counsel Peter Kouten. Petitioners continue to object to her appearance in this case, as Kouten's law firm had a non-waiveable conflict of interest with Alice Shaw Baker, now deceased.

case on the underlying and upcoming Constructive Trust trial which were not set forth by Respondent Huckabee:

First, the trial on the will contest established important judicial admissions which will benefit the constructive trust trial and may have important implications in this court's decision about a Conservator's duty to protect assets pending trial in disputed matters.

It is important to note that, at the bifurcated trial, Kay Passailague Slade testified that she knew that Alice Shaw Baker wanted her monies to be used for animal rescue. This is a significant admission supporting Petitioners' fight for justice for Alice Shaw Baker, and even more importantly, a significant fact justifying Lisa Fisher's protection of the assets during this period of consideration by this Court.

Petitioners have always contended that Respondent Bessie Huckabee and Kay Passailague Slade knew and in bad faith refused to comply with Alice Shaw Baker's request and desires that her life's work be used to benefit animals. Instead, they merely act in these court cases to unjustly enrich themselves contrary to Alice Shaw-Baker's known wishes. Consideration of the issues raised in the Constructive Trust trial is consistent with this Court's long held practice of refraining from making judicial decisions on judgments that are not final. Petitioners support this Court's careful consideration and judicial conservatism in waiting to intervene in cases of vital importance.

Second, Kay Passailague's admission supports Petitioners' position in their Writ of Certiorari . This judicial admission will ultimately lead to Speedy Justice and certainly plays a significant role in the bifurcated Constructive Trust matter, and provides this court with the greatest range of possibilities for consideration in this case.³

³ See *Sexton v. Sexton*, 298 S.C. 359, 380 S.E. 2d 832 (1989); *Sexton v.*

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Third, although Petitioners want this Court to take the necessary time and analysis of these important issues, Petitioners do not waive their objection to Bessie Huckabee's continued actions in this case after the revelation at trial that she has never satisfied the requirements to act as Personal Representative. At trial, Bessie Huckabee admitted that she and former counsel Peter Kouten deposited estate funds without a bond, because she was unable to qualify for a bond. This was of course contrary to court orders. This is directly implicated by petitioners' writ.⁴ Also, she continues to hold in her possession Alice Shaw Baker's Estate cash assets for which she has never accounted. Unless and until she satisfies the requirements of the circuit court to obtain a bond, she has no standing to bring this motion. (Attached hereto is a true and correct copy of said order granting modification of temporary restraining order dated June 10, 2009 marked as Exhibit B).

Finally, this court's efforts in reviewing the important legal issues can not be sullied by Respondent's purported facts and the improper characterization of this case, therefore Petitioners deny and object to the purported statements in the briefing as follows:

Paragraph 2: Alice Shaw Baker did not die on February 29, 2009. Her date of death was February 25, 2009.

Paragraph 3: Bessie Huckabee was not formally appointed, she was appointed via an informal appointment without notice to Petitioners.

Sexton, 427 S.E. 2d 665 (Sup. Ct., 1993), issue whether family court had subject matter jurisdiction held in abeyance. See also Ex parte Dibble, 279 S.C. 592, 310 S.E. 2d 440 (1983):

"Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible."

- Paragraph 4: Lisa Fisher was the conservator and guardian of Alice Shaw Baker and has a duty to ensure that the estate is transferred to the proper person.
- Paragraph 5: Lisa Fisher was not "removed" --which has a negative connotation, moreover termination of the conservatorship duties under S.C. Code Ann. 62-5-425(d).
- Paragraph 6: Lisa Fisher has used all lawful methods to review improper orders of the lower courts. She has safeguarded all assets. Bessie Huckabee has not obtained a bond. All of the liquid assets in Lisa Fisher's possession were frozen and the matter is before this Court and under this Court's judicial review. Respondent Bessie Huckabee attempts to create an urgency when she knows that Lisa Fisher used her own funds to protect the property, pay the taxes, pay the insurance, pay the maintenance, and all relevant charges. Therefore, Respondent's motion is fatally defective and the improper allegations should not be considered by this Court.
- Paragraph 7: Again, Lisa Fisher was not removed. Despite termination of the conservatorship, as conservator, Lisa Fisher had continuing and remaining duties to protect the property. This is one of the very important issues considered by this court. Again, issues pending on the constructive trust trial may help in this Court's analysis of the issues and will not prejudice any party.
- Paragraph 8 and 9:
- Lisa Fisher abided by all legal procedures to have this Court consider the legal issues. She should not be penalized for seeking judicial review to ensure that her bond would not be penalized improperly.

Paragraph 10:

The trial in the underlying matter is not yet concluded. The case was bifurcated. The jury verdict and judgment is not final and a date certain trial is set for March 12, 2018 on the Constructive trust and remaining causes of action. The verdict did not state that "the appointment of Bessie Huckabee as Personal Representative was valid."

Paragraph 11:

The time of review is not controlling and the age of the litigants is not controlling, especially in a case where Alice Shaw Baker's wishes regarding animal charities must be properly decided.

Paragraph 12:

The assets are not subject to waste. The property and liquid assets have increased in value. Lisa Fisher has paid from her personal funds all expenses relating to the real property. All other liquid assets in her custody are frozen, so no one is prejudiced.

Paragraph 13:

There is a motion for new trial regarding the jury verdict. This does not settle the matter of proper administration, nor nullify Lisa Fisher or Betty Fisher's standing. This is a legal issue not currently before the court.

Paragraph 14:

Mr. Harvey's death does not make the appointment of a Special Fiduciary and/or the probate court's jurisdiction to make said decision when the matter was before the circuit court moot. Petitioners believe that they have a right to proper consideration of the legal issues before this Court. The consideration of this Court

should not be based on a false presentation of the facts and issues at hand.

REMEDY SOUGHT

It is well settled that: "The granting or refusing of a stay is discretionary and should be exercised with caution after balancing competing interests." (See *Carolina Water Service Inc. v. Lexington County Joint Municipal Water and Sewer Commission*, 367 S.C. 141, at 153, 625 S.E. 2d 227, at 233 (Ct.App. 2006).

This Court's unique opportunity to aid the elderly with consistent and appropriate powers to Conservators should not be forcibly expedited--however, petitioners support Speedy justice that will consider all of the issues in this case as presented in the Writ.

Petitioners believe that after consideration of the judicial admission by Kay Passailague Slade, at trial, that Alice Shaw Baker wanted her monies to be used for animal rescue, the ultimate conclusion on the Constructive trust trial will aid this court's determination.

The competing interests here weigh in favor of Petitioners. They are safeguarding the assets pending resolution of the matter, while Respondent has ignored court orders to obtain a bond, admitted that she can not even get a bond, yet seeks possession of the property.

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WHEREFORE, Petitioners pray that the Court consider the arguments set forth herein, sustain their objections, and refuse to consider the unsupported facts set forth in the motion.

January 25, 2018

RESPECTFULLY SUBMITTED,
JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE
LISA FISHER, ESQUIRE,
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ATTORNEYS FOR PETITIONER

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.

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.,

PLAINTIFFS

DEFENDANTS

FILED 2011 DEC 27 PM 1:32 JUSTICE THOMAS L. HUGHSTON CLERK OF COURT

CHECK ONE:

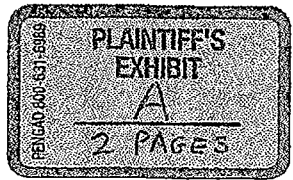
- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), 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:

All matters pertaining to and/or related to the above captioned case or cases currently filed are hereby assigned to Judge Thomas L. Hughston until further Order of this Court. It is further ordered that this case is set for a date certain trial beginning the week of March 12, 2018. The parties shall coordinate with Judge Hughston to schedule any matters pertaining to this case, if 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.


Circuit Court Judge

2128
Judge Code

12.27.17
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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER and)
LISA FISHER,)

Plaintiffs,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

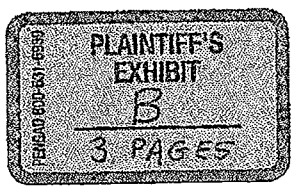
ORDER GRANTING MODIFICATION
OF TEMPORARY RESTRAINING
ORDER

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate No.:)
2009-ES-10-0378)

FILED
2009 JUN 10 PM 1:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Date of Hearing: June 8, 2009
Presiding Judge: Honorable Thomas L. Hughston, Jr.
Defendant's Attorney: Peter A. Kouten, Esquire
Attorneys for Plaintiffs: Cain Denny, Esquire
John Cooper, Esquire
Court Reporter: Brenda Cooley

This matter comes before the Court on June 8, 2009 on Defendant Huckabee's Motion for Reconsideration and Modification of a prior Temporary Order from this Court, filed May 22, 2009, which restrained the Personal Representative of the Estate of Alice Shaw-Baker from performing any acts with regard to the estate. Present for the hearing was Cain Denny representing Plaintiffs Betty and Lisa Fisher. Attorney Peter Kouten represented Defendant Bessie Huckabee. Having considered the Defendant's Motion, counsel's argument and memoranda, applicable statutory and case law, as well as the various interests balanced by the Court at the time of the ruling, the Defendant's Motion to Reconsider is hereby GRANTED.



Although Plaintiffs have not detailed with specificity the immediate and/or irreparable harm that would occur if the Personal Representative was not temporarily restrained as required by Rule 65(b), the South Carolina Probate Code allows for restrictions on disbursements and distributions. In granting such restraint pursuant to South Carolina Probate Code § 62-3-607, the Court is bound by SCRCP, Rule 65 requiring the Court to specify reasons for the issuance and the duration of restraint. The Court requires the Plaintiff to provide a bond in the event the Defendant's sustain harm from a finding that the restraint was improperly issued. Associate Probate Judge Tamara Curry informally appointed Defendant Bessie Wyndham Huckabee as Personal Representative of the Estate of Alice Shaw-Baker on March 11, 2009. Plaintiffs filed a Complaint alleging Undue Influence and Fraud as well as various other causes of action on April 27, 2009. This case was removed from the Probate Court to the Circuit Court pursuant to S.C. Code § 62-1-302(d)(5) by an Order signed by the Honorable Tamara Curry and filed on May 13, 2009. The Court finds that, in balancing the equities, restraining the Personal Representative from making any disbursements or distributions from the estate is the least restrictive way of preserving the estate until a trial on the merits¹.

The Personal Representative shall continue to administer and preserve the estate pending a trial on the merits. This includes: (1) filing necessary documents (2) receiving and marshaling assets into the estate account, and (3) accounting for estate assets provided the authority does not include any disbursements or distributions from the estate.

SCRCP, Rule 65(c) states that no temporary injunction shall issue without the giving of security by the applicant. The Court finds that bond must be given before the Restraining Order shall issue. The Court finds that the Personal Representative shall procure a bond pursuant to South Carolina Probate Code §§ 62-3-603- 606 in the amount of one and one half times the value of the liquid assets in the estate. The Court further finds that the Plaintiff must be required to post a bond equivalent to one and

¹ This case was removed from the Probate Court to the Circuit Court pursuant to S.C. Code § 62-1-302(d)(5) by Order signed by the Honorable Tamara Curry and filed on May 13, 2009. According to the Charleston Clerk of Court staff, this case will be transferred to the trial roster and is likely be called on or about June 13, 2010.

one half time the assets of the estate to satisfy the bond issuance requirement of SCRCF, Rule 65(c). This bond may be a modification of that which was previously required of the Conservator by the Probate Court; however, that bond must be clearly modified to specify the reason for the bond as stated in Rule 65, SCRCF.

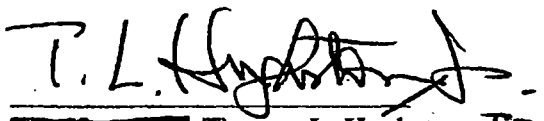
THEREFORE, based on the forgoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant's Reconsideration and Modification of the prior Order is **GRANTED** and the restraint of the Personal Representative is limited to disbursing or distributing any estate assets pending a trial on the merits on all issues in controversy; and it is further

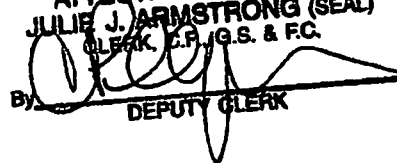
ORDERED, ADJUDGED AND DECREED that the Personal Representative may continue to administer and preserve the estate, including filing necessary documents, receiving and marshaling assets into the estate account, and accounting for estate assets provided the authority does not include any disbursements or distributions from the estate; and it is further

ORDERED, ADJUDGED AND DECREED that the Personal Representative and Plaintiff shall both maintain a bond in the amount of one and one half times the liquid assets of the estate, pursuant to SCRCF, Rule 65.

AND IT IS SO ORDERED!


Thomas L. Hughston, Jr.
Presiding Circuit Court Judge
Ninth Judicial Circuit

This 9th day of June, 2009
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, P., G.S. & F.C.
By: 
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA

In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

RECEIVED

JAN 2 / 2018

S.C. SUPREME COURT

Appeal from the Circuit Court

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

Consolidated Appellate Case No. 2017-000743

BETTY FISHER, LISA FISHER.....Appellants/Petitioners

v.

BESSIE HUCKABEERespondent

PROOF OF SERVICE

I certify that on January 25, 2018, I served a copy of **Return by Petitioners Betty Fisher and Lisa Fisher to Respondent's Motion for Expedited Review** on the Respondent by fax and by depositing same in the United States Mail, postage prepaid, addressed as follows:

Jessica L. Crowley, Esquire
P.O. Box 30189
Charleston, SC 29417
(Attorney for Respondent)

January 25, 2018

RESPECTFULLY SUBMITTED:

JOHN HUGHES COOPER, P.C.

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

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