

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

RECEIVED

MAY 11 2018

Appellate Case No. 2016-000320
Circuit Case No. 2012-CP-10-1332

S.C. SUPREME COURT

Betty Fisher, as Real Representative
for Alice Shaw-Baker.....Appellant

v.

Bessie Huckabee, Kay Passailague Slade,
Sandra Byrd, and Peter Kouten, and Does 1 through 100, Defendants
Of whom Bessie Huckabee, Kay Passailague Slade, Sandra Byrd,
and Peter KoutenRespondents

**PETITIONER BETTY FISHER'S OBJECTION AND OPPOSITION
TO RESPONDENTS' MOTIONS FOR COSTS
FILED BY EVAN A. SMITH AND W. WESTBROOK WILLS**

Betty Fisher
Petitioner Pro Se
P.O. Box 91112
Long Beach, CA 90809-1112
(562) 965-3267

COMES NOW Betty Fisher, as Real Representative for Alice Shaw Baker, Petitioner in the above appeal, and pursuant to Rule 240(e), SCACR, timely files her Return in opposition to the Motion for Costs filed by Respondent Peter Kouten, by Evan A. Wills, and by Respondents, Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd, by W. Westbrook Wills:

**BETTY FISHER’S OBJECTION AND OPPOSITION
TO THE GRANT OF ATTORNEY FEES ON BEHALF OF RESPONDENTS**

Petitioner Betty Fisher, *pro se*, objects and opposes the following:

1. Motion for Costs from W. Westbrook Wills;
2. Motion for Costs from Evan A. Smith.

Counsel failed to reference the proper code in the motions, seek excessive fees for their involvement in this case, and have already been granted fees related to this appeal in the Circuit court order of March 21, 2018.

BACKGROUND FACTS

Petitioner Betty Fisher (“Petitioner”) filed a Writ of Certiorari on February 22, 2016.

This court granted the Writ on January 13, 2017.

The Respondents’ brief was filed by Peter Kouten on behalf of Respondents. W. Westbrook Wills signed it, however he did not file any separate document. Peter Kouten filed billings showing his continued representation of the other Respondents during the period when Attorney Wills was supposedly representing them.

On October 12, 2017, Peter Kouten filed a Second Amended Motion to Withdraw As Counsel and Substitute Counsel for Respondent Peter A. Kouten and Withdrawal of

Representation of Respondent. This motion sought to have Evan Smith appointed as counsel for Peter Kouten only.

On October 17, 2017, Evan Smith was formally appointed, two days before oral argument.

On October 19, 2017, the court had oral argument in this case.

On February 28, 2018, this court issued its decision as follows:

“We VACATE that portion of the court of appeals' opinion discussing "real representative," and AFFIRM the court of appeals AS MODIFIED.”

On April 24, 2018, Attorney W. Westbrook Wills III filed his motion for Costs in the amount of \$2500.00 pursuant to Rule 222, SCACR. The motion affirmed that the “costs” are correct. This motion was mailed on April 25, 2018, and not received until May 2, 2018.

On April 30, 2018, Attorney Evan Smith filed his motion for Costs on behalf of Peter Kouten pursuant to Rule 222, SCACR. This motion sought Attorney Fees in the amount of \$2500.00. This was not received until May 3, 2018.

**ARGUMENT IN SUPPORT OF
OBJECTION AND OPPOSITION TO REQUESTED FEES**

Peter Kouten already sought appellate fees in the companion case, circuit court action, 2009-CP-10-003010 in their post trial motion.

On March 21, 2017, The trial court granted these fees, and this matter is on appeal before the Supreme Court in case no.2018-000566. The correctness of these fees was questioned by Petitioner in the lower court as duplicative and excessive, and ultimately will be decided by

this court when the appeal is resolved. Allowing Peter Kouten these duplicative fees, after they were already awarded in the circuit court, would be a grave injustice.

In this court's 3-2 decision, Opinion no. 27765, this Supreme Court did not base the decision on any of the grounds raised by Respondent Peter Kouten, either individually or in representing Respondents. Although Rule 220 ©, SCACR, states that this Court may affirm any ruling upon any ground appearing in record, in reviewing the opinion and the pleadings, it does not appear that Rule 17(a) was raised, instead Rule 12(b) (8) was the ground raised by Respondents. This court issued its decision, contrary to the plain language of the statute. This court took on the role of changing the statute and disallowing a "real representative" to assert a claim on behalf of a decedent. It would seem interpreting this statute was a role for the legislature. This does not meet the requirements for affirmance, nor for an award of costs.

Alternatively, Petitioner Betty Fisher also contends that allowing Evan Smith to receive attorney fees in this circumstance is unfair in light of his appointment 2 days before the oral argument.

Also, Petitioner Betty Fisher brought this action in "a representative capacity" for the benefit of the Estate of Alice Shaw Baker, something the Personal Representative would never have done, and a Special Administrator as suggested by this court could have declined.

Both Attorney Evan Smith and W. Westbrook Wills stated that the fees were taxable under Rule 222, SCACR, when Rule 242 (j) (2) governs costs on Writ of Certiorari. Therefore, Respondents sought relief under the wrong rule, and have waived their rights to attorney fees on those grounds. Also, their certification relates to costs and does not certify anything related to the attorney fees.

I respectfully request that the fees not be awarded.

WHEREFORE, Petitioner prays for an Order denying Respondent's Motion for Costs in its entirety.

Dated: May 4, 2018

RESPECTFULLY SUBMITTED,

Betty Fisher

BETTY FISHER

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PROOF OF SERVICE

I certify that I have served **PETITIONER BETTY FISHER'S OBJECTION AND
OPPOSITION TO RESPONDENTS' MOTIONS FOR COSTS FILED BY EVAN A.
SMITH AND W. WESTBROOK WILLS** upon Attorneys W. Westbxrook Wills III
and Evan A. Smith depositing a copy of it in the United States Mail, postage prepaid, on May 4,
2018 addressed as follows:

W. Westbrook Wills III
PO Box 822
Folly Beach, SC 29439

Evan A. Smith
PO Box 976
Charleston, SC 29402

May 4, 2018


Betty Fisher
PO Box 91112
Long Beach, CA 90809-1112
562-965-3267