

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

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

BETTY FISHER, as Real Representative
for Alice Shaw-Baker.....Petitioner

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

REPLY BRIEF ON THE MERITS
BY PETITIONER BETTY FISHER, REAL REPRESENTATIVE
REGARDING DECISION

Fisher ex rel. Shaw Baker v. Huckabee, 415 S.C. 171, 781 S.E. 2d 156 (Ct. App. 2015)

JOHN HUGHES COOPER, ESQUIRE
1476 Ben Sawyer Blvd. Ste. 11
Mount Pleasant, SC 29464
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE
Pro Hac Vice
c/o JOHN HUGHES COOPER, P.C.
1476 Ben Sawyer Blvd. Ste. 11
Mount Pleasant, SC 29464
843-883-9099; fax 843-883-9335
(Attorneys for Petitioner)

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I.
**SOUTH CAROLINA’S PUBLIC POLICY SUPPORTS
MODERN VIEWS OF STANDING, AND IN THIS CASE,
EMBRACES EXPANSION OF PRINCIPLES ALLOWING FAMILY THIRD PARTY
STANDING TO PURSUE ELDER ABUSE/LEGAL MALPRACTICE LITIGATION
AGAINST ERRANT EXECUTORS AND CONFLICTED ATTORNEY FIDUCIARIES**

South Carolina has adopted modern views of standing, based, in part, on the important public policies at the forefront of protecting individuals from wrongdoing. In the case of Alice Shaw Baker, these policies are even more important as she represents the growing population of vulnerable and elderly individuals who are repeatedly, personally and financially, victimized by friends, neighbors, and fiduciaries, and where without the changes encouraged by Petitioner, Betty Fisher (“Petitioner”), families would be helpless to vindicate the rights and desires of their loved ones.

In their brief, Respondents do not seek merely to preserve the rights of properly appointed personal representatives, instead they ask this court to insulate their wrongful conduct by preventing a decedent’s loved ones from seeking any legal remedy through third party standing. However, with the growing problem of Elder Abuse, expansion of the function of standing is consistent with the modern views of equity.

The court in *Simmons v. Tuomey Reg’l Med. Ctr.*, 330 S.C. 115, 124,498 S.E.2d 408, 412-13 (Ct. App. 1998) affd as modified, 341 S.C. 32, 533 S.E.2d 312 (2000) used this language to explain the need and objectives of expansive public policy, albeit in the context of hospital liability:

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“The true grounds of decision are consideration of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more rarely, if ever, are capable of unanswerable proof.

(Id., citing *Martell v. St. Charles Hosp.*, 137 Misc. 2d 980, 523 N.Y.S. 2d 342, 352 (NY. Sup. Ct. 1987) and its reference to Shriver, THE JUDICIAL OPINIONS OF OLIVER WENDELL HOLMES, page 65)

Here, Respondents¹ rely on antiquated readings of the law governing standing, which effectively demonstrate this problem of “unanswerable proof”. Neither the legislature nor this Court can provide a solution for every elder abuse case, and Respondents’ answer will leave victims without any remedy. Therefore, the need for a “case by case” principle that can allow for adaptations of procedural rules to protect the wishes of decedents and recoup for the current day abuse by strangers, fiduciaries, and here, court appointed attorney/guardian ad litem Peter Kouten, which include blatant breaches of fiduciary duties owed to Alice Shaw Baker.² These recurring types of problems encountered by the disabled and elderly populations support public

¹ Respondent Kouten indicates that he is filing the Respondents’ brief on behalf of Bessie Huckabee as Personal Representative, before this Court. However, on p. 25 of the brief, it is also signed by W. Westbrook Wills III, on behalf of Respondents Bessie Huckabee and Kay Slade and Sandra Byrd. These are errors which Petitioner is forced to bring to this Court’s attention to prevent any waiver. She continues to object to these manipulations in procedure.

² Petitioner respectfully requests that the court disregard the allegations in Respondents’ brief, due to their failure to cite to the record, including allegations that Petitioner did not respond in a timely manner and/or the filing of amended accounting before walking into courtroom and characterization that Petitioner was “unapologetic”, etc. (pp. 3, 4, 5 and 7) (See *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) [court will not consider any fact which does not appear in the Record on Appeal]; see also Rule 210(h), SCACR.)

policies that motivate family involvement to ensure wrongdoers are not unjustly enriched.³

In the opening brief, Petitioner Betty Fisher set forth the factual scenario which supports her legal request to proceed with a survival action under S.C. Code Ann. § 15-5-90 on behalf of her Aunt Alice Shaw Baker (“Alice”), the decedent herein, against purported friends and the court appointed attorney/guardian ad litem (in the underlying conservator action). In a related will contest, Petitioner seeks to establish that her aunt revoked the will naming Respondents as beneficiaries in her efforts to recoup the estate to benefit animal charities.

The Court of Appeal affirmed the finding that Petitioner had no standing to pursue these survival actions under S.C. Code Ann. § 15-5-90. This court granted Petitioner’s Writ of Certiorari to review these compelling issues which demonstrate and support her position that she has Standing and authority to prosecute the survival action.

A. While South Carolina already Recognizes Third Party Beneficiaries’ Standing to Pursue Legal Malpractice Claims, Petitioner Established that Respondents Waived their Claim that Petitioner Lacked Standing, therefore Reversal is Mandated.

1. Betty Fisher has Standing, both under Principles of Statutory Standing and Equitable Standing.

This Court was at the forefront of changes to the laws governing third party standing in cases of estate planning legal malpractice, as this Court allowed beneficiaries to sue for defects in

³ Petitioner seeks recovery on behalf of decedent and to benefit Alice Shaw Baker’s charitable intentions. Petitioner possesses the role of beneficiary/ “heir at law”, if successful in the related revocation/will contest case. To give standing to Respondents any more legitimacy would prejudice Petitioner, and cause harm in the event of success. Without petitioner’s efforts, recovery will have been lost based on statute of limitations. The claim that Petitioner bears no interest in this case is therefore false. She has the motivation to pursue the cases on her behalf. (See *Layne v. International Bhd. Of Elec. Workers*, 271 S.C. 346,247 S.E. 2d 346 (1978)[action survives to representative].)

estate planning documents in *Fabian v. Lindsey*, 410 S.C. 475, 765 SE 2d 132 (2014). The *Fabian* court found that “only the beneficiaries have the motivation to pursue a damages claim”, yet *Fabian* supports an expansive view due to the underlying motive to secure recovery of a decedent’s losses and obtain damages for the decedent’s injuries.

In Alice Shaw Baker’s case, she was hurt during her lifetime, so the same rationale that was stated by this Court in *Fabian, supra*, supports a similar third party standing for the alleged Elder Abuse/Breach of Fiduciary claim. Although, the *Fabian* Court’s conclusion that only beneficiaries would have the “motivation” to proceed in estate planning litigation, this is not necessarily true, certainly not in the Elder Abuse context, because as stated in Petitioner’s opening brief, Elder Abuse is a growing problem where many families would like to vindicate the rights of their loved ones and ensure that the decedent’s wishes are honored.

While it is recognized that “Statutory standing exists as the name implies, when a statute confers a right to sue a party, and determining whether a statute confers standing is an exercise in statutory interpretation”(Respondents’ brief, p. 10), even this interpretation explains that statutory standing pursuant to S.C. Code Ann. § 15-5-90, is that a decedent’s “injuries to the person or to personal property shall survive **both** to and against the personal or **real representative**” (emphasis added). Therefore, under these principles, Petitioner, on behalf of Alice Shaw Baker, may act to recover for the wrongdoing that decedent suffered.

2. **Respondents Did not Properly Raise the Issue of Petitioner’s Standing, therefore Petitioner has established their Waiver and She Must be Able to Prosecute the Civil Action for Elder Abuse Damages.**

Respondents’ claim that they specifically raised the issue of standing in their pleadings for Summary Judgment (Respondents’ brief, p. 12), however they neglect to inform the court that

the issue they raised was not Petitioner’s capacity as “Real Representative”, rather it was based on Petitioner’s failure to bring the Will Contest (App. 54; App. 168)--which is not about standing.

Their efforts to distinguish *We Sav Financial Corp. v. Lingefelt*, 316 S.C. 442, 450 S.E.2d 580 (1994) also fail. The fact that *We Sav* does not specifically use the term “standing” is not dispositive.⁴ It does raise the issue of “waiver” as described by Petitioner i.e. failure to bring an issue (here “real representative’s” standing) before the court.⁵ The *We Sav* court specifically found that:

“The issue of whether the RTC is the real party in interest was not raised or ruled on by the trial judge. Therefore, the Court of Appeals erred in considering this issue.” (Id, at 445)

Moreover, Respondent’s reading of the United States Supreme Court’s ruling on Standing under *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990) is not instructive in this instance. It discusses the importance of jurisdiction in the federal court and the application of standing, yet it does not discuss the issue of third party standing. Here, Petitioner has set forth facts supporting decedent’s causes of action, and under both statutory and equitable standing, a family member

⁴ The court in *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 485 S.E.2d 371 (S.C. 05/12/1997) explained standing is often equated with a real party in interest. Many cases discuss the concept of waiver by failure to timely raise an issue. (See *Bardoon*, citing 6A Wright, Miller and Kane, Federal Practice and Procedure, § 1554, pp. 406-407 (1990). See also *Gogolin & Stelter v. Karn's Auto Imports, Inc.* 886 F.2d 100, 102 (5th Cir. 1989), cert. denied 110 S.Ct. 1480 (defendant waived defense that plaintiff was not real party in interest by failing to timely raise issue); *Hefley v. Jones*, 687 F.2d 1383, 1388 (10th Cir 1982); *Fox v. McGrath*, 152 F.2d 616, 618-619 (2nd Cir. 1945); *Bielski v. Zorn*, 627 N.E.2d 880 (Ind. 1994).

⁵ Respondents’ brief defines the terms “waiver” on p. 12 in the context of waiving an interest in property. This is not the context explained in *We Sav*, *supra*.

may preserve the rights of recovery for the decedent's estate without reference to federal definitions of standing.

Despite their claims of raising the issues of waiver, Respondents' pleadings were defective in every way.⁶ Respondent Kouten was basically able to obtain judgment without ever appearing in the case, or addressing the legal malpractice and breach of fiduciary claims. The other Respondents' also failed to address the claims in the complaint, instead opting to be named Defendants or Respondents at the whim of Counsel.

South Carolina and other jurisdictions make it clear that failing to raise a defense constitutes waiver. (See Rule 12 (h) (1) [defense waived if "it is neither made by motion under this rule or included in a responsive pleading or an amendment.]; See also *Deutsche Bank Nat'l. Trust Company v. Hussain*, 78 A.D.3d 989, 912 N.Y.S.2d 595 (2d Dept., 2010); *Home Loans Servicing, L.P. v. Albert*, 78 A.D.3d 983, 912 N.Y.S.2d 96 (2d Dept. 2010); *In re S.M.*, 118 Cal.App.4th 1108, 1115, fn. 3 (2004); *In re Christopher I.*, 106 Cal.App.4th 533, 548, fn. 1 (2003).; *Greer v. Ill Housing Dev. Authority*, 524 NE 2d 561 (1988)]; *Krivanek v. Take Back*

⁶ Petitioner has objected throughout the case about the malleable representation of the parties, especially in light of the adverse, conflicted role of Peter Kouten who was appointed by Judge Curry of the probate court to represent Alice Shaw Baker in the underlying conservatorship case. The continued ambiguity of Respondents' representation and status in filing pleadings, and avoiding procedures is questionable.

The Respondents insist on a rigid reading of Standing, however they fail and refuse to abide by rules even with regard to disclosure of parties represented in this case. Respondents Slade, Byrd and Huckabee, individually, did not file their own briefing, (See *First Union Nat. Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E. 2d 429 (1996) [failure to respond to the issues in an Appellant's brief will be deemed a confession that the appellant's position is correct. (See also 5 Am.Jur.2d Appellate Review § 555, at 254 (1995).)

See *Valentine v. Davis*, 319 S.C. 169, 460 S.E. 2d 218 (1995)(can not add names to caption because it interferes with orderly administration of legal system).

Tampa Political Com., 625 So. 2d 840 (Fla: Supreme Court 1993); *Harrison v. Leach*, 323 SW 3d 702 (Ky: Supreme Court 2010).)

Respondents' efforts to avoid liability by preventing Petitioner from asserting third party standing must fail. As seen above, many courts and jurisdictions hold that the defense of standing must be raised or the issue is waived, so their failure to properly raise the issue of "real representative" and "equitable standing" is fatal.

Petitioner respectfully requests that this Court find that Respondents waived the issue of standing and reverse the summary judgment.

B. Betty Fisher has Standing in her capacity as "Heir at law" and under the Modern View of a "Real Representative" and "Equitable Standing" to seek vindication on behalf of her loved one.

Petitioner briefly reminds the Court of the plain language granting her statutory standing, "*Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive **both to and against the personal or real representative, as the case may be, of a deceased person...***" (S.C. Code Ann. § 15-5-90, emphasis added)

It is significant that wrongful death actions are to "...be brought by or in the name of the executor" (See S.C. Ann. Code § 15-51-20) and there is no exception for a "real representative."

Yet, Petitioner is an "heir at law". The court in *Duke v. Postal Telegraph Cable Co.*, 71 S.C. 95 (SC 1905), held that heirs at law are the real representatives.

In *Thompson v. Hudgens*, 161 S.C. 450, 463, 159 S.E. 807, 812 (1931), the courts have recognized that heirs are generally in privity with their ancestors. *See also Whaley v. Slater*, 202 S.C. 182, 24 S.E.2d 266 (1943) (plaintiffs' claim as heirs of decedent

sufficient to establish privity for "identity of parties" requirement for standing to maintain action). These cases not only support an expansive definition of “real representative” but also of the corresponding identity of *successors*. (See *Byrd v. McDonald* 417 S.C. 474 (2016) ; S.C. Code Ann § 62-1-302(a) [concurrent jurisdiction to circuit courts to “determine heirs and successors necessary to resolve real estate matters, including partition.”])

Further, the cases governing equitable standing were not distinguished by Respondents, and the longstanding views of equitable standing support modern efforts to justify family intervention for litigation. (See App.238). (See *Bailes v. Southern Railway Co. Et al.*, 227 S.C. 176, 87 S.E. 2d 481 (1955) [courts have upheld the right of the beneficiary to begin action to recover estates]; see also Bogert, *The Law of Trust and Trustees*, § 869, ch. 41, “Beneficiary and Trustee— Remedies under Trusts”, p. 118-119).⁷ Their efforts to find a factual difference only claims that Petitioner is not a beneficiary, and ignores the policies to allow to proceed. They further ignore their own status as “beneficiaries” is tentative, in light of the alleged revocation of the Will. The legal analysis of *Bailes and Bogert* is that at some point in litigation, there is a need for a third party.

The more modern approach even supports principles of allowing for reformation of wills. (See *In re Estate of Duke*, 352 P.3d 863, 879 (Cal. 2015) [California was “persuaded that authorizing the reformation of wills . . . serves the paramount purpose of the law governing wills without compromising the policies underlying the statutory scheme and the common law rules. If

⁷ It is significant that the analysis in Bogert is specific: “The beneficiary is not enforcing his own cause of action, but is acting as **a temporary representative of the trust in order to effect a recovery which will go to the trustee or his successor for the benefit of the beneficiary.**” (Emphasis added)

a mistake in expression and the testator's actual and specific intent at the time the will was drafted are established by clear and convincing evidence, **no policy underlying the statute of wills supports a rule that would ignore the testator's intent and unjustly enrich those who would inherit as a result of a mistake.**”], emphasis added.)

As evidenced in the *Estate of Duke, supra*, it is this policy consideration that controls and impacts modification and extension of principles of standing. Respondents refuse to address Petitioner's standing, instead they merely reiterate their arguments related to: 1) general issues of standing; 2) waiver of standing; 3) the unmeritorious assertion that petitioner must waive her rights to review and prosecute the will contest matter without resolution of these matters. (See Respondents brief, pp. 14)⁸; 4) the stilted view of the *Omnibus Adult Protection Act* (S.C. Code Ann. § 43-35-25); and the (5) antiquated definition and interpretation of the term “real representative”. As set forth herein, their arguments can not justify denying Petitioner authority to seek legal recourse, especially in light of the clear and unambiguous language governing a survival action under S.C. Code Ann. § 15-5-90.⁹

The statute itself clearly provides that injuries to the person shall survive to a “real representative”. Respondents attempt to bolster their position, that only a personal representative has standing, by reference to South Carolina Code Ann. Sections 62-3-715 and 62-3-703. However, these codes are defeated, in light of S.C. Code § 15-5-90's own non-exclusive

⁸ The legal malpractice claim alleged against Peter Kouten includes the issues of non-waivable conflict of interest which Petitioners contends is central to both cases, and failure to secure a ruling on this issue would and does prejudice Petitioner.

⁹ This Court has previously determined that the language of S.C. Code § 15-5-90 is “clear and unambiguous” in the case of *Ferguson v. Charleston Lincoln Mercury*, 349 S.C. 558, 564 S.E. 2d 94 (2002). The case is silent whether the plaintiff acted on her own behalf and “on behalf of the estate.”

provision allowing for both personal and real representatives to bring the actions.

Asbury v. S.C. National Bank, 268 S.C. 40 (1977) is not instructive in this case. The *Asbury* court merely decided that “no qualified contestant” existed to bring an appeal. In that case, no will had been filed, and the heir had not yet been appointed executrix.

The *Asbury* court found that there are three potential capacities for an appellant to pursue an appeal: (1) individually, in her own right; 2) individually as sole heir of the decedent; or 3) representatively as the executrix of the estate. The court held that a person must be a party to appeal. There is no dispute that Petitioner is a party,¹⁰ able to seek interpretation, modification, or an extension of the law. A modern view of standing for the protection of family members is Petitioner’s focus and even Respondents’ false claims that petitioner has “sat on her right to hearing on the issues” can not diminish the need for elder protections through appropriate policy decisions. Some litigation is more complicated, but each party has a right to seek judicial review as a means of asserting deprivation of due process.

Respondents insist that petitioner waived her right to review by this Court. They further claim that they have standing, because Alice Shaw Baker “did not name dog charities as her final beneficiaries” (Respondents’ brief, p. 14). Petitioner contends that Alice Shaw Baker never intended these individuals to benefit, as the record reflects a very telling exhibit that states the monies were intended for “pets and rescue.” (App. 250)

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¹⁰ See also, rule 71(d)(1), SCRCP, “all heirs at law or devisees of the deceased person shall likewise be made parties.”

C. *The Purpose and Scope of the Omnibus Act Also supports A Modern Policy Allowing for Recovery for Elder Abuse.*

The Omnibus Adult Protection Act is more far reaching than set forth by Respondents. Since the Omnibus Adult Protection Act is a cause of action, based on statute, it survives the death of a party . (See 1 CJS Abatement and Revival § 151, at 206 (1985); see also 1 Am Jur. 2d Abatement, Survival and Revival § 53 (1994).) Additionally, since violation of a statute constitutes negligence per se, Appellant can use these violations to establish some evidence of recklessness and willfulness. (See *Fairchild v. Dept. of Transp.*, 385 S.C. 344, 683 S.E. 2d 818 (2012) [can establish punitive damages].)

Case law in *Amisub of South Carolina, Inc. v. Passmore*, 316 S.C. 112, 447 S.E.2d 207 (1994) stands for the proposition that a third party may sue on behalf of a victim.¹¹ Allowing a hospital to sue a spouse for necessities under the code as an interested person under section 43-29-10(2) demonstrates a public policy goal to recover for abuse. The *Amisub* court’s finding that third party standing does not require an “altruistic interest in the protected person” doesn’t mean that those *with* an “altruistic interest” can not proceed on that person’s behalf. See also *Williams-Garrett v. Murphy*, 106 F.Supp.2d 834 (2000) supports Petitioner’s contention that a “contemporaneous claim to report” is not mandated prior to seeking relief through a civil action.

Instead, Petitioner contends that the cause of action relates to *essentially* a negligence per se/reckless cause of action under South Carolina Ann. Code § 43-35-3. The statutes that apply in this instance are not limited, as set forth by Respondent Kouten. South Carolina Ann. Code § 43-35-85 specifically references the “death” of a victim. Even though South Carolina Ann.

¹¹ Although the code used in *Amnibus* is a repealed statute, Petitioner’s rationale still applies to the new statutory scheme.

Code § 43-35-80, provides specifically that an attorney general may bring an action, it also includes language that:

“Notwithstanding any regulatory or administrative penalty that may be assessed **and in addition to a private civil cause of action** that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, or exploitation under this chapter.” (Emphasis added)

Therefore, the legislature specifically anticipated that parties could bring civil actions, and Petitioner must be allowed to proceed.

D. Petitioner Preserved the Issues of Equitable Standing and Waiver by Respondents.

In the Initial Petition for Writ of Certiorari, Petitioner referenced all the areas and issues raised in the record. Respondents do not even attempt to dispute these issues. Petitioner repeats (in condensed form) these issues to ensure that the court has reference in the record:¹²

- Petitioner referenced Respondent Kouten's failure to outline his capacity. (App. 85, fn. 3) Respondent Kouten and the other Respondents did not bring the motion for summary judgment based on standing. (App. 146)
- Respondents cited no authority for the argument that Petitioner had no standing. Arguments are not evidence. (App. 184, citing *Trivelas v. S.C. Dept. of Transportation* , 348 S.C. 125, 141, 558 S.E. 2d 271, 279 (2001).)
- Petitioner continued to contend that the court ignored the motion to disqualify/ remove Kouten. (App. 164) This is important, since Alice Shaw Baker was Respondent Kouten’s “ward” as court appointed counsel in the conservatorship proceedings. It is well settled that a ward will be considered a client for the

¹² Its important to note that at the hearing on *October 8, 2013* , Petitioner’s counsel raised the issue of the proper representation by Attorney Wills and the *Notice of Association*. Respondent Kouten made it clear that he was arguing on behalf of all Respondents, despite Attorney Wills' filing of the *Notice of Appearance*.

purposes of the rules relating to attorney conflicts of interest. (*Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).) Petitioner alleges that Respondent Kouten represented Bessie Huckabee, Kay Slade, and Sandra Byrd while at the same time representing Alice Shaw Baker—during her life— without any conflict waiver. Under the rules relating to attorney conflicts of interest, a lawyer owes a duty of loyalty to former clients. (*In re Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010), Rule 407, SCACR); (App. 181, fn. 5)

- Petitioner questioned Kouten's involvement in the case from his first pleadings. (R. 472-474).

The court in *Coward Hund Construction Co., Inc. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56, 58 (1999) explained: "Once the issue has been properly raised by a Rule 59 (e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised."

Additionally, James F. Flanagan explains in *South Carolina Civil Procedure* 475 (2nd ed. 1996): "Lawyers cannot force a trial Judge to address a disputed issue."

Finally, as outlined in *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E. 2d 505, 509 (2006): "The Supreme Court identifies two ways to preserve the issue: 'a ruling by the trial judge or a post trial motion.'" Here, Petitioner outlined that the circuit court failed to address the issues in the case, either by way of a direct ruling or her post-trial motion. (App. 182 and 186)

Therefore, Petitioner respectfully requests that the court reverse the orders of Summary Judgment.

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II. REMEDY SOUGHT

Petitioner Betty Fisher, real representative for Alice Shaw Baker, prays this Court grant this petition and allow her to prosecute all the claims against Respondents. These claims arise from the physical abuse, psychological abuse, breach of fiduciary duties owed to the decedent, Alice Shaw Baker, and the adverse, conflicted relationship of court appointed attorney/guardian ad litem wherein Ms. Shaw Baker suffered personal and financial damages during her life. This is a survival action.

This Court has already extended privity/standing to situations where a beneficiary is seeking recourse on their own behalf, however the reach toward privity and standing is an important component, as a decedent who suffered during her lifetime should not be divested of her real wishes and tormented during her lasts days without a remedy. This brings us back to Justice Clark's and Justice Warren's warning against procedures that "cause injustice."¹³

Without the extension of standing in Elder Abuse cases, Petitioner Betty Fisher (and similarly situated family members and/or "successors in interest") will be forced to see their loved ones suffer unspeakable harm during their lifetime from individuals who will have devised the means of precluding any oversight or remedy by family members with standing.

South Carolina law supports third party standing in Elder Abuse cases. Petitioners contend that standing as a "real representative" is not necessarily an extension of the law, it is as *Fabian* turned out to be, a modern view of recovery for wrongdoing. It creates in South Carolina a new era of safety where recovery can be made by: 1) personal representatives; 2) third party

¹³ Petitioner cited Justice Charles E. Clark, "The Handmaid of Justice," 23 Washington University Law Quarterly 297 (1938) and Justice Earl Warren, "The Law and the Future" in Fortune Magazine (November 1955).

beneficiaries seeking estate planning relief; and 3) third party standing/equitable standing for family members to stand up to those who have harmed their loved ones. South Carolina will lead the nation in embracing the modern view, without prejudicing any parties.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 
JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 11

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE

Pro Hac Vice

c/o JOHN HUGHES COOPER, P.C.

1476 Ben Sawyer Blvd. Ste. 11

Mount Pleasant, SC 29464

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF

June 13, 2017

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No. 2016-000320

Circuit Case No. 2012-CP-10-1332

RECEIVED

JUN 14 2017

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 KOUTEN are.....Respondents

PROOF OF SERVICE

I certify that on June 13, 2017, I served a copy of Reply Brief of Petitioner on the Respondents and interested parties by depositing same in the United States Mail, postage prepaid, addressed as follows:

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340a
Johns Island, SC 29457
(Attorney for Respondent Peter A. Kouten)

W. Westbrook Wills, III, Esquire
P.O. Box 822
Folly Beach, SC 29439

June 13, 2017

RESPECTFULLY SUBMITTED:

JOHN HUGHES COOPER, P.C.



JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185586

1476 Ben Sawyer Blvd., Suite 7

Mt. Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE

Pro hac vice

c/o John Hughes Cooper, P.C.

1476 Ben Sawyer Blvd., Suite 7

Mt. Pleasant, SC 29464

883-9099; fax 843-883-9335

ATTORNEYS FOR APPELLANT