

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas L. Hughston, Jr., Circuit Court Judge

Circuit Court Case No. 2009-CP-10-3010
Appellate Case No. 2018-000566

Betty Fisher and Lisa Fisher..... Appellants

v.

Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd Respondents

In the Matter of the Estate of Alice Shaw-Baker.

**RESPONDENTS' RETURN TO
APPELLANTS' MOTION FOR SUPERSEDEAS**

COMES NOW Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd, Respondents in the above captioned appeal, and pursuant to Rule 240(e), SCACR, hereby file their return to Appellants' Petition for Supersedeas, filed on May 23, 2018 ("Petition"), showing this Court as follows:

INTRODUCTION

Alice Shaw-Baker died testate in February of 2009 from complications related to Alzheimer's disease, leaving her Estate to her three best friends of over 40 years. Appellants,

who were distant family members and essentially strangers¹ to Mrs. Shaw Baker, brought the underlying lawsuit to contest the validity of Ms. Shaw-Baker's last will executed May 21, 2001. Despite knowing Defendants were named beneficiaries in Ms. Shaw-Baker's 2001 will, and in each of her several previous wills dating back to 1991, and with full knowledge the Probate Court for Charleston County had specifically deemed Ms. Shaw-Baker incapacitated, and ordered that she not modify or revoke her existing will (for her protection), Appellants' will contest action alleged 11 causes of action including claims that will was not validly executed, that the will was procured by undue influence and fraud, that there existed a subsequent will, and that Ms. Shaw Baker revoked her will (orally). [See generally Verified Complaint, Exhibit "J" to Appellants' Petition at p.109]. Then, over the following 8 years, Appellants used every tactic imaginable to forestall the adjudication on the merits of the will contest; the very adjudication which they sought in the first place. [See generally Judge Thomas L. Hughston's March 21, 2018 Order of Judgment and for Sanctions, Exhibit "A" to Appellants' Petition at p. 37; see also Judge Thomas L. Hughston's May 29, 2018 supplemental Order, a true and accurate copy of which is attached hereto as Exhibit "A"].

Such stall tactics by Appellants served to delay the proper adjudication of the will contest so long that, in the meantime, one of the named beneficiaries of Mrs. Shaw-Baker's will, Sandra Byrd, passed away before the matter was ultimately put to a jury, and the will upheld. When the case finally did go trial on October 23, 2017, the date that had been specially set, at Appellants' insistence, since June 13th of that year, Appellant Betty Fisher did not even show up.

¹ The Record will reflect the Fisher's testimony at trial. Lisa and Betty Fisher are residents of California. Lisa Fisher never met Mrs. Shaw-Baker prior to a hearing in the Charleston County Probate Court in July of 2008 at which the court found Mrs. Shaw-Baker incompetent, and appointed Lisa Fisher as her Guardian and Conservator. Betty Fisher, who is presently believed to be 81 years of age, testified she had not seen Mrs. Shaw-Baker since she Betty Fisher was a little girl [See also; May 29, 2018 Order of Judgment at p 1 (Lisa and Betty Fisher "essentially strangers to Alice Shaw-Baker and her friends.")]

After 8 years of delay and vexatious litigation, at the close of evidence, Appellants had effectively abandoned every one of their 11 causes of action, with the exception of one: that Alice Shaw-Baker revoked her will². The jury returned a verdict upholding the will and finding Alice Shaw-Baker had not revoked it.

On November 3, 2017, Appellants filed a motion for date certain to hear bifurcated claims; a motion for a new trial and to reconsider, alter, or amend the order of judgment. On November 6, 2017, Respondents filed their post-trial motion for sanctions under S.C Code Ann. §15-36-10, South Carolina Frivolous Proceedings Sanctions Act, and for and award of attorneys' fees as provided under S.C. Code Ann. §62-1-111 of the Probate Code.

On March 12, 2018, the trial court held a trial on Appellants' bifurcated equitable claims.

On March 21, 2018 Judge Hughston entered his Order of Judgment and for Sanctions against Appellants and their attorney. [See Exhibit "A" to Appellants' Petition, p. 37]. In subsequent Order, dated April 3, 2018, entered more than ten days after the Order of Judgment and for Sanctions was filed, Judge Hughston enjoined Appellants from making any further filings in the Circuit Court.

On April 7, 2018, Appellants first petitioned this Court for supersedeas and for emergency interim relief, arguing Judge Hughston's injunction prevented them from filing a Rule 59 motion for new trial and motion for supersedeas in the trial court. On April 11, this Court entered an Order permitting Appellants to file a motion for supersedeas and a Rule 59 motion for new trial in the trial court, which Appellants did on April 18, 2018 and April 25,

² Appellants claimed, for the first time at trial (their pleadings only allege Ms. Shaw-Baker indicated orally that she wanted to revoke her will) that on or about January 1, 2009, Alice Shaw-Baker tore up a copy of her will with the express intention of revoking it, despite their absolute knowledge of the Charleston County Probate Order, entered in November of 2008, specifically prohibiting Ms Shaw-Baker from revoking or modifying her will in any way

2018, respectively. After full briefing on the issues by both parties, the trial court set the hearing on Appellants' motion for May 21, 2018.

At the May 21, 2018 hearing, which lasted approximately six hours, the trial court took additional testimony from the parties and other witnesses. On May 23, 2018, prior to the trial court ruling or entering any orders on their motions, Appellants filed their second petition for supersedeas and emergency motion for interim relief, which is presently before this Court.

On May 29, 2018, Judge Hughston issued supplemental orders denying Appellants' motion for supersedeas and for new trial, but modifying the sanctions he had imposed against Appellants. [See Order of Judge Thomas J. Hughston, signed and filed on May 29, 2018, a true and accurate copy of which is attached hereto as Exhibit "A"].

In both her original and in their current Petition, Appellants agree that staying the enforcement of Judge Hughston's Orders, which *inter alia* require Lisa Fisher to turn over the estate funds assets to the personal representative Bessie Huckabee, is necessary to preserve the status quo, to prevent irreparable harm to her and the estate, and because she believes Appellants' appeal is likely to succeed on the merits. However, for the reasons set out below, this Court should deny Appellants' petition and remove its temporary stay of all proceedings in the lower courts in any way relating to Alice Shaw-Baker.

Lisa Fisher was discharged as Conservator for Alice Shaw-Baker by Order of the Probate Court dated May 11, 2009 and has since refused to turn over any of the assets of the estate to anyone, including the Probate Court and Circuit Court which have both ordered her on several occasions to do so. The basis of her continued refusal has been her obstinate insistence that S.C. Code Ann. §62-5-425(d) creates in her an absolute duty to retain, protect, and hold all estate

assets, and to only turn them over to someone *she* believes is the appropriate person.³ Ms. Fisher argues Alice Shaw-Baker's true intention, despite what she carefully spells out in all of her wills going back to 1991, was to leave her entire estate to unknown animal charities. Therefore she has argued, and continues to argue, that she is duty bound not to deliver the estate to the personal representative (or to a special fiduciary), and to protect the estate for the benefit of animal charities. Lisa Fisher is not the conservator, and has no interest in the estate either as a beneficiary or a would-be intestate heir. Yet, she has refused to relinquish the assets of the estate since early 2009. After years of delay, a jury verdict upholding the will, and summary dismissal of the totality of her equitable claims, and the denial of her motion for stay in the trial court, Appellants now asks this Court to aid them in further delaying the relief Respondents have been deprived now for nearly a decade.

DISCUSSION

As a general rule, the service of a 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.

The exceptions to the general rule are found in Rule 241(b), SCACR and include *inter alia* 1) money judgments as provided in S.C. Code Ann. §18-9-130, 2) judgments directing the assignment or delivery of personal property as provided in S.C. Code Ann. §18-9-150, 3) judgments directing the delivery of possession of real property as provided in S.C. Code Ann.

³ S.C. Code Ann. §62-5-425(d) directs that upon the death of ward, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto

§18-9-170, and 4) ejectment orders as provided in S.C. Code Ann. §27-37-130 and S.C. Code Ann. §27-40-800.

Rule 241(c)(1) provides, in a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. “The effect of the granting of a supersedeas is to suspend or stay matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, **to revive the terms of the prior order or decision.** (emphasis added).

In determining whether an order should issue pursuant to this Rule . . . the Court should consider whether such an order is necessary to preserve jurisdiction or the appeal or to prevent a contested issue from becoming moot. Rule 241(c)(2), SCACR. Furthermore, the granting of supersedeas under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking as the Court may deem appropriate. See Rule 241(c)(3), SCACR.

Rule 241(d)(1), SCACR provides that an application for supersedeas must first be made to the lower court. If the lower court denies a party’s application for supersedeas, that party may petition for review of that denial, however, the petition must include a certified copy of the lower courts order denying the supersedeas. See Rule 241(d)(4)(C)(emphasis supplied).

Finally, supersedeas may be issued *ex parte* only where exigent circumstances require that action be taken before there is time for a hearing, and only if it clearly appears from specific facts shown by affidavits or included in the verified petitions that immediate and irreparable injury, loss or damage will result before the opposing party can respond. See Rule 241(d)(6)(A), SCACR (emphasis supplied).

In the instant case, Appellants' petition was not only premature⁴, but to obtain *ex parte* relief as provided by Rule 241(d)(6), SCACR, Respondents make substantial misrepresentations of fact and law in the Petition and supporting affidavits. Otherwise, Appellants petition fails to set forth any legitimate basis for the grant of supersedeas. Furthermore, supersedeas would serve to allow the estate assets to remain in the hands of the very individuals the Magistrate, Probate, Circuit Courts, and the Court of Appeals have determined have improperly dissipated estate assets after Lisa Fisher's discharge as Conservator.

I. Appellants' Petition For Supersedeas Misleads The Court.

Appellants, in their Petition and supporting affidavits, take extraordinary liberties with the facts and application of the law, and with such regularity, that it would be futile to attempt to address each instance. By way of example, Respondents point to a select few. Page 2 and 3 of Appellants' Petition speaks to the action the personal representative Bessie Huckabee commenced in the Magistrates Court following for the eviction of Lisa Fisher's friend she has allowed to live in Mrs. Shaw-Baker's home, rent-free, for the past 9 years, without authorization from anyone, and who has caused extensive damage to the property. Appellants misrepresent, for example, that Respondents obtained orders for eviction "after they had previously obtained an order from Judge Hughston, which was stopped based on this Court's order to allow a new trial." [Appellants' Petition at p. 2]. Of course, nothing in this Court's order permitting Appellants to file a Rule 59 motion for new trial in the trial court affected in any way Judge Hughston's order regarding ejection of the unauthorized occupant at the property. Orders to turn over property are not stayed on appeal (Rule 241(b), SCACR), much less for a motion for

⁴ Pursuant to Rule 241(d)(1), SCACR a petition for supersedeas must contain a certified copy of the lower court's denial of supersedeas. Appellants' Petition fails to include such copy because they filed it with this Court before the trial court even ruled or entered an order denying supersedeas.

new trial, which had, at that time, not even been filed. Appellants further misrepresent the situation by claiming Respondents were “seeking damages from an innocent caretaker, when they knew she is not the real party in interest.” In true fact, the Magistrate had granted the personal representative’s eviction of Lisa Fisher’s friend in January of 2018, and her friend, appealed the eviction, and were required by the Magistrate to provide an appeal bond to remain in the property pending the appeal. The proceeding to which Appellants refer was the hearing on the eviction appeal, which the Circuit Court affirmed. Respondents, who had incurred substantial attorneys fees, therefore sought release of the appeal bond to the estate.

The representations contained in Appellants’ enumeration 1-3 of “new facts warranting preservation of the status quo” on page 8 of their Petition are simply false. At page 14 of their Petition, Appellants represent “Alice Shaw-Baker appreciated Lisa Fisher’s help, because as she put it, “My best friend [Bessie Huckabee] betrayed me.” Such an assertion is not of record, nor could it have been, and Appellants make it for the first time in this Petition. It is simply made up. Then again at page 14 of their Petition, Appellants represent that “[d]uring the conservatorship trial, the court put in the order that Alice Shaw-Baker could not change her will. This was done without notice to Alice or Appellants, and is contrary to South Carolina law.” That falsity is astounding considering both Appellants were present at that trial/hearing, and Lisa Fisher or her counsel drafted that order.

While the foregoing examples of misrepresentation relate to issues Respondents argue are irrelevant and tangential to Appellants’ application for supersedeas (and therefore should be inconsequential), their Petition also misleads the Court with regard to more substantive relevant issues. Specifically, Appellants either misrepresent the issue of the “status quo” in this case, and that they will suffer irreparable harm and be deprived of their right to a meaningful appeal,

absent a writ of supersedeas. [See Appellants' Petition at p. 4; Supplemental Affidavit of Lisa Fisher at paras. 10 and 16]. Each of those issues was relevant to this Court in granting Appellants emergency interim relief. [See Chief Justice Beatty's May 24, 2018 Order].

A. Appellants Misrepresent The Status Quo.

Appellants' reiteration throughout their petition that immediate action by the Court is necessary preserve the "status quo" pending appeal demonstrates their own misunderstanding (potentially, selective misunderstanding) of the meaning of that term of art in the context of orders and judgments directing the payment of money or delivery of real and personal property, and the exceptions to the automatic stay on notice of appeal under Rule 241(b), SCACR.

The "status quo" in this case at the present time is that Bessie Huckabee is the duly appointed personal representative of the estate of Alice Shaw-Baker, and multiple courts, in multiple orders have directed Lisa Fisher to immediately turn over all estate funds assets to her. Appellants' insistence to this Court that Bessie Huckabee's role as personal representative of the estate is still an issue in dispute is yet more of Appellants' misrepresentations to this Court. [See Appellants' Petitions at p. 5 ("Bessie Huckabee falsely claims that there is not contention concerning her appointment and her removal")].

Pursuant to the Last Will and Testament of Alice Shaw-Baker executed May 21, 2001, Bessie Huckabee was appointed Personal Representative of the Estate of Alice Shaw-Baker on March 11, 2009. The Fishers appealed her appointment, and the Court of Appeals dismissed the appeal as not immediately appealable See Fisher v. Huckabee, 2011 WL 11733660 (Ct. App. 2011). Subsequently, a jury found that the Last Will and Testament of Mrs. Shaw-Baker, naming Bessie Huckabee as Personal Representative of the Estate of Alice Shaw-Baker, to be valid. [See Order dated October 26, 2017, Fisher v. Huckabee, 2009-CP-1 0-3010]. Thereafter, on April 5,

2018, Appellants filed their notice of appeal from the trial orders, but that notice did not include appeal from the Order of March 11, 2009 appointing Bessie Huckabee as the Personal Representative of the Estate of Alice Shaw-Baker. The propriety of Ms. Huckabee's appointment is therefore final, unappealed, and is the law of the case. See Charleston Lumber Co. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000) (stating an unappealed ruling is the law of the case).

The South Carolina Probate Code directs that upon the death of ward, the conservator **shall deliver the estate assets to a duly appointed personal representative of the decedent.** S.C. Code Ann. §62-5-425(d) (emphasis supplied). Bessie Huckabee is the duly appointed personal representative, and Lisa Fisher, who had retained the estate assets in her possession despite being discharged as conservator in 2009, refuses to turn them over to her.⁵ Lisa Fisher's willful violation of the law and of court orders is the only reason she is presently in possession of any estate assets, and calls it the "status quo. Lisa Fisher's argument that she has a right to retain the estate assets because S.C. Code Ann. § 62-5-425(d) creates an affirmative duty in her to only turn estate assets over to the person *she* deems is the appropriate person is fanciful, at best. Rather, her affirmative duty under § 62-5-425(d) is to immediately turn the assets over to Bessie Huckabee, appeal or no appeal.

B. Appellants Misrepresent They Will Suffer Irreparable Harm And They Will Be Deprived of Meaningful Appeal If The Status Quo is Not Preserved.

In their Petition, Appellants essentially argue that a stay of the enforcement of the judgments against them and orders they relinquish the estate funds and assets to the personal representative for her to administer is necessary to prevent them from having to actually turn

⁵ Over the course of this 8-year litigation, and throughout Appellants' Petition, Lisa Fisher recites like a mantra that S.C. Code Ann. §62-5-425(d) creates an affirmative duty in her to ensure the assets of the estate "are distributed to the appropriate person." [See Appellants' Petition at pp 2, 3, 4-5, 7, 12, . . .].

over the assets, claiming they personally, and the estate, will be irreparably harmed if Respondents spend the money or sell the property. [See Appellants' Petition at p. 4 ("Unless this court takes action to stay the enforcement of the orders and preserve the status quo, Appellants will be deprived of all meaningful chance of recuperating the property in the event they are successful on appeal."); Appellants' Petition at p. 5 ("preserving the status quo is the only way to ensure that the things loved by Alice Shaw-Baker are not summarily disposed of, sold, or taken."); Appellants' Petition at p. 7 ("... in the interim, protection of the status quo is necessary to ensure that the real property, the personal property of Alice Shaw-Baker, and the status of control over said property is preserved pending final resolution of this court.")]. The thrust of their argument is that if, somehow they are successful on appeal, the money and property will no longer be available for unspecified animal charities. Not only is Appellants' position antithetical to very purpose Rule 241(b), SCACR itself, but it is not in accordance with provisions of South Carolina law. See Levine v. Spartanburg Reg'l Services Dist., 626 S.E.2d 38 (S.C. App., 2005)(economic loss is typically not sufficient to prove irreparable harm in the context of an injunction); see generally Brown v. Brown, 286 S.C. 56, 57, 331 S.E.2d 793, 793-94 (Ct. App. 1985)(Generally, reversal of a judgment on appeal has the effect of vacating the judgment and leaving the case standing as if no such judgment had been rendered, and a party who receives payment under a judgment subsequently reversed must restore whatever advantage he obtained thereby to his adversary); see also Miller v. Springs Cotton Mills, 225 S.C. 326, 82 S.E.2d 458 (1954) (dictum).

Furthermore, S.C. Code Ann. §18-7-200 provides a legal remedy for Appellants to recover in just the type of situation they claim entitles them to a writ of supersedeas. §18-7-200 provides that if the judgment below, or any part thereof, be paid or collected and the judgment be

afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection.

Next, Appellants argue that unless this Court issues a writ of supersedeas, the estate funds and assets will go to Respondents who are not bonded, leaving the assets unprotected during the pendency of the appeal. [See, e.g., Appellants' Petition at p. 7 (contrary to the status quo, "[r]espondents [would then be] in possession of over \$236,000 without any protections for Appellants if the case is reversed"); Appellants' Petition at pp. 12-13 ("The monies [would all be] in the control of Respondents, with no protection, no bond – and no real ability for Appellants to recoup if they spend these monies") Appellant Lisa Fisher has protected these assets during the pendency of these proceedings based on her duty under S.C. Code §62-5-425(d) and §62-7-707."]. Appellants argue that a supersedeas is appropriate because she claims she is bonded, and the estate funds and assets will be protected by such bond.⁶ First, it is not clear at this point whether Ms. Fisher possesses a bond that will provide protection for the assets retained under her control as "former conservator." Second, even if she does, the bond only covers the liquid assets of the estate, and specifically not the real and personal property. As things presently stand, all of the known liquid assets of the estate have been ordered to be paid into the trial court pending this Court determination of the merits of Appellants' Petition for Supersedeas, and until further notice of the Court. [See June 1, 2018 Order of Chief Justice Beatty]. Consequently, were the Court to grant appellants' request for supersedeas, none of the estate assets that remain in their possession would be covered (and protected) by a bond. On the other hand, the personal representative Bessie Huckabee is not required to be bonded. [See Judge Thomas L. Hughston's

⁶ Chief Justice Beatty, in his May 24, 2018 Order granting an interim stay, indicates that "I order all estate assets – cash, real property, or otherwise – to be returned to the custody of Lisa Fisher, as she is bonded and is best able to protect the assets until final resolution of this petition "

letter to Chief Justice Beatty, dated May 30, 2018, a true and accurate copy of which is attached hereto as Exhibit "B"].

Furthermore, Respondents submit that whether or not Lisa Fisher is bonded with regard to the assets she has retained, in contravention of court orders, has no direct correlation with whether Respondents are entitled to enforce the judgments and orders in their favor, all of which fall under the exceptions to automatic stay on appeal under Rule 241(b), SCACR.

Finally, granting Appellants' application for supersedeas would serve no purpose because Appellants would be required to turn over the assets to Respondents Bessie Huckabee anyway. As provided under Rule 241(c)(1), the effect of the granting of a supersedeas is to suspend or stay matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision. A stay of Judge Hughston's final orders for Appellants to turn all estate assets over to Bessie Huckabee (or the court), would simply revive the terms of the previous several orders that Appellants turn over the assets to the personal representative of the estate.

Despite Appellants' contention, the effect of the orders granting supersedeas, both on an emergency interim basis, and during the pendency of an appeal interferes with, rather than protects, the true "status quo." Furthermore, it is undisputed that the assets and funds at issue belong to the estate and not to Appellants. It is difficult to conceive how Appellants could possibly be irreparably harmed by the effect of judgments and orders requiring them to turn over all estate assets . . . to the estate.

II. Appellants State No Legitimate Basis For The Court to Impose an Order For Supersedeas.

While Appellants' 226-page motion (with exhibits) and supporting affidavit present the Court with a multitude of facts and opinions (most all of which Respondents dispute) concerning Appellants' plight in this and other related cases, it does little more to demonstrate a legitimate basis for the need for supersedeas other than essentially to submit that they do not want Judge Hughston's orders to be immediately enforceable. Appellants fail to even address⁷ under the facts and circumstances of this case, how supersedeas is necessary either to preserve the jurisdiction of the Court or to prevent a contested matter from becoming moot. See Rule 241(c)(2).

Here, neither is the case. Nothing in Appellants' appeal from the judgments and orders against them would cause the lower court to lose jurisdiction over matters remaining before it.⁸ The reference in Rules 205 and 241(a) to the "jurisdiction" of the lower courts does not refer to subject matter jurisdiction. Rather, the rules govern the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or "matter," during the pendency of the appeal. See Tillman v. Oakes, 398 S.C. 245, 256, 728 S.E.2d 45, 51 (Ct. App. 2012) at fn. 3. Such is not the case in the present matter. Furthermore, nothing in Appellants' appeal serves to render any contested matter from becoming moot. Respondents point out, that much of Appellants' appeal deals with the lower courts imposition of sanctions on them for frivolous litigation. The matter Appellants

⁷ Appellants make a passing reference at page 21 of their petition that "serious violations by the Court and deprivation of a fair trial must be decided by this Court to prevent the harm to the estate, to prevent the loss of jurisdiction, and to prevent unnecessary harm to Appellant Lisa Fisher . ." Other than stating it, Appellants do nothing to show how or why any court would lose any jurisdiction over any issue absent an order for supersedeas

⁸ Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. See Tillman v. Oakes, 398 S C 245, 255, 728 S E 2d 45, 51 (Ct App 2012)

contest as it relates to the judgments and orders from which they appeal is whether they are entitled to a new trial on the validity of the will. Nothing of that contested matter becomes moot absent a writ of supersedeas. Appellants have simply not demonstrated the need for supersedeas.

III. Supersedeas Creates a High Risk of Dissipation and Devaluation of Estate Assets.

Lisa Fisher is the very person the Probate Court and the Circuit Court have taken action against to protect the estate from her unauthorized spending and dissipation by her of estate funds after her discharge as conservator, including substantial payments to herself, her family, and her agents.

On May 11, 2009, the Probate Court issued an order terminating Lisa Fisher as Conservator and ordering her to provide a final accounting and turn over all estate assets to personal representative Bessie Huckabee. Thereafter, despite orders of the Probate Court to do so, Lisa Fisher refused both to turn over estate monies and assets to the personal representative and to provide an accounting of those monies and assets. [See Order of Judge Thomas L. Hughston, timeline exhibit, Petition at pp. 52-57].

Some two years later, on June 1, 2011, when Ms. Fisher did finally provide an accounting of the estate monies and assets at the hearing on the personal representative's motion for accounting, the documents differed substantially from the last final accounting she provided in January of 2009. Moreover, the accounting clearly showed Lisa Fisher had continued to spend substantial estate funds, without authorization of the court, after she was discharged as conservator, including payments to herself, her mother, her attorney, and her employees for unspecified and unsubstantiated expenditures and reimbursements. On that basis, and to protect the estate from further unauthorized dissipation by Lisa Fisher, the Probate Court issued orders freezing any and all estate assets and accounts under the name Alice Shaw-Baker and/or Lisa

Fisher or Alice Shaw-Baker individually. [See id. at p. 57 (October 14, 2011)]. Thereafter, Lisa and Betty Fisher appealed the orders freezing the assets of the estate, which action on appeal the circuit court affirmed [See id. at p. 59 (August 18, 2014); p. 60 (December 21, 2016)]. While Lisa Fisher still remained in possession of several items of Mrs. Shaw-Baker's personal property and bonds, which she refused to hand over to the duly appointed personal representative, the Probate Court's action freezing the estate accounts dispossessed Lisa Fisher of her control over those financial constituents of the estate.

Furthermore, a review of the final accounting Ms. Fisher finally provided earlier this year show multiple discrepancies from her previous "final" accounting, including Ms. Fisher spent as much as \$59,465.86 after Mrs. Shaw-Baker died, and nearly \$40,000 after she was discharged as conservator. [See Exhibit "B" to Appellants' Petition, Judge Hughston's March 21, 2018 Order of Judgment and for Sanctions, Appendix 3, p. 65. Furthermore, in its unpublished opinion, the Court of Appeals perceived the accountings it reviewed in the appeal of a related matter to show depletion of the estate of more than \$250,000. [See Fisher v. Huckabee, 2016 WL 7495869 at p. 6., a copy of which opinion is provided herewith as Exhibit "D"].

Moreover, the various "final" accountings Ms. Fisher has filed show that as much as \$123,000 in savings and other bonds, eight items of jewelry, Ms. Shaw-Baker's silver dollar collection, and other items of personal property are unaccounted for. The effect of a writ of supersedeas of leaving estate assets in Lisa Fisher's hands creates a significant danger of further dissipation of those assets. Respondents submit that, given the present posture of the case and the sanctions imposed against Ms. Fisher, the danger is even higher.

Finally, as set out above, Ms. Fisher, without authorization from anyone, has allowed her friend to live in Mrs. Shaw-Baker's residence for 9 years, without paying rent. The occupant,

with full knowledge of Lisa Fisher, has substantially degraded and devalued the property, and negligently allowed it to fall into disrepair. [See photos attached as Annexes "A" through "C" to the Affidavit of W. Westbrook Wills III, which is itself attached hereto as Exhibit "E"]. Furthermore, Lisa Fisher has instructed the occupant of Mrs. Shaw-Baker's residence not to allow Bessie Huckabee access to perform her duties as personal representative of making an inventory of the contents of the residence, and other acts of estate administration.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court deny Appellants' Petition for Supersedeas and remove any temporary stay it has imposed on all proceedings related to Alice Shaw-Baker in the various lower courts.

Respectfully submitted,

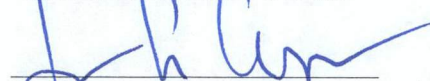
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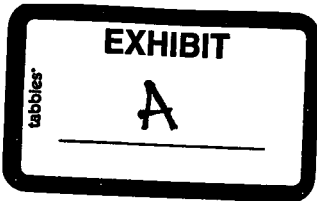


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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-3010

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)
As Conservator for ALICE SHAW-)
BAKER,)

Plaintiffs,)

vs.)

BESSIE HUCKABEE, et al.)

Defendants.)

ORDER

2018 MAR 23 PM 2:18
CLERK OF COURT

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available online on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record pertaining to this dispute beginning with the filing for a Conservatory/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

#9
T.H.H.

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorneys fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day according to her. It is important to read the Order of Judge Curry of November 19, 2008, for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court." No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a

#2
T.H.H.

mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

“The one who first states a case seems right, until the other comes and cross-examines.” Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p. 113, “A man’s story seems right, until you look into it.”

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker’s deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to “go to animal welfare and rescue projects only.” It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue “to be hers in fee simple absolute, to include the care of my dogs....” It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various “animal welfare” organizations by Will and/or by contract. However, it is finally established clearly by the memorandum of a call from her to her insurance company: “I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I

#3
T.L.B.

will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue— Governed by Will." Also, a prior form of 7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed "animal welfare" organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker's own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine years old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, "We are just doing what Alice Shaw-Baker wanted us to do." Intent and result are shown by their acts, not their words.

This should have been a simple guardian/conservator/personal representative case. Instead it has by Plaintiffs' frivolous acts gone on for nine years and counting. This is unconscionable and an abuse of the court system. Every avenue available to delay has been used and abused by Plaintiffs for no good reason.

I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees.

Handwritten notes: #4, T.L.B. with a signature.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services' inventory and appraisal, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate's initial value was \$353,746.81. According to Lisa Fisher's own accounting, \$39,549.43 was spent following Judge Curry's May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker's death, after being told by a medical doctor that she would not survive the trip, and violated § 62-5-424(C)(9) by making twenty unauthorized charitable donations in the amount of \$2,555, and of this \$105 came before the termination of the conservatorship.

The Probate Court has approved fees amounting to \$67,185.92. An additional \$20,621.34 was spent on unapproved fees, \$13,941.59 coming before the termination of the conservatorship, totaling \$87,807.26 in paid fees, which amounts to 25% of the Estate's value. However, there remains pending requests for approval of fees totaling \$74,422.00. Assuming those requests are approved, the total fees paid would amount to \$162,229.26 or 46% of the Estate. As it currently stands, a total of \$173,148.66 from the Estate has been spent, which represents 49% of the Estate. Approval of the outstanding fee request would almost completely deprive the Estate of its value. That comes without any consideration of the amount of attorney's fees accumulated from Feb. 2009–Feb. 2018 which totals \$314, 837.35 or 89.25% of the Estate. After totaling all the paid, unpaid, requested, and accumulated fees, the total amounts to \$564,873.87, which represents 160% of the Estate.

#5
T.H.K. J.

Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanctions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$13,941.59 for unapproved fees prior to termination of conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the order terminating the conservatorship. I have also decided to award the Defendants their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. After careful consideration of these factors, I find Defendants' attorney's fees in the amount of \$157,539.93 are, unfortunately, justified under that analysis. As a result, I am imposing judgment against Plaintiffs for a total of \$236,135.95, jointly and severally, in favor of Defendants and their attorneys.

Again, I reference Bleak House. Jarndyce vs. Jarndyce ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in"

#6
T.L.H.

...sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

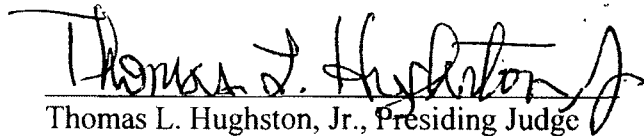
I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt of Court. I stay this during the Plaintiffs' appeal.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

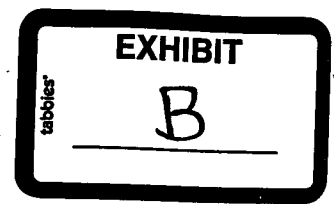
IT IS SO ORDERED.

May 29, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

#7

State of South Carolina



THOMAS L. HUGHSTON, JR.
CIRCUIT JUDGE, RETIRED



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May 30, 2018

Chief Justice Donald W. Beatty
South Carolina Supreme Court
PO Box 3543
Spartanburg, SC 29304

Re: Fisher vs. Huckabee, et al., Case # 2018-000566

Dear Chief Justice Beatty:

I received your Order of May 24, 2018, and write to suggest you modify your Order.

There are two "pots" of money involved. \$105,025.14 came from the deceased's life insurance, deferred compensation and retirement accounts, and was paid into the Court and had been held by the Clerk of Court. These were by contract to go to Kay Passailaigue Slade, and are not a part of the Estate. I found against Plaintiffs trust claims and Ordered this be paid to her since by Statute and Rule orders involving personal property are not automatically stayed by an appeal. This money was never part of the Conservatorship.

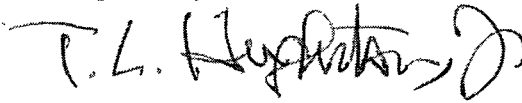
The second "pot" of money is money that was left over at the end of the Conservatorship ended by Order of Judge Curry in 2009. This money belongs to the Estate and not Lisa Fisher under any theory of this case. I have a check from the bank payable to Alice Shaw-Baker Conservatorship for \$127,265.45, and without a doubt this belongs to the Estate, not Lisa Fisher. She is not the Personal Representative.

If your desire is to preserve the status quo pending an appeal, I respectfully suggest you Order Kay Passailaigue Slade to return the money she has in the amount of \$105,025.14 to the Clerk of Court, and not to Lisa Fisher who has never had it, and allow me to deposit the check from the ended Conservatorship with the Clerk in a separate account. All the money will be held by the Clerk pending the appeal and further Order.

Regarding the lack of a bond by the Personal Representative, the Will specifically says the Personal Representative shall serve without bond, and the Personal Representative has had no Estate money to purchase a bond since Lisa Fisher has kept all the money belonging to the Estate for over nine years.

I respectfully suggest to you the above as a way to preserve the status quo if that is your desire. I did what I thought proper under the Statute and Rule regarding personal property and an appeal. I will await your further Order, or if you prefer, by letter or email to me.

Respectfully,

A handwritten signature in black ink, appearing to read "T.L. Hughston, Jr.", with a stylized flourish at the end.

Thomas L. Hughston, Jr.

cc: Mr. W. Westbrook Wills, III, Attorney at Law
Ms. Jessica Crowley, Attorney at Law
Ms. Lisa Fisher, Attorney at Law



2016 WL 7495869

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Court of Appeals of South Carolina.

Betty Fisher, Appellant,

v.

Bessie Huckabee, Respondent.

Lisa Fisher, Appellant,

v.

Bessie Huckabee, Respondent.

Appellate Case No. 2014-002020¹,

Appellate Case No. 2014-002034,

Appellate Case No. 2014-002028

Opinion No. 2016-UP-528

Heard October 3, 2016

Filed December 21, 2016

Appeal From Charleston County, J. C. Nicholson, Jr., Circuit Court **Judge**

Attorneys and Law Firms

John Hughes Cooper, of John Hughes Cooper, PC, of Mount Pleasant, and Lisa Fisher, of Long Beach, CA, for Appellants.

Peter A. Kouten, of Kouten Law Firm, LLC, of Johns Island, for Respondent

Opinion

PER CURIAM:

*1 In this consolidated probate case, Appellants Betty Fisher and Lisa Fisher separately appeal from the circuit court's affirmance of the probate

court's orders appointing a special fiduciary, freezing assets, and denying the Fishers' motions for reconsideration, arguing twenty-two issues summarized as the following: (1) the circuit court erred in failing to consider the Fishers' Statement of Grounds or allow oral argument; (2) the probate court did not have jurisdiction because the matter was on appeal, (3) Respondent Bessie Huckabee did not have standing in the matter; (4) the probate court's order was void because Huckabee failed to provide the required notice and violated Rule 11, SCRPC; (5) the probate court erred in denying Lisa Fisher reasonable compensation; (6) the probate court erred in freezing decedent's accounts; (7) the probate court erred in appointing a special fiduciary; (8) the probate court erred in failing to grant Lisa Fisher an extension; and (9) the probate court erred in **hearing** the motion to appoint a special fiduciary when statutory notice was not given. We affirm in part and remand in part.

II. BACKGROUND FACTS²

Lisa Fisher was appointed as Alice Shaw-Baker's guardian and conservator by order dated November 19, 2008. Peter A. Kouten was appointed as Shaw-Baker's guardian ad litem. After Shaw-Baker died on February 25, 2009, and Huckabee was appointed personal representative based on her nomination in the will, Lisa Fisher was discharged as the conservator by order dated May 11, 2009. The order required Fisher to provide an estate accounting and turn over all estate assets within fifteen days of the date of the order.

In May 2011, Huckabee **filed** a motion entitled, "Motion to Appoint Special Fiduciary for Conservatorship Assets." Huckabee alleged Lisa Fisher was discharged as the conservator of Shaw-Baker by the May 11, 2009 order, had been granted at least six extensions to turn over the estate assets, and had not **filed** annual accountings since 2008. Huckabee requested the court deny any further continuances, require Lisa Fisher to **file** the delinquent accountings for 2009 and 2010, require her to release estate funds, and to appoint a third-party special fiduciary to accept all assets of the estate. At a **hearing** on the motion, Huckabee argued Fisher did not appeal the order discharging

her as conservator, but it had been two years and she had not turned over the estate assets

Huckabee also argued that when Fisher finally turned in the annual accountings, “it became clear that the discharged conservator did not cease in her actions as conservator” and had disbursed \$80,500 from the estate after her authority ceased. Huckabee requested the court appoint a special fiduciary to accept the estate assets and that no further extensions be granted to Fisher.

*2 Fisher argued she had motions pending, including a motion for a ninety-day extension and a motion to strike Huckabee's motion. Fisher also argued the court should strike the motion to appoint a special fiduciary. Fisher's motion to strike alleged the issue was moot because she **filed** the missing accountings with her motion, Kouten could not represent Huckabee because he had been Shaw-Baker's guardian ad litem; and Kouten had not satisfied the Rule 11(a). SCRCP requirement that a movant attempted in good faith to resolve an issue prior to **filing** a motion unless the movant certified that consultation would have served no useful purpose. Fisher argued she had been granted six extensions and was waiting for the appeals in circuit court and the supreme court to be decided prior to complying with the order to turn over the estate assets. By order dated September 28, 2011, the probate court denied Fisher's motions to strike and for an extension, granted the motion to appoint a special fiduciary, and appointed Heyward Harvey, Esq. to serve as the special fiduciary. The order required Fisher to turn over the estate assets within fifteen days.

Fisher moved for reconsideration, arguing the probate court did not have jurisdiction over the matter because an appeal was pending in the supreme court; no evidence of her wrongdoing was produced at the **hearing**; the probate court lacked statutory authority; Fisher had no ability to transfer the estate because a motion to appoint Betty Fisher as special administrator was pending in circuit court, and the probate court order was void. Betty Fisher also **filed** a motion as an “Interested Party” to void the September 28, 2011 order based on lack of notice and Huckabee's lack of standing.

By order dated October 14, 2011, the probate court denied the motions. The order also denied a pending “Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator.” In a separate order dated October 14, 2011, the probate court froze the assets in all of decedent's accounts.

Lisa Fisher moved to reconsider the denial of the renewed motion for fees. Fisher argued her motion was originally **filed** in July 2009 and the probate code provided for fees. Fisher also moved to reconsider the freezing of the assets, arguing the following: (1) the probate court requires a conservator to deliver estate assets to a “Duly Appointed” personal representative; (2) she is entitled by the doctrine of laches to continue protecting the estate; (3) the probate court lacked jurisdiction; (4) no party sought an order freezing the assets; and (5) the orders violated due process. On November 9, 2011, the probate court denied the motions for reconsideration. Fisher and Betty Fisher appealed to the circuit court.

At a **hearing** in the circuit court, the Fishers argued Lisa Fisher had a statutory **duty to** turn over the estate assets to a duly appointed personal representative and the order appointing Huckabee the personal representative was on appeal; thus, Fisher could not turn over the assets. The Fishers also argued the probate court did not have jurisdiction to appoint a special fiduciary because an appeal was pending. Betty Fisher next argued that as an interested party, she was entitled to the statutorily-required notice of twenty days before the probate court could consider a motion to appoint a special fiduciary. Betty Fisher further argued the Attorney General was entitled to notice as an interested party (as a protector of animal charities named in a prior will). Lisa Fisher next argued the probate court refused to take any testimony and made factual findings without any evidentiary support. Finally, Lisa Fisher argued the probate court erred in denying her motion to be paid fees as the conservator and in issuing orders freezing the assets.

Huckabee argued the issues in the current matter were unrelated to the pending appeals because they were related to conservatorship of the assets rather

than personal representative matters. Huckabee also argued that although there were no affidavits or testimony before the probate court, Lisa Fisher's accountings indicated she was spending money from the estate after she was discharged, which was sufficient for the probate court to appoint a special fiduciary. In Form 4 orders, the circuit court affirmed the probate court's orders. This appeal followed.

III. STANDARD OF REVIEW

*3 On appeal from a final order of the probate court, the circuit court must apply the same standard of review that an appellate court would apply on appeal. *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity." *In re Estate of Hyman*, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). The underlying nature of the matter before the probate court was the appointment of a special fiduciary to manage the estate assets, which we find akin to the removal of a personal representative; thus, the action is in equity. See *Dean v. Kilgore*, 313 S.C. 257, 259, 437 S.E.2d 154, 155 (Ct. App. 1993) (holding an action to remove a personal representative appointed pursuant to the terms of a will is equitable in nature). If probate proceedings are equitable in nature, then the circuit court on appeal may make factual findings according to its own view of the preponderance of the evidence. *Howard*, 315 S.C. at 361-62, 434 S.E.2d 254, 257-58.

IV. ISSUES ON APPEAL³

1. Did the circuit court err in failing to consider the Fishers' statement of grounds for appeal and failing to permit oral argument?⁴
2. Did the probate court lack jurisdiction because the matter was on appeal?⁵
3. Did Huckabee lack standing?⁶

4. Was the probate court order void because Huckabee failed to provide notice in violation of Rule 11, SCRPC?⁷

5. Did the probate court err in denying Lisa Fisher reasonable compensation?⁸

6. Did the probate court err in issuing orders freezing assets?⁹

7. Did the probate court err in appointing a special fiduciary?¹⁰

8. Did the probate court err in failing to grant Lisa Fisher an extension?¹¹

9. Did the probate court err in **hearing** the motion to appoint a special fiduciary when statutory notice was not given?¹²

V. LAW/ANALYSIS

1. Failure to Consider Statement of Grounds or Permit Oral Argument

The Fishers argue the circuit court erred in failing to read the briefs prior to the **hearing**, depriving them of further argument on the record, and failing to make findings of fact. We disagree.

At the beginning of the **hearing**, the circuit court noted on the record that it remembered the parties from one of the previous cases. The Fishers' attorney began arguments, stating, "[W]e've briefed this extensively and we assume the Court has those briefs and I'm not going to go into it." The circuit court **judge** stated, "Yes, I've got the briefs. I have not looked at them but I have got them here. I will probably have to look at them before I make a decision. But go ahead. . . If you can summarize the briefs, that would be very helpful." The Fishers' attorney responded, "That's what I'm going to attempt to do, Your Honor." The **judge** stated, "You don't have to reiterate everything that's in there . . . because I will read them . . . [o]r my law clerk and—we both will probably read them." The court **heard** extensive arguments from counsel.

The **hearing** lasted from 10.22 a.m until 11:13 a.m. The Fishers were permitted to fully argue the issues. At the conclusion of the **hearing**, the Fishers argued, “Your Honor, one thing for the record?” The **judge** stated, “Thank you very much. I’ve **heard** enough.” However, as the Fishers concede, the **judge** next stated, “I’ll review it. I’ll review your memorand[a]. I’ll make them a part of the record. Okay? Thank y’all very much.” The Fishers’ counsel replied, “Thank you.”

*4 We find no error by the circuit court. Although the circuit court sitting in an appellate capacity in an equity action may make factual findings according to its own view of the preponderance of the evidence, deference to the probate court’s findings is appropriate in circumstances where it is apparent from the record that the credibility of the witnesses was a consideration. *Macaulay v Wachovia Bank of S C*, 351 S C 287, 293–94, 569 S.E.2d 371, 375 (Ct. App 2002). In this case, the accounting provided by Lisa Fisher established unauthorized depletion of the estate assets after Fisher was discharged as the conservator of the estate by order **filed** May 11, 2009. Further, the circuit court **heard** the Fishers’ arguments at the **hearing**. We find no error. See *Porter v Labor Depot*, 372 S.C 560, 568, 643 S E.2d 96, 100 (Ct App. 2007) (stating “not all situations require a detailed order, and the trial court’s form order may be sufficient if the appellate court can ascertain the basis for the trial court’s ruling from the record on appeal”)

2. Jurisdiction of the Probate Court

The Fishers next argue the probate court did not have jurisdiction to **hear** the motion to appoint a special fiduciary because related matters were pending on appeal and a personal representative had already been appointed. We disagree.¹³

The jurisdiction of the probate court is governed by the Probate Code and extends to subject matter related to estates of decedents S.C. Code Ann § 62-1-302(a) (Supp. 2015) (“To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject

matter related to: (1) estates of decedents ...”). The probate court may appoint a special administrator informally prior to the appointment of a personal representative and in a formal proceeding “on the petition of any interested person and finding ... that appointment is necessary to preserve the estate....” S.C. Code Ann § 62-3-614 (Supp. 2015). The probate court has exclusive jurisdiction to determine the need for a conservator. S.C. Code Ann § 62-5-402(1) (Supp. 2015).

The question of whether the probate court may proceed with a case after one of its orders has been appealed is also governed by the Probate Code Section 62-1-308(h) (Supp. 2015) of the Probate Code provides the following:

When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had. If the appellant, in **writing**, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

In *Ulmer v Ulmer*, our supreme court explained that this section¹⁴ “does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken.” 369 S.C. 486, 491–92, 632 S.E.2d 858, 861 (2006)

In this case, the order on appeal at the time of the probate court **hearing** related to the appointment of Huckabee as the personal representative under the will. The Fishers’ cause of action challenging the will remains pending in the probate court. We find Huckabee’s status under the will is not related to the discharge of Lisa Fisher as the conservator and the appointment of an unrelated, special

fiduciary to marshal the estate assets and maintain authority and control of the estate pending the final distribution of the estate. Further, we find the probate court had jurisdiction to appoint a special fiduciary under sections 62-1-302(a) and 62-3-614.

3. Huckabee's Standing

*5 The Fishers argue Huckabee lacked standing to file the motion to appoint a special fiduciary. We disagree.

The Probate Code defines interested persons to include the following:

heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding

S.C. Code Ann § 62-1-201(23) (Supp 2015) “[A]ll persons having any interest [in the probate of a will] are deemed parties and concluded by the decision therein.” *Davis v Davis*, 214 S.C. 247, 258, 52 S.E.2d 192, 197 (1949). Because Huckabee is the personal representative named in the will and is defined as an interested person, we find no merit to the Fishers' challenge to Huckabee's standing. As to the Fishers' challenge to Huckabee's standing based on the pending appeal of the order appointing her as the personal representative, we affirm for the reasons discussed in part 2 of this opinion.

4. Rule 11, SCRPC

Lisa Fisher argues the probate court's order was void because Huckabee failed to comply with the notice provisions of Rule 11, SCRPC. We disagree.

Rule 11 of the South Carolina Rules of Civil Procedure provides that “[a]ll motions filed shall contain an affirmation that the movant's counsel ... has communicated ... with opposing counsel and has attempted in good faith to resolve the matter ... unless the movant's counsel certifies that consultation would serve no useful purpose ...” Rule 11, SCRPC. Rule 11 provides a motion not in compliance with the rule “shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.” *Id* Finally, the rule provides the court “may impose upon the person who signed it, a represented party, or both, an appropriate sanction ...” *Id*

In *Jackson v Speed*, our supreme court affirmed the trial judge's refusal to strike a motion based on a similar Rule 11(a) violation, finding the trial judge did not abuse his discretion in refusing to strike the motion because an attempt to consult with opposing counsel about the matter would have been pointless. 326 S.C. 289, 310-11, 486 S.E.2d 750, 761 (1997). The court noted “[t]his finding by the trial judge is adequate to cure the deficiency under the facts of this case” *Id* at 311, 486 S.E.2d at 761.

In this case, the Fishers argued the motion to appoint a fiduciary should have been stricken based on the Rule 11 violation. Huckabee argued the motion was in response to Lisa Fisher's motion for an extension. In her brief, Huckabee also notes counsel had discussed the matter of the appointment of a special administrator on several occasions and the Fishers' motions for extensions likewise failed to comply with the Rule 11 affirmation requirements. The probate court did not make a specific finding on the record. However, the issue of the violation was argued to the probate court, and the court ruled at the hearing that Huckabee had “a right to file that motion with the Court.” Although a specific ruling excusing the Rule 11 violation is preferable, we affirm, finding the probate court's ruling implicitly

found consultation with opposing counsel would have been pointless. See *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (stating the imposition of sanctions under Rule 11 is subjected to an abuse of discretion standard of review).

5. Denial of Lisa Fisher's Request for Fees

*6 Fisher argues the probate court erred in denying her request for fees. We remand this issue

Fisher was appointed as the guardian and conservator by order dated November 19, 2008. After Shaw-Baker died on February 25, 2009, Huckabee was appointed personal representative based on her nomination in the will. Fisher was discharged as the conservator of the estate by order dated May 11, 2009. Fisher moved for fees and expenses of \$67,814.50 for services rendered between August 2008 and July 2009, which is approximately 17% of the estimated value of the estate of \$395,935.39. Fisher argued entitlement to fees under the probate code. By order dated October 14, 2011, the probate court summarily denied the motion.¹⁵ Fisher moved to reconsider the order, arguing (1) all other guardians and attorneys had been paid their fees; thus, she was entitled to fees under the equal protection clause of the United States and South Carolina constitutions, (2) the probate code provides for reasonable compensation to guardians and conservators; and (3) the takings clauses of the constitutions require compensation

The Probate Code provides, “[i]f not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding *is entitled to reasonable compensation* from the estate, as determined by the court.” S.C. Code Ann. § 62-5-414 (2009) (emphasis added). The Probate Code also provides as follows.

Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and *is entitled to receive reasonable sums* for his services and for room

and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances.

S.C. Code Ann. § 62-5-312(b) (2009) (emphasis added). In addition, the Probate Code requires a conservator to “retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto” if a protected person dies. S.C. Code Ann. § 62-5-425(d) (2009).

In this case, Lisa Fisher was the appointed guardian and conservator until Shaw-Baker died on February 25, 2009. Some of the expenses Fisher requested reimbursement for were incurred after her conservatorship ended. However, the accountings **filed** by Fisher include disbursements of \$68,523.79 in “Administrative/Legal Fees” incurred between December 23, 2008 and December 31, 2009 alone. Furthermore, Huckabee alleged the accountings indicate the estate has been depleted by more than \$80,000, but the accountings in the record indicate depletion of more than \$250,000. Because the probate court's order and the circuit court's order only summarily address the issue, we remand to the probate court.¹⁶

6. Freezing of Assets

*7 Lisa Fisher argues the probate court erred in freezing assets. We disagree.

Fisher argues the order(s) freezing assets were issued without notice because this relief was not requested or raised, she was required to retain the estate property until a “duly appointed” personal representative was appointed and the issue of the propriety of Huckabee's appointment is on appeal, the doctrine of laches supports her continued protection of the estate, and the freezing of the estate assets and Fisher's personal assets violated Fisher's constitutional rights.

Section 62-1-302 of the Probate Code generally defines the probate court's jurisdiction and provides

in pertinent part: "(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents . ." S.C. Code Ann. § 62-1-302(a)(1) (Supp. 2015). The probate court has the authority to issue orders in the nature of injunctions. *See Greenfield v Greenfield*, 245 S.C 604, 611, 141 S.E.2d 920, 924 (1965) (finding the probate court had the authority to issue an order requiring relatives of a decedent to surrender the records of the decedent, and stating "[t]his power, we think, is one which is of necessity incident to the jurisdiction expressly granted the probate court over all matters of administration").

We find no merit to Fisher's arguments. As to her personal assets, Fisher admitted at the hearing before the circuit court that the order(s) freezing assets "didn't have any real effect because Lisa Fisher didn't have any accounts here in South Carolina personally." Thus, Fisher suffered no prejudice and there is no basis for reversal. *See In re Estate of Patterson v Palmetto Bank*, 374 S.C. 116, 120, 646 S.E.2d 885, 887 (Ct. App. 2007) (holding a probate court's error that did not prejudice either party formed no basis for reversal). As to the estate assets, we find the probate court had the authority to freeze assets to protect the estate.

7. Appointing Special Fiduciary

Lisa Fisher next argues the probate court erred in appointing a special fiduciary. We disagree.

First, Fisher argues the probate court did not rule on her objections to the procedure and the accusations of her mismanagement of the estate. Second, she argues the probate court's rulings are not supported by the record. Third, relying on trust law, Fisher argues the probate court's finding that she did not have authority to pay expenses on behalf of the estate was erroneous and demonstrates no emergent need for a special fiduciary. Finally, Fisher argues Huckabee is barred from moving for the appointment of a special fiduciary under the doctrine of laches.

As to the first three issues, we find no merit. Initially, the probate court noted Fisher's continued

objections to its jurisdiction. In addition, neither the probate court nor the circuit court found misconduct by Fisher in their written orders. Rather, the probate court found Fisher had been discharged in 2009; the estate contained real property assets requiring upkeep and repair; and the accounting indicated a need for authority to deal with third parties. To the extent the court's findings regarding Fisher's objections were deficient, we find adequate support in the record. *See Holcombe v Hardee*, 304 S.C 522, 524, 405 S.E.2d 821, 822 (1991) (allowing the appellate court to make its own findings of fact if the record is sufficient even though the family court may have failed to set forth specific findings of fact and conclusions of law to support its decision). Further, the accounting provided by Lisa Fisher established unauthorized depletion of the estate assets after Fisher was discharged as the conservator of the estate by order dated May 11, 2009. This is sufficient evidence in the record to constitute the emergent need found by the probate court. *See S.C. Code Ann. § 62-7-704(c)* (Supp. 2015) (providing the probate court with authority to appoint a special fiduciary to administer a trust whenever the court considers the appointment necessary for the administration of a trust), § 62-5-402(1) (Supp. 2015) (providing the probate court with exclusive jurisdiction to determine the need for a conservator or other protective order). To the extent Fisher argues trust law does not apply, the probate court has jurisdiction over the estate of decedents outside of the trust provisions of the Probate Code. *See § 62-1-302(a)* ("To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents"). Thus, any erroneous reliance by the probate court on trust law is insignificant because the probate court had authority under estate law.

*8 As to Fisher's final issue, we find laches does not apply to bar Huckabee's request for the appointment of a special fiduciary. "The party seeking to establish laches must show. (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice." *Robinson v Estate of Harris*, 388 S.C 616, 627, 698 S.E.2d 214, 220 (2010). In

this case, even if Fisher can show Huckabee caused any delay, it would not be unreasonable delay. The issue of Huckabee's appointment as the personal representative was not affirmed by this court until April 2011. Huckabee filed the Motion to Appoint Special Fiduciary for Conservatorship Assets in May 2011.

8. Denial of Lisa Fisher's Request for Extension

Lisa Fisher argues the probate court erred in failing to grant her another extension to deliver the assets, averring the court erred in finding she did not have the **duty to** act once she had been discharged because she was required to protect the property until delivery. We find no reversible error.

The South Carolina Rules of Probate Court govern procedure in the probate court. See Rules 1–5, SCRPC. These rules address only a limited number of issues, and there is no procedural rule governing motions in probate court. However, the Probate Code provides the rules of civil procedure shall be applied in formal proceedings in the probate court. S.C. Code Ann. § 62-1-304 (Supp. 2015). “The manner of service, time for answering and other proceedings relating to the trial, except trial by jury, shall conform as nearly as may be to the practice in the courts of common pleas as provided in this Code.” *In re Estate of Weeks*, 329 S.C. 251, 258, 495 S.E.2d 454, 458 (Ct. App. 1997) (quoting S.C. Code Ann. § 14-23-280 (1976)). We find the probate court's ruling on Fisher's motion for an extension to turn over the estate assets was within the sound discretion of the probate court. See generally *Beckham v. Durant*, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct. App. 1989) (finding the probate court's consideration of an enlargement of time to file an answer was within the discretion of the probate court). As to Fisher's argument the probate court erred in finding she did not have the **duty to** act once she had been discharged, we note this was a statement made by the probate court during the **hearing**, and the probate court did not make this finding in its final order. We find no merit to this argument. See *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (“Until **written** and entered, the trial **judge** retains discretion to change his mind and amend his oral ruling accordingly.”); *id.* (“The **written order** is

the trial **judge's** final order and as such constitutes the final judgment of the court”).

9. Statutory Notice of the Hearing

The Fishers argue the probate court's order appointing a special fiduciary is void because neither Betty Fisher nor the Attorney General's office were provided notice of the Motion to Appoint Special Fiduciary for Conservatorship Assets. We disagree.

Betty Fisher again argues the probate court erred in relying on trust law to appoint a special fiduciary, which we considered above and found no reversible error. As to notice, we likewise find no reversible error. Under the Probate Code, “[a] special administrator may be appointed: (1) informally by the court on the application of an interested person when necessary (c) to take appropriate actions involving estate assets; (2) in a formal proceeding by order of the court on the petition of any interested person If it appears to the court that an emergency exists, appointment may be ordered without notice.” S.C. Code Ann. § 62-3-614 (Supp. 2015). In this case, the issue before the court was the protection of the estate. Although the disposition of the estate would require notice to an “interested person,” the Probate Code provided authority for the probate court to conduct this **hearing** without notice to Betty Fisher or the Attorney General. See S.C. Code Ann. § 62-1-201(23) (Supp. 2015) (defining an “interested person” as including “heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent ...”). Neither Betty Fisher nor the animal charities are named in the last will.

V. CONCLUSION

*9 For the foregoing reasons, we affirm in part and remand in part.

AFFIRMED IN PART and REMANDED IN PART.

HUFF and SHORT, JJ., and MOORE, A.J.,
concur.

All Citations

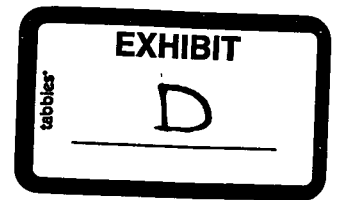
Not Reported in S E.2d, 2016 WL 7495869

Footnotes

- 1 Consolidated with Appellate Case No 2014–002028 and Appellate Case No 2014–002034
- 2 Additional background facts may be found in *Fisher v Huckabee*, 415 S C 171, 173–75, 781 S E 2d 156, 157–58 (Ct App 2015), *reh'g denied* (Jan 21, 2016), *petition for cert. filed* (Feb 22, 2016) and *In re Estate of Alice Shaw Baker*, Op. No 2015–UP–359 (S C Ct App filed July 15, 2015), *reh'g denied* (Sept. 15, 2015).
- 3 We have combined the Fishers' twenty-two issues on appeal into nine issues as noted. As to Lisa Fisher's brief in Appellate Case No. 2014–002034, we have listed her issues as they appear in the Statement of Issues on Appeal.
- 4 *Betty Fisher v. Huckabee*, Appellate Case No 2014–002020 (“2020”)—issue 1; *Lisa Fisher v. Huckabee*, Appellate Case No. 2014–002028 (“2028”)—issue 1, *Lisa Fisher v Huckabee*, Appellate Case No. 2014–002034 (“2034”)—issue 1:
 - 5 2020—issue 2, 2028—issues 2, 3, 4, 6.
 - 6 2020—issue 4; 2028—issue 5.
 - 7 2028—issue 10.
 - 8 2034—issues 2, 3, 4.
 - 9 2034—issues 5, 6.
 - 10 2028—issues 7, 8, 9.
 - 11 2028—issue 11.
 - 12 2020—issue 3; 2028—issue 12.
- 13 Huckabee argues the order appointing a special fiduciary is interlocutory and not immediately appealable. We disagree. *See Ex parte Small*, 69 S C 43, 46, 48 S E. 40, 41 (1904) (finding an order appointing an administrator was a final order and was immediately appealable).
- 14 Formerly section 62–1–308(c)
- 15 Fisher filed her motion in July 2009 and filed a renewed motion in October 2011
- 16 We make no determination of the entitlement to, or the reasonableness of, the fees claimed.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

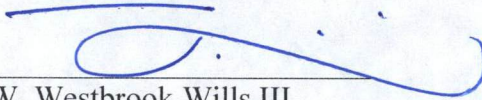
**AFFIDAVIT
OF
W. WESTBROOK WILLS III**

Personally appeared before the undersigned officer, duly authorized to administer oaths, W. Westbrook Wills III, who, after first being duly sworn, deposes and states under oath as follows:

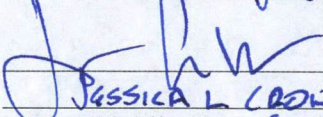
1. My name is W. Westbrook Wills III. I am over 18 years of age, and competent to give this affidavit.
2. I am an attorney in Charleston, South Carolina and am licenses to practice in South Carolina and Georgia. My practice consists entirely of civil litigation in those jurisdictions.
3. I represent Respondents Bessie Huckabee, Kay Passailaigue Slade in the matter of Betty Fisher and Lisa Fisher v. Huckabee, et al., appeal from Charleston County Circuit Court Case No. 2009-CP-10-3010, Appellate Case No. 2018-000566.
4. I attest that I have personal knowledge that the photos that are attached hereto as Annexes "A" through "D" are accurate representations of Alice Shaw-Baker's residence at 306 Cassina Road in Charleston, Charleston County, South Carolina and the state I and Jessica Crowley, counsel for Bessie Huckabee as Personal Representative, found it on November 14, 2017 when we presented at the residence, after proper notice to and appointment with the occupant, to perform an inventory of personal property.

5. When Ms. Crowley and I presented on November 14, 2017, the occupant declined to allow access to the personal representative for the purpose of making the inventory.
6. I have personal knowledge that the occupant at 306 Cassina Road has not been authorized by the Court or by Bessie Huckabee, as personal representative for the Estate of Alice Shaw-Baker to occupy or live at the property.
7. I was present and have personal knowledge that Bessie Huckabee, as personal representative for the estate, through her counsel, Ms. Crowley, presented copies of the photos attached hereto as Annexes "A" through "D" on November 14, 2017, at a hearing in the Magistrates Court on an action for ejection Ms. Huckabee brought to evict the occupant of the 306 Cassina Road property.

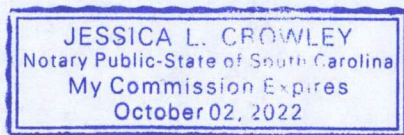
FURTHER AFFIANT SAYETH NOT.


W. Westbrook Wills III

Sworn and Subscribed Before
Me this 14th day of June, 2018.



JESSICA L. CROWLEY
Notary Public For: South Carolina
My Commission Expires: 10/2/2022





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EXHIBIT ANNEX
B







THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 08 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas L. Hughston, Jr., Circuit Court Judge

Circuit Court Case No. 2009-CP-10-3010
Appellate Case No. 2018-000566

Betty Fisher and Lisa Fisher..... Appellants

v.

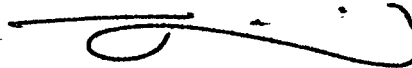
Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd Respondents

In the Matter of the Estate of Alice Shaw-Baker.

PROOF OF SERVICE

I certify that I have served the enclosed Respondents Return to Appellants' Petition for Supersedeas by depositing a copy in the United States Mail, postage prepaid, on June 4, 2018, addressed to Appellants separately at their address of P.O. Box 91112, Long Beach, California 90809-1112.

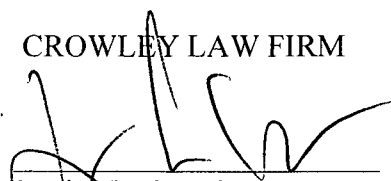
LAW OFFICE OF
W. WESTBROOK WILLS III



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P.O. Box 822
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Attorney for the Respondents

-and-

CROWLEY LAW FIRM



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*Attorney for Respondent Huckabee as
Personal Representative*

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