

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

Case No. 2009-CP-10-3010

RECEIVED

JUL 02 2018

S.C. SUPREME COURT

Ex Parte:

John Hughes Cooper,

Appellant,

In Re:

Betty Fisher and Lisa Fisher,

Plaintiffs,

v.

Bessie Huckabee, Kay Passailaigue
Slade, and Sandra Byrd,

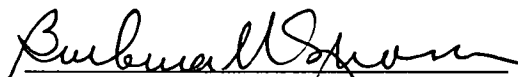
Respondents.

NOTICE OF APPEAL

Appellant John Hughes Cooper appeals the Order of the Honorable Thomas L. Hughston, Jr., dated June 29, 2018. Appellant received written notice of entry of this Order on June 29, 2018.

In the referenced Order, Judge Hughston imposed sanctions against John Hughes Cooper personally; therefore, he is a person aggrieved pursuant to Rule 201(b), SCACR.

July 2, 2018



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

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Slade, and Sandra Byrd,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all parties by depositing copies of it in the United States Mail, postage prepaid, on July 2, 2018, addressed as follows:

Warren Westbrook Wills, III, Esquire
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Folly Beach, South Carolina 29439

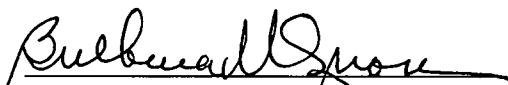
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July 2, 2018



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Attorney for Appellant

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-3010

Betty Fisher, et al.
 PLAINTIFF(S)

Bessie Huckabee, et al.
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

2010 MAR 29 AM 11:11
 JUDGE: JAMES H. COOPER
 FILED

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Estate of Alice-Shaw Baker	Betty Fisher and Lisa Fisher	\$78,596.02
Peter A. Kouten	Lisa Fisher and John Hughes Cooper	\$35,315.00
W. Westbrook Wills, III	Lisa Fisher and John Hughes Cooper	\$59,289.50
Jessica L. Crowley	Lisa Fisher and John Hughes Cooper	\$25,512.50

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

T.L. Hutchins, J.
Circuit Court Judge

2008
Judge Code

6/29/18
Date

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 BETTY FISHER and LISA FISHER,)
 As Conservator for ALICE SHAW-)
 BAKER,)
)
 Plaintiffs,)
)
 vs.)
)
 BESSIE HUCKABEE, et al.)
)
 Defendants.)
 _____)

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

RECEIVED

JUL 02 2018

S.C. SUPREME COURT

ORDER

FILED
 JUN 29 AM 11:12
 S.C. SUPREME 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 on-line 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 Conservator/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.

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 T.H. D.

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 attorney's 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.

I have also considered the equitable principles that relate to a constructive trust and find by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust. *See* Cases from S.C., re: constructive trust. Alice Shaw-Baker's property will go exactly as she intended for it to go, both by her Will and by contract.

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 Judge Curry's November 19, 2008 Order 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

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RLB

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 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.

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T.L.B.

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 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 year 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.

Frivolous determinations are governed by a reasonable attorney standard. Here, two questions arise. One, would a reasonable attorney bring and maintain a suit now in its ninth year claiming that an undoubtedly incompetent person had revoked her otherwise valid will by tearing it on January 1, 2009, following Judge Curry's Order of November 19, 2008, when only that attorney supposedly witnessed the tearing and no proof of such an act exist other than that attorneys say so, and that attorney's mother is an heir if the Will was revoked along with some other heirs who are not parties,

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T.L.H.A.

or notified of this suit, and whose existence was just revealed? The answer is an unqualified "No". Two, would a reasonable attorney bring and maintain a suit now in its ninth year claiming an equitable constructive trust over the entire Estate given all the clear facts and circumstances in the record contrary to such a claim? Again, the answer is an unqualified "No".

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. It should be noted that Plaintiffs' first appeal was from what was essentially a mutual restraining Order. Imagine that! As I have previously written, I deeply regret signing that Order.

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

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T.L.F.

that she would not survive the trip. She does, however, claim that she obtained a partial refund but such a refund is not reflected by her accounting.

Pursuant to § 62-5-424(C)(9), a conservator must obtain court approval prior to making charitable donations from the Estate. Lisa Fisher failed to observe this statute by making twenty unauthorized charitable donations in the amount of \$2,555—\$105 coming before the termination of the conservatorship—to various animal charities

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. If 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.

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

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T.L.A. 8/17

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, \$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 for a total of \$78,596.02. I impose this as a judgment against Betty and Lisa Fisher, jointly and severally, in favor of Defendants.

I have also decided to award the Defendants' attorneys 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.

According the Defendants' three attorneys' affidavits, they are requesting fees in the amount of \$173,493.68 for services performed through May 30, 2018. Lisa Fisher has objected to this amount on the basis that some of the fees pertain to hours worked for the separate, but related, actions. I have subtracted the amount I believe is attributed to those actions. As for attorney Peter A. Kouten, he has requested \$78,872.43 for services rendered from February 2009–October 2017. I have deducted those fees accumulated after the October 14, 2013 Order for Substitution of Counsel in addition to fees for services performed in relation to actions required for probating the Estate, the Conservatorship (GC) action, and the related circuit court actions. I therefore find his reasonable attorney's fees to be \$35,315.00. As for attorney W. Westbrook Will, III, he has requested \$59,289.50 in attorney's fees. I find this amount to be reasonable. As for attorney Jessica L. Crowley, she has requested \$35,331.75 in attorney's fees. After subtracting those fees related to the ejectment

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T.L.H.

action and conservatorship action, I find her reasonable attorney's fees to be \$25,512.50. Thus, after careful consideration of the factors set forth above for assessing attorney's fees, I find Defendants' total attorneys' fees in the amount of \$120,117.00 are, unfortunately, justified under that analysis. I impose this as a judgment against Lisa Fisher and John Hughes Cooper, jointly and severally, in favor of Defendants' attorneys—\$35,315.00 in favor of attorney Peter A. Kouten, \$59,289.50 in favor of attorney W. Westbrook Wills, III, and \$25,512.50 in favor of attorney Jessica L. Crowley.

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" . . . 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.

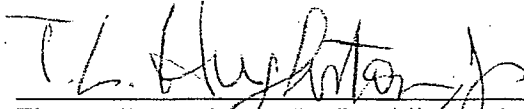
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T.L.H.

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

herein.

IT IS SO ORDERED.

#9
June 29, 2018
Charleston, South Carolina



Thomas L. Hughston, Jr., Presiding Judge