

LISA FISHER
P.O. Box 91112
Long Beach, CA 90809-1112
(866) 206-9066 Ext. 9861 [Toll-free]
cell: (562) 965-3267
fax: (866) 610-4371
lfisher6736@yahoo.com

RECEIVED

AUG 06 2018

S.C. SUPREME COURT

August 6, 2018

Via US Mail and Fax:

Honorable Daniel E. Shearouse, Clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: *In re Ex Parte Fisher v. Huckabee*
Appellate Case No. 2018-001332

To the Honorable Daniel E. Shearouse:

This correspondence is in reply to the letter of Jessica Crowley, received on Saturday August 4, 2018. Ms. Crowley's letter misrepresents the facts and is merely argument. This issue requires formal consideration by the court due to the serious and important issues raised by appeal.

As this court knows, arguments of counsel alone do not support evidentiary facts. As the court in *Trivelas v. S.C. Dept. Of Transportation*, 348 S.C. 125, 141, 558 S.E 2d 271, 279 (2001) explained, arguments of counsel are not evidence, and absent stipulation, they do not provide any factual basis. Moreover, "factual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists." (See *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E. 2d 180 (Ct. App. 1986).) Although this is not a summary judgment, the same rationale applies that an attorney's argument does not support evidentiary facts.

In this case, the arguments of Attorney Crowley do not even accurately represent the facts of this case. I am attaching the response filed in the magistrate's court which clearly states that Lisa Fisher is an interested party and that both she and Candace Rickborn have asserted that position throughout this litigation.¹

¹ In my faxed response, I am only including the response filed in the magistrates' court and not the exhibits. The exhibits will be included in the mailed copy of this response. Since there is no electronic means of filing, The faxed copy is merely to inform the court of the previously filed response and not inundate or overload the fax system.

Lisa Fisher
August 6, 2018

re: Reply to letter of August 4, 2018

The *Statutory Request for Order to Show Cause Pursuant to S.C. Ann. Code sct. 27-37-20; Motion to Dismiss or Alternatively, to hear Motion for Summary Judgment Due to Improper Defendant, Lack of Jurisdiction and Lack of Standing of Bessie Huckabee and Made Applicable under Rule 81; Affidavit of Candace Rickborn; Affidavit of Interested Person, Lisa Fisher, in Possession of Estate Property Pursuant to S.C. Ann. Code sct. 62-4-425(d)* was filed in the magistrates court on December 18, 2017 at 10:54 a.m.² (Attached hereto is a true and correct copy of said Response marked as Exhibit A)

In said request, Lisa Fisher answered and raised the issue of standing of Bessie Huckabee, the jurisdiction of the magistrate, and the duties of Lisa Fisher. Since the property was turned over by Lisa Fisher, with full knowledge of Bessie Huckabee, they can not continue to assert any liability by Candace Rickborn.

Attorney Crowley makes the disingenuous remark that:

"Ms. Fisher lives in California, has never had a personal interest in the estate real property, and has never lived in the property. Candace Rickborn is the individual who occupied the property without authorization of the Personal Representative of Mrs. Shaw Baker's estate, when Ms. Huckabee served a proper notice to vacate and thereafter commenced the action for ejection "

Lisa Fisher had a personal interest in the estate as conservator and as the person in control of the real property. The issue of control over the property was not properly raised for 8 years by Bessie Huckabee in any action for ejection, and her status as personal representative is still in dispute. Attorney Crowley knows that the property was not turned over by Candace Rickborn, who is an innocent party in this litigation, instead it was turned over by Lisa Fisher by order of this Supreme Court. The law governing ejection raises a defense with regard to attorney fees and costs. Therefore, Lisa Fisher has a right and obligation to assert defenses to ensure that she is not liable for any duplicative judgment.

Without citing authority, Attorney Crowley states that: "There is no obligation on the part of Ms. Fisher to indemnify Ms. Rickborn in the event the latter is required to forfeit the appeal bond she was required to post as a condition for staying the home." This statement is made without any knowledge of any legal requirement owed to Ms. Rickborn as an agent for Lisa Fisher.

Finally, Ms. Fisher's motion to intervene on appeal was required, because she is the real party in interest who was in possession of the real property, and in fact was the person who turned over said property. Attorney Crowley's continuation of the ejection litigation, despite knowledge that the issue of control was before the Supreme Court was and continues to be in bad faith. As set forth

² Appellant apologizes for the heading errata, however the body of the documents sets forth clearly that Lisa Fisher took the position that the real property was in her possession and not Candace Rickborn's

Lisa Fisher
August 6, 2018

re: Reply to letter of August 4, 2018

in my motion to consolidate, Attorney Crowley is already seeking attorney fees from Lisa Fisher and her effort to double dip in this case is unwarranted and illegal. Her action was only for ejection, and she was therefore only entitled to possession. Lisa Fisher should not be made liable for fees, where she does not have an opportunity to respond.

There is nothing frivolous about asserting my right to avoid an additional judgment, especially where Attorney Crowley's continued efforts to seek monies from an innocent party is not based on law or the facts of this case. The only frivolous filing is that filed by Crowley who knew that Lisa Fisher was the proper party and filed this bogus litigation.

Alice Shaw Baker's estate was and is meant to benefit animal charities. Respondents' efforts to deprive her of her true intentions have caused suffering to Appellant and her family. Attorney Crowley's further attempts to punish Lisa Fisher for protecting Alice Shaw Baker's property are not proper. I respectfully ask the court to allow the appeal to proceed to ensure that no further duplicative judgement is obtained by Respondents.

Thank you for your assistance. As set forth below, we are serving this letter on all parties. My cell phone number is (562) 965-3267 if you have any questions.

Sincerely,

Lisa Fisher, Esq.

Enclosures

cc: Neil Thomson
Jessica Crowley
W. Westbrook Wills

STATE OF SOUTH CAROLINA)

MAGISTRATE COURT

COUNTY OF CHARLESTON)

CASE NO. 2017-CV-1010903280

Bessie Huckabee,

)
STATUTORY REQUEST FOR ORDER TO SHOW CAUSE
Plaintiff,) PURSUANT TO S.C.

vs.

)
ANN. CODE § 27-37-20;
) MOTION TO DISMISS, OR ALTERNATIVELY,
) TO HEAR MOTION FOR SUMMARY JUDGMENT DUE TO
) IMPROPER DEFENDANT, LACK OF JURISDICTION AND
) LACK OF STANDING OF BESSIE HUCKABEE AND
) MADE APPLICABLE UNDER RULE 81;

CANDACE RICKBORN

) AFFIDAVIT OF CANDACE RICKBORN;
) AFFIDAVIT OF INTERESTED PERSON, LISA FISHER,
) IN POSSESSION OF ESTATE PROPERTY PURSUANT TO
) S.C. ANN. CODE §62-4-425(d);

Defendant,

)
DEMAND FOR JURY TRIAL

)
[Before the Honorable Ellen Soffar Steinberg]

In the Matter of
306 Cassina Rd.
Charleston S.C. 29407

PURSUANT TO S.C. CODE ANN. § 27-37-10 ET SEQ. AND THE RULE TO VACATE OR SHOW CAUSE DATED DECEMBER 8, 2017, Defendant Candace Rickborn ("Defendant") and Interested Party, Lisa Fisher ("Interested Party") request a hearing to Show Cause on the Rule to Vacate re: Application for Ejectment:

Defendant and Interested Party further request that this Honorable Court dismiss the Application for Ejectment, or alternatively, treat this request as a Motion for Summary Judgment under Rule 56 and made applicable to this court under Rule 81 based on the following:

1) Title to the property is disputed.

The subject property located at 306 Cassina Rd., Charleston, SC 29407 was owned by Alice Shaw Baker. She is deceased. There is litigation in the Charleston Circuit Court, Case no. 2009-CP-10-3010 ("Estate matter") regarding a will.

DEC 18 2017 10:54

Ex A

contest and a constructive trust for the benefit of animal rescues and/or animal charities.

There is also a Petition for Certiorari currently before the South Carolina Supreme Court, Appellate Case no. 2017-000743. Until these issues are resolved and litigation is completed, title is disputed.

2. Defendant Candace Rickborn Is an Improper Defendant.

Bessie Huckabee and her counsel are aware that Candace Rickborn is caring for the property on behalf of Interested Party Lisa Fisher, the Conservator of the Estate of Alice Shaw Baker. Any orders regarding the property will ultimately be made by the probate court at the conclusion of the pending litigation.

At the request of the Conservator, Lisa Fisher, Defendant Candace Rickborn cares for the property to ensure that the property is properly maintained, save on storage costs, and not deemed abandoned and is protected while the Estate matter is involved in litigation relating to a Constructive Trust alleging that the property is to be used for the benefit of animal rescue and/or animal charities. (Attached hereto is a true and correct copy of the docket for Estate of Alice Shaw Baker, Case no. 2009-CP-10-3010, marked as Exhibit A--said docket shows there are pending post-trial motions in the circuit court).

3) This Court Lacks Jurisdiction to Make any Orders.

Interested Party Lisa Fisher holds the property under S.C. Code Ann. § 62-5-425(D) until there is a determination of the appropriate person to whom the assets should be distributed. This matter is before the South Carolina Supreme Court, Appellate Case no. 2017-000743.

Therefore, this court does not have jurisdiction to make any orders related to the property while the Supreme Court is considering Interested Party Lisa Fisher's Petition for Writ of

Certiorari. (Attached hereto is a true and correct copy of the docket for the Supreme Court, Appellate Case no. 2017-000743, setting forth that the petition for writ of certiorari is still pending, marked as Exhibit B).

4) Bessie Huckabee Does Not Have Standing.

Bessie Huckabee does not have standing to pursue this action as she is not the landlord-lessor of the property. There has been no final determination of who is entitled to receive the Estate Property of Alice Shaw Baker, and as outlined in the Affidavit of Interested Party Lisa Fisher, Bessie Huckabee never complied with the Order to obtain a bond, therefore she is not legally entitled to hold any assets of Alice Shaw Baker. (Attached hereto is a true and correct copy of the order granting modification of temporary restraining order dated June 10, 2009 setting forth that Ms. Huckabee is required to have a bond to act as personal representative marked as Exhibit C.) Further, testimony at trial in the Estate matter by Bessie Huckabee indicated that she could not get a bond. (See Affidavit of Lisa Fisher, filed herewith).

APPLICABLE LAW

A. This Court has Jurisdiction to Consider a Motion to Dismiss, or in the Alternative a Motion for Summary Judgment

It is well settled that under Rule 81, SCRCP:

"These rules [SCRCP], or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. They shall apply insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts."

See Rule 1, SCRCF (defining the scope of the South Carolina Rules of Civil Procedure) and Rule 56, SCRCF (providing the authority to grant summary judgment).

Additionally, Rule 2, SCRMC, provides:

"(a) If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in like situations but not inconsistent with these rules.

(b) Each magistrate may promulgate rules for the conduct of proceedings in his court which are not inconsistent with these rules and the South Carolina Code of Laws."

Further, South Carolina Bench Book for Magistrates and Municipal Court Judges discusses summary judgment, explaining:

"After the filing of a civil case and prior to the actual trial, you may occasionally receive a motion for summary judgment Rule 56, SCRCF, which is made applicable to magistrate's court by Rule 81, SCRCF, allows the plaintiff or defendant . . . [to] move with or without supporting affidavits for a summary judgment Summary judgment is proper when, after reviewing the motion, supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. . . . If, after a hearing, the court determines the summary judgment is appropriate, an order to that effect ending the case should be issued."

South Carolina Bench Book for Magistrates and Municipal Court Judges, II-19 to II-20 (2d ed. 1984), available at <http://www.sccourts.org/trial/magistrate/benchbook/HTML/CivilC.htm#C15> (emphasis in original).

So, this court may dismiss this action based on lack of jurisdiction, improper joinder of parties, and lack of standing.

B. Any Dispute over Title or Authority to Administer the Estate is to be Determined in the Estate Matter, Bessie Huckabee is forum shopping.

It is well settled that the South Carolina Probate Code confers exclusive original jurisdiction to the probate court over all subject matter related to estates of decedents. S.C. Code Ann. § 62-1-302(a)(1) (2009) (providing probate court has exclusive original jurisdiction over all subject matter related to "estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons").

An action requesting settlement of a claim owed by and to an estate must be originated in the probate court. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Thereafter, it may be removed to the circuit court within 10 days.

Resolution of the disputes regarding the property are still before the circuit court and the South Carolina Supreme Court. As outlined by Lisa Fisher, there are pending motions for new trial, and other post-trial motions in the Circuit Court (See also, Ex. A, Docket of circuit court), and the Petition for Certiorari is still pending. (See Ex. B, Docket of South Carolina Supreme Court).

Moreover, the property is occupied by Interested party Lisa Fisher, who holds it until there is a determination of the proper person to whom the property should be distributed. Defendant Candace Rickborn is not a proper defendant.

C. Lisa Fisher is Prohibited from Transferring the property to anyone without proper Court Orders

Due to the pending litigation and pursuant to her statutory duties under S.C. Code Ann. § 62-5-425(D), Lisa Fisher is required to maintain the property until ordered to distribute to

the appropriate person. Here, these matters are before the circuit court and the South Carolina Supreme Court.

Candace Rickborn is on the premises at the request of Lisa Fisher to protect the property, maintain it in good condition, and ensure that it maintains its property value. This court has no jurisdiction to make any orders regarding the property.

D. This Court lacks Jurisdiction to Make any Orders when the Matter is Before the South Carolina Supreme Court
Pursuant to Rule 203, SCACR:

"Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (Rule 205, SCACR, emphasis added.)

Further, pursuant to S.C. Code Ann. § 62-1-308(c):

"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." (Emphasis added)

For all the reasons stated in here, Dismissal or grant of summary judgment is proper. This court does not have jurisdiction, nor does Bessie Huckabee have standing.

RESPECTFULLY SUBMITTED:

JOHN HUGHES COOPER, P.C.

By:

~~JOHN HUGHES COOPER, ESQUIRE~~
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
shiplaw@jhcooper.com

JOHN TOWNSEND COOPER, ESQUIRE
Federal Court ID 10172
South Carolina Bar 76087
jtc@jhcooper.com

1476 Ben Sawyer Blvd., Suite 11
Mt. Pleasant, SC 29464
843-883-9099; fax 843-883-9335

ATTORNEY SPECIALLY APPEARING FOR DEFENDANT
CANDACE RICKBORN and FOR INTERESTED PERSON
LISA FISHER

December 15, 2017
Mt. Pleasant, South Carolina