

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Schafer Goodstein., Circuit Court Judge

Circuit Court Case No. 2017CP1006629
Appellate Court Case No. 2018-001332

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SEP 07 2018

S.C. SUPREME COURT

Ex Parte Lisa Fisher,Appellant

In re Bessie Huckabee.....Respondent

v.

Candace Rickborn.....Defendant

APPELLANT LISA FISHER'S INITIAL BRIEF

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(Appellant)

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I.
STATEMENT OF ISSUES ON APPEAL

- 1) Did both the Magistrates Court and Circuit Court, acting in its Appellate Function, improperly deny Appellant Lisa Fisher joinder in the Ejectment action?

- 2) Did the Courts lack Jurisdiction to Issue any Order on Ejectment, since this Court was considering by way of Writ of Certiorari, the appropriateness of Transfer of Alice Shaw Baker's property to a Special Fiduciary?

II.
STATEMENT OF THE CASE

Black's law Dictionary defines "forum shopping" as "when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." (Black's Law dictionary, 590 (5th ed. 1979).)

There are times when courts have endorsed forum shopping, e.g. different venues or courts when there is a diversity or some other legitimate purpose. However, as here, there is a different type of forum shopping, one meant to interfere with both the court's powers and a party's ability to seek redress. This is the forum shopping that Respondent Bessie Huckabee ("Respondent"), by and through her counsel, engaged in. She failed to name Lisa Fisher as a party, despite knowing that Lisa Fisher was in control of the subject property of Alice Shaw Baker and despite knowing that there were orders on appeal. When there are two courts that may potentially render two separate and contradictory decisions that renders an intolerable prejudice-- where unscrupulous party litigants repeatedly try their luck until they obtain a favorable result.

South Carolina does not tolerate such action, as the court in *Slatton v. Slatton*, 289 S.C. 128 (1986) explained: “This Court...will remand for a necessary party to be brought into an action even when that party has not requested relief. See *Midland Timber Co. V. Pretty man & Sons*, 93 S.C. 13, 75 S.E. 1012 (1912) [¶] A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined. *Simon v. Strock*, 209 S.C. 134, 39 S.E. 2d 209 (1946). **It is mandatory that a necessary party be brought into the action.**” (*Slatton, supra*, emphasis added)

As in *Slatton*, the question of title, interest, and control of property mandated that the courts in this matter afford Appellant Lisa Fisher an opportunity to appear as a litigant.

This appeal seeks relief to prevent an injustice, prevent confusion and contradictory decisions, prevent duplicative attorney fees awards, and to ensure that the underlying purpose in this case, that the intention of Alice Shaw Baker to benefit animal charities is not compromised and her estate does not suffer unnecessary costs and losses.

Despite the fact that this court already ordered Lisa Fisher to transfer Alice Shaw Baker’s property to Respondent, it matters what methods, tactics, and orders are issued to gain an advantage. Appellant contends the matter is not moot, and that allowing Respondent to use such tactics undermines the authority of this court and the legitimacy of the law. For all of these reasons, She respectfully requests that the court reverse the matter.

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III. STATEMENT OF FACTS

A. Background

Alice Shaw Baker owned a lovely home in Parkwood Estates, located at 306 Cassina Rd, Charleston S.C. 29407. At the end of her life, she was under a probate guardianship and conservatorship. Her great niece, Lisa Fisher, traveled from California and was appointed her Guardian and Conservator. Unfortunately, Ms. Shaw Baker died on February 25, 2009.

Lisa Fisher protected the property and knew that Ms. Shaw Baker wanted her house to go to animal charities, thus began a long and arduous litigation, including an attack of Bessie Huckabee's position as personal representative and the Will contest litigation. These actions were initiated to ensure that the distribution of the Estate went to the correct charitable institutions. This fight is still ongoing. Oral Argument in the related case, 2018-00566, is set for November 28, 2018 before this Court.

For the past several years, Lisa Fisher has been forced to use her own money to pay for the expenses of the real property. However, during the entire proceedings, she made sure to have an individual at the residence, Candace Rickborn, to prevent criminals, trespassers, and respondent from trying to access the property without legal authority.

B. Petition for Writ of Certiorari in 2017-000743

At the time of the filing of the application for ejectment by Respondent Bessie Huckabee ("Respondent"), There was a pending Petition for Writ of Certiorari which sought, in part, review of the order appointing a Special Fiduciary to take control of Alice Shaw Baker's estate. (Request for Judicial Notice of 2018-000743)

It is important to note that Bessie Huckabee sought the order for appointment of a Special Fiduciary. She did not seek an order demanding the court order return Alice Shaw Baker's property over to her, instead she wanted Lisa Fisher to turn over the property to a third party.

Appellant contends that the grant of that motion deprived the Personal Representative of authority to take any action in the case, because the order on review mandated Lisa Fisher turn over the property to the third party-- not Bessie Huckabee. Furthermore, Bessie Huckabee had failed to obtain a bond, so her ability to manage the property was ambiguous at best. ¹

This Court finally granted review on the Writ of Certiorari and it is on the same expedited briefing schedule as the Will contest litigation.

C. Appeal of the Will Contest; Certification before this Supreme Court

The Will Contest trial went forward, however there were significant issues related to the Will Contest which impacted control of the real property of Alice Shaw Baker. As part of the court orders in the Will Contest, Judge Hughston made orders related to attorney fees on ejectment, issued its own orders regarding transfer of the real property to Bessie Huckabee, and other others which are before this court on Appeal.

Still there was the conflicting order that the real and personal property be transferred to the Special Fiduciary. Appellant had no final direction as to the control of the real property, since there still existed an order to turn over estate property to the Special Fiduciary.

¹ Under S.C. Code sct. 62-3-414, any personal representative "shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise."

D. Respondent's Action for Ejectment Amounted to Forum Shopping

In December of 2017, Respondent Bessie Huckabee initiated Ejectment proceedings on December 8, 2017 by the filing of an Application of Ejectment signed by counsel Jessica L. Crowley. The stated reasons for the application for ejectment from 306 Cassina Road, Charleston, SC 29407 was that "a landlord tenant relationship exists between myself and defendant Candace Rickborn," and that "the tenant-lessee, as evidenced by the following: **unauthorized resident no lease or other documentation.**" (Emphasis added) (Rec. ____)

Conversely, in the supplemental application, Attorney Crowley specifically states that "No landlord-tenant relationship exists." (Rec. ____)

The ground set forth in the application for ejectment is that "**the term of tenancy or occupancy has ended.**" (Emphasis added) This document was again signed by counsel Jessica L. Crowley. (Rec. __)

Despite a duty to inform the court, Ms. Crowley failed to inform the magistrate that there was a dispute as to title and that a Petition for Writ of Certiorari was before the South Carolina Supreme Court, Ms. Crowley never mentioned that Lisa Fisher was in fact the former conservator of her great aunt's estate and holding it pursuant to § 62-5-425 (d)(duty to deliver to the proper representative). The application admits that this is not a regular landlord tenant action, and as such was not subject to the law used to seek relief .

The court issued a Rule to Vacate or Show Cause on December 8, 2017.(Rec. __)

Defendant Candace Rickborn (and Interested Party Lisa Fisher) filed a document entitled *Statutory Request for Order to Show Cause pursuant to S.C. Ann. Code § 27-37-20; 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 § 62-4-425 (d) on December 18, 2017. (Rec. __)

On December 27, 2017, the Honorable Ellen S. Steinberg, West Ashley Magistrate, signed an order of Writ of Ejectment against Defendant Candace Rickborn. (Rec. __)

On January 8, 2018, the hearing was rescheduled for hearing on January 10, 2018 due to weather.

The hearing went forward on January 10, 2018 at 3:00 p.m.

As part of the magistrate's return, the court stated that when asked "what jurisdiction this court has because of post trial motions and pending cases and Attorney Crowley answered to maintain status quo." (Rec. ____). However, when you read further, Attorney Crowley stated that "an unauthorized third party, Ms. Rickborn, was living in the house for over seven years and the property was not being cared for properly." Clearly, if it was to preserve the "status quo", ejectment was not the proper means of this preservation.

Additionally, as part of the court's consideration, Respondent used unlawfully obtained pictures taking them from outside and into and through the window of the house, invading the privacy of Candace Rickborn, and which were not representative of the true nature of Alice Shaw Baker's real property.

On January 10, 2018, the court set the appeal bond for \$5,000.00 appeal bond. (Rec. ____)

On January 29, 2018, the court issued its magistrate's return. (Rec. ____)

Lisa Fisher filed a Motion to intervene in the circuit court appeal, as an interested person on May 22, 2018. Respondents waived the right to file a response, and the matter was heard on May 22, 2018. (Rec. ____)

At the time of the hearing there was a petition to stay the proceedings issued by this court in the related case, Case no. 2018-00566. (Rec. ____)

On May 24, 2018, this Supreme Court granted the temporary stay and ordered the return of property to the possession of Lisa Fisher. (Rec. ____)

There were orders presented to the Judge Goodstein (Rec. __) which Lisa Fisher objected to. (Rec. __) After the denial of the stay in the related matter, Case no. 2018-000566, Judge Goodstein signed the order denying Lisa Fisher's motion to intervene and granting the ejectment. (Rec. __) Appellant Lisa Fisher filed her Notice of Appeal on July 23, 2018. (Rec. __)

IV. STANDARD OF REVIEW

In matters involving determination of propriety of joinder and parties, the standard of review is limited to determining whether there was an abuse of discretion. (See *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E. 2d 501, 502 (2006).)

However, as the court explained in *Slatton v. Slatton*, 289 S.C. 128 (1986), this court must remand when a party is a necessary party, even if the party has not requested relief.

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V.
**APPELLANT LISA FISHER WAS A NECESSARY PARTY AND INDISPENSABLE
PARTY MANDATING JOINDER, THEREFORE THE COURT MUST REVERSE THE
JUDGMENT IN FAVOR OF RESPONDENT**

It is well settled that under Rule 20, SCRPC, joinder is required when it will resolve a controversy as a whole and avoid the expense and complications of multiple lawsuits.

Respondent's action in trying to deprive Lisa Fisher of her right to appear and get a final determination of this court in the related actions (Case nos. 2017-000743 and 2018-000566) undermines the validity and effect of the prior action in trying to have Lisa Fisher transfer the property to a Special Fiduciary. They sought relief from Judge Hughston in the "will contest" action obtaining attorney fees awards in regards to the ejectment action. They failed to seek further orders from the probate court revoking their prior orders. They failed to seek intervention by this court. Instead, they filed an action against an innocent person, Candace Rickborn, obtained a judgment which may affect her reputation/credit, and which will subject Lisa Fisher to a requirement of indemnity when she had not opportunity to be heard in this matter. As set forth above, in *Slatton v. Slatton*, 289 S.C. 128 (1986), this conduct can not be tolerated, and Lisa Fisher must be brought into the action as a necessary party. This Court has this authority, even had she not sought relief.

Also, the court in *Stewart v. State Crop Pest Com'n*, 414 S.E. 2d 121, 125, 307 S.C. 133, 139 (1992) explained that: "In order to be an indispensable party, the action must (1) not afford complete relief among those already parties, or (2) impair or impede the absent parties' ability to protect its interest, or (3) leave parties already in the suit subject to substantial risk of incurring multiple or inconsistent obligations by reason of the absent party not being joined."

Here, complete relief is subject to this Honorable Court in its decisions and orders in the related case. There are already substantial competing and inconsistent orders which mandate this Court's review and consideration. These are before the court, so the action of ejectment can not afford the parties complete relief.

Next, Lisa Fisher's rights are impaired and her ability to protect her interests, including but not limited to, orders subjecting her to duplicative attorneys' fees and adverse findings. She has no ability to protect her interests and prevent conflicting findings without her ability to join as a necessary and indispensable party.

Finally, until this Court makes its final decisions in the related actions, there is substantial risk of multiple and inconsistent obligations. Thus, Lisa Fisher must be considered an INDISPENSABLE party, and reversal is necessary as her joinder is strongly favored on grounds of judicial efficacy pursuant to the law.

**VI.
THE COURTS DID NOT HAVE JURISDICTION TO DETERMINE THE ISSUES
RELATED TO ALICE SHAW BAKER'S REAL PROPERTY, DUE TO THE PENDING
WRIT OF CERTIORARI AND THE CONFLICTING ORDERS GRANTING
CERTIORARI**

It is well settled that under S.C. Code Ann. § 62-1-308 (h) (2013), “ 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.**” (Emphasis added; see also Rule 205, SCACR)

While the ejectment action is not subject to the probate order, Respondent knew of the stay, knew of her prior motion she filed seeking appointment of a Special Fiduciary, and knew

that Lisa Fisher was seeking review of that order. Therefore, Lisa Fisher contends that the Magistrates Court and the Circuit Court lacked jurisdiction to make any decision with regard to Alice Shaw Baker's property, because this Court is still considering the implications of the orders under the related cases, 2017-000743 and 2018-000566.

Respondent knew that Appellant Lisa Fisher was the real party in interest, and that she was the person with possession of the property, not Candace Rickborn.

Respondent's Attorney Crowley knew that there was a 1) pending action before the Supreme Court (Case no. 2017-000743), 2) pending trial (at the time) in the underlying Will contest case 2009- CP-10-3010 (now appealed under Appeal case no. 2018-000566), and 3) that there was a pending motion for new trial authorized by the South Carolina Supreme Court in the underlying case, and 4) finally, that as former conservator , Lisa Fisher had a duty to properly hold the property and ensure orderly delivery of the property to the appropriate person. This would include receipts and proper distribution.

Without proper orders and distribution, Appellant would be potentially liable to any person entitled to proper distribution (as alleged, the true beneficiaries of the estate, animal charities).

Further, Respondent and her counsel knew that Appellant was materially interested in the action and should have been joined so that all the matters could be completely determined. This action should never have been filed, and was used to bully Appellant (and Ms. Rickborn in her position as caregiver), to sully her name, and cause harm to the rights and reputation of Appellant and the caregiver.

She further knew that Lisa Fisher, as former conservator of the estate of Alice Shaw Baker, was duty bound to deliver the estate to the *proper person* pursuant to S.C. Code Ann. § 62-5-425 and 62-7-707. (Emphasis added)

Respondent and Counsel attempted to obtain excessive damages for the property and sought damages and attorney fees in both the will contest action and the ejectment action. She sought attorney fees in the ejectment action, despite knowing that the remedy and relief in ejectment proceedings is limited pursuant to S. C. Code Ann § 27-37-20 to ejectment and does not include other claims or causes of action for damages, such as monetary damages, back rent, damage to the landlords' property, etc. (See South Carolina Bench Book for Summary Court Judges, Civil Section, § N, Elements of Common Landlord-Tenant Problems, § 2, Jurisdiction of Magistrates, <http://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=CivilN>)

A requirement in ejectment cases is that there must be a landlord tenant relationship. Although Attorney Crowley swears by way of the notarized document that there is this relationship, her additional allegation, “**unauthorized resident no lease or other documentation**” negates the other claims and is a judicial admission that she is seeking relief in the wrong court and without statutory authority. Attorney's fees are not recoverable unless authorized by contract or statute. This is the American Rule. (See South Carolina Summary Judges Benchbook, § G, no. 4, <http://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=CivilG#G4>)

Therefore, when the Circuit Court remanded to the magistrate for a determination of attorney fees and damages, the court subjected Lisa Fisher to potential liability for indemnity.

All of these issues are important and not moot, because this Court is considering the propriety of the judgments, orders, and findings regarding Alice Shaw Baker's property in the related cases.

By allowing this proceeding to go forward, conflicting orders were created. For example, on January 29, 2018, the magistrate ruled: "...the PR has not been able to go inside to view or care for the property as is her responsibility..." (Rec.____) However, this is the very issue in dispute in the Special Fiduciary case, and in the underlying appeal, as to whom Lisa Fisher was to properly distribute the property to under S.C. Code Ann. § 62-5-425(d). The Supreme Court ultimately ordered Lisa Fisher to deliver the property, not Judge Hughston nor these ejectment proceedings. The ejectment proceedings are per se erroneous.

Finally, the issue of jurisdiction is also implicated regarding the law governing claims and the authority of the *probate* court. As set forth in *Anderson v. Anderson*, 299 S.C. 110, 115 (1989) and S.C. Code §62-1-302(a)(1), the probate court has exclusive jurisdiction to determine estate claims. Therefore, Respondent knew or should have known that the probate court, not the magistrate's court was the proper court, and Lisa Fisher was a necessary party.

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**VII.
CONCLUSION**

Appellant prays that this court reverse the judgment in this matter, and order that Appellant Lisa Fisher is an INDISPENSABLE and necessary party.

RESPECTFULLY SUBMITTED,

By: 

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Ex Parte Lisa Fisher,Appellant

In re Bessie Huckabee.....Respondent

v.

Candace Rickborn.....Defendant

PROOF OF SERVICE

I certify that I have served **APPELLANT LISA FISHER'S INITIAL BRIEF ON THE MERITS; DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPELLANT; MOTION FOR REQUEST FOR JUDICIAL NOTICE** upon the following parties by depositing a copy of it in the United States Mail, postage prepaid, on September 4, 2018 addressed as follows:

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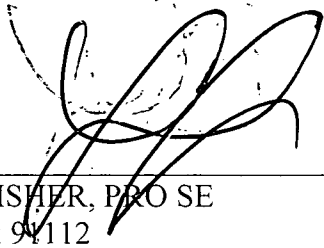
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