THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Alice Shaw-Baker ("Alice" or "Mrs. Shaw-Baker") left her home in California in the 1960s to join the Navy. After discharge from the Navy, Alice worked as an accountant at Charleston Memorial Hospital. Over the course of the following 40 years, Alice developed close, enduring friendships with Respondents Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd (deceased), with whom she worked in different departments at the hospital. In that time, Alice and Respondents spent holidays and vacations together, shared common interests, and frequently attended various social events together. After moving to Charleston, Alice maintained very little contact with any family remaining in California.

In August 2008, Charleston County Elder Services initiated Guardianship and Conservatorship proceedings for Alice Shaw-Baker due to her incapacity. Plaintiffs Lisa Fisher and her mother, Betty Fisher, distant relatives of Alice, were notified of the probate proceedings. Lisa Fisher, a probate attorney in California, came to Charleston and sought appointment as permanent Guardian and Conservator. Fisher employed the services of John Hughes Cooper, to assist in the proceedings. Attorney Cooper represented both Lisa Fisher and Alice Shaw-Baker at various stages of the Guardianship and Conservatorship proceedings and was sponsor for Lisa Fisher's pro hac vice appointment.

On November 19, 2008, the Charleston County Probate Court entered an Order appointing Plaintiff Lisa Fisher as Alice's permanent Guardian and Conservator, and further ordering that "[n]either Alice Shaw-Baker, nor anyone on her behalf may revise or revoke her will or execute a new will, unless specifically ordered by [the] Court." It further ordered that Mrs. Shaw-Baker consult with forensic psychologist Randolph Waid in order to determine whether 24-hour in-home care was required for Mrs. Shaw-Baker. Said consultation was effectuated on November 20, 2008. Prior to coming to Charleston in October of 2008 and being appointed as her conservator, Lisa Fisher had never met Alice in person. Betty Fisher, currently in her 80s, had not seen Alice since Betty was a child.

Four months later, Alice Shaw-Baker died testate on February 25, 2008. Prior to her death, Mrs. Shaw-Baker executed a Last Will and Testament in January of 1993, which she formally revised on 3 separate occasions by subsequent wills on April 5, 1996, February 13, 2001, and May 21, 2001. Respondents are named beneficiaries in each of Ms. Shaw-Baker's wills, and Bessie Huckabee is designated as Personal Representative in all of them.

Lisa Fisher and her attorney provided Alice's original Last Will & Testament to the Charleston County Probate Court, and on March 11, 2009, Bessie Huckabee was appointed Personal Representative according to the will. Lisa Fisher was discharged as guardian and conservator on May 11, 2009.

On April 27, 2009, Lisa Fisher and her mother, would-be intestate heir Betty Fisher, filed the present action alleging causes of action for 1) constructive trust, 2) declaratory judgment regarding revocation of will, 3) undue influence, 4) fraud, 5) declaratory judgment regarding improper execution of will, 6) declaratory judgment regarding subsequent will, 7) unjust enrichment, 8) promissory estoppel, 9) petition for removal of Bessie Huckabee as personal representative, 10) petition for appointment of Betty Fisher as personal representative, and 11) attorney's fees and costs.

The parties were involved in several other legal proceedings that ran concurrently with the Will Contest litigation, including the probate of the estate; a survival and malpractice action for damages filed by Betty Fisher against Bessie Huckabee and her attorney, Peter Kouten; and various appeals filed in connection with those matters. [March 12, 2018 Bench Trial Trans., p. 107].

In May 2009, Appellants filed a motion for a restraining order to be issued against the Personal Representative. On May 22, 2009, the court granted Plaintiffs' motion restraining the personal representative "from doing anything." On May 28, 2009, counsel for the Personal Representative filed a motion to reconsider, to enable the Personal Representative to perform administrative duties, and to conform with the requirements of Rule 65(b), SCRCP. Following hearing with counsel for all parties present, Judge Hughston issued Order Granting Modification of Temporary Restraining Order on June 10, 2009. Plaintiffs then appealed the Order restraining

the Personal Representative on June 18, 2009, and proceeded to argue that the trial could not proceed until resolution of their appeals.

On August 1, 2012, Appellants filed Motion by Plaintiffs Betty Fisher and Lisa Fisher to Disqualify and Remove Opposing Counsel Peter Kouten due to Non-Waivable Conflict of Interest. Attorney W. Westbrook Wills, III took over representation of the Respondents and Appellants appealed due to what they alleged was faulty Certificate of Service.

On August 2, 2017, Respondents filed a Motion for Summary Judgment. The Motion was heard on October 23, 2017, as a pretrial matter, Attorney for Respondents verbally withdrew the motion at that time.

On January 17, 2017, Plaintiffs filed Consent Motion for Date Certain for a five-day trial to begin May 15, 2017, with sixteen expected live witnesses. However, trial was ultimately scheduled for October 23, 2017. On October 2, 2017, Plaintiffs filed a Motion to Transfer Venue, and to Disqualify Attorneys Crowley and Wills. During the hearing, Attorney for Appellants acknowledged that the law they relied on as the basis for the motion did not support their position and withdrew the Motion. The following day, Appellants filed a Motion for Reconsideration of the Court's Order denying Motion to Transfer Venue, which the Court denied. On the day the case was set to go to trial, Appellants filed a Notice of Appeal of the denial of Motion to Transfer Venue, and claimed the trial could not go forward pending resolution of the appeal. The Court of Appeals dismissed the appeal as not immediately appealable.

On the day of trial, in addition to Notice of Appeal, Appellants filed a Motion to Disqualify Judge Hughston based on allegations that former counsel for Respondents had sent a

proposed order to Judge Hughston nine years prior and had not immediately copied Lisa Fisher or John Hughes Cooper. Judge Hughston denied their motion.

Appellant, Betty Fisher, did not appear for the jury trial. During the jury trial, Appellants abandoned all of their legal causes of action except for the revocation claim. The Court directed verdict in favor of Respondents on all of Appellants' legal causes of action except the revocation claim because no evidence was presented to support the claims. [Jury Trial Trans. 410-19]. On October 26, 2017, at the end of a three-day trial, the jury found for the Respondents on the revocation claim. [Jury Trial Trans. 497, ll18-20].

On November 6, 2017, Respondents filed Post-Trial Motion requesting attorney's fees pursuant to South Carolina Code § 62-1-111 and attorneys' fees and sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA"). Appellants filed their reply on December 6, 2017. Respondents' attorneys submitted their affidavits of fees at that time, based on the work that had been done through that date. The trial judge subsequently ordered the parties to provide information on all of the accountings that had been done in the related conservatorship case and the estate case.

On January 2, 2018, Respondents filed renewed Motion for Summary Judgment on the remaining equitable causes of action due to Appellants' lack of standing. Judge Hughston issued Order on February 28, 2018 deferring ruling on the motion, indicating that it was his preference to proceed to trial and for the parties to be prepared to move forward on the merits. [Order of Judge Hughston, February 28, 2018]. On March 7, 2018, Respondents reasserted their Motion for Summary Judgment following Supreme Court decision in associated case as to Appellants' standing. Again, the judge held the issue in abeyance but dismissed the Plaintiffs' action

following the two-day bench trial in Order dated July 19, 2018. [Order of Judge Hughston dated July 19, 2018].

On March 22, 2018, the trial judge filed an order finding in favor of the Respondents and imposing sanctions against the Appellants and their attorney pursuant to both the FCPSA and Rule 11, SCRCP. The sanctions included a judgment against Appellants and their attorney jointly in favor of Respondents, against Lisa Fisher individually and against John Hughes Cooper individually. On April 3, 2018, the trial judge issued an order granting John Hughes Coopers' request to be relieved as counsel for the Appellants in the Will Contest litigation and, as an additional sanction, enjoined the Appellants and their attorneys from filing "any motions in the Circuit Court." [Order of Judge Hughston dated April 3, 2018]. Plaintiffs subsequently requested relief in the Supreme Court, claiming that they had not received Judge Hughston's March 21, 2018 Order until March 26, 2018. The Supreme Court issued Order on April 16, 2018 allowing Appellants an additional 15 days to file their post-trial motions. On April 23, 2018, Appellants filed their Rule 59 Motions for new trial, to alter or amend the judgment, and for recusal of Judge Hughston.

On May 21, 2018, the trial judge held a hearing on the Appellants' post-trial motions, at which he took substantial additional testimony including from Appellant, Lisa Fisher, from a former caretaker for Mrs. Shaw-Baker, and from Respondents. On May 29, 2018, Judge Hughston executed Order amending the judgment against plaintiffs to include reduced attorney's fees awarded to Respondents, based on Plaintiffs' assertions in their post-trial motions (this order was subsequently vacated). Respondents filed Motion to Reconsider on May 31, 2018. Thereafter, on July 23, 2018, the judge issued Order restoring the award of attorney's fees to the

original amount awarded, finding that he had incorrectly evaluated Attorneys Kouten's and Crowley's affidavits and mistakenly reduced their award of fees.

STANDARD OF REVIEW

Appellants' raise multiple issues in their appeal[1] that implicate questions of law, equity, evidentiary rulings, and sanctions, which this Court reviews under different standards. Pursuant to Rule 608, SCACR.

The determination of the standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993). To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below. Id. 437 S.E.2d at 155. If the essential nature of the cause of action is legal, the action to be taken by the circuit court is controlled by its determination of whether or not there is any evidence to support the factual findings of the court below. Id.

"When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." In re Estate of Rider, 407 S.C. 386, 392, 756 S.E.2d 136, 140 (2014)(citing Neely v. Thomasson, 365 S.C. 345, 349–50, 618 S.E.2d 884, 886 (2005)). "Questions of law, however, may be decided with no particular deference to the lower court." Id.

Ordinarily, an appellate court reviews cases in equity by finding facts in accordance with its own view of the preponderance of the evidence. Matter of Estate of Kay, 423 S.C. 476, 480,

[1] As discussed below, Appellants improperly argue several factual and legal issues in sections A (Introduction), C (Statement of the Case), E (Relevant Orders) and F (Evidence that Alice Shaw-Baker Intended Animal Charities to Benefit from her Probate and Non-Probate Assets) which are not set out in their Statement of Issues on Appeal, and many of which are not properly before this Court because they were either not raised or ruled on in the trial court, or are not issues Appellants preserved for appeal.

816 S.E.2d 542, 544–45 (2018), reh'g denied (Aug. 2, 2018); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). However, an appellate court still affords a degree of deference to the trial court because it was in the best position to judge the witnesses' credibility. Id. at 480, 545; Lewis v. Lewis, 392 S.C. 381, 391, 709 S.E.2d 650, 655. (2011).

Because "the decision whether to impose sanctions under the FCPSA is a decision for the judge, not the jury, it sounds in equity rather than at law." Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003)(refusing to adopt the more deferential "abuse of discretion" federal standard of review in assessing decisions to impose sanctions under the FCPSA). Therefore, an appellate court must review the findings of fact with respect to the decision to grant sanctions under the FCPSA by "taking its own view of the evidence." Id. (citing S.C. Const. art. V, § 5); see also S. C. Code Ann. § 14–3–320 (Supp.2012). However, "[t]he 'abuse of discretion' standard . . . does . . . play a role in the appellate review of a sanctions award." Father, 353 S.C. at 261, 578 S.E.2d at 14. "An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions." Father, 353 S.C. at 261, 578 S.E.2d at 14.

Qualification of an expert and the admission or exclusion of his testimony is a matter within the sound discretion of the trial court. Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court. In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion. Pike v. S.C. Dept. of Transp., 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997); Means v. Gates, 348 S.C. 161, 166, 558 S.E.2d 921, 923 (Ct. App. 2001). An abuse of discretion occurs when the ruling is based on an error of law or

a factual conclusion that is without evidentiary support. Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991); Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair. Means, 348 S.C. at 166, 558 S.E.2d at 924.

To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof. Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); Timmons v. S.C. Tricentennial Commn., 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970); Powers v. Temple, 250 S.C. 149, 160, 156 S.E.2d 759, 764 (1967).

ARGUMENT

I. The Court Should Dismiss Appellants' Appeal Because Appellants' Initial Brief Substantially Fails to Comply with the South Carolina Appellate Court Rules.

Appellants' Initial Brief demonstrates Appellants' have virtually no regard for the South Carolina Appellate Court Rules ("SCACR"), and particularly Rule 208, SCACR. Appellants' numerous violations of the clear mandates set out in the Rules render it nearly impossible to distinguish what Appellant is presenting as their issues on appeal to be decided by this Court, and what arguments they are advancing in support their assignments of error. Their appeal is further frustrated by their consistent failure to cite to relevant authority for the propositions they claim support of their arguments, or to the transcript where necessary, making the task of responding into an unreasonable exercise in guesswork.

South Carolina Appellate Court Rules, Rule 208 requires that appellate briefs contain, under appropriate headings and in order, a table of contents, a statement of issues on appeal, a

statement of the case, the standard of review, argument, and a conclusion. Rule 208(b)(1)(B), SCACR requires Appellants to set out a statement of each of the issues presented for review, which is concise and direct as to each issue. (emphasis supplied). The Rule warns that broad general statements may be disregarded by the appellate court, and ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal. Rule 208(b)(1)(C), SCACR requires Appellants' statement of the case to contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal, and specifically proscribes the inclusion of any contested matters. Rule 208(b)(1)(D), SCACR instructs that where the same standard of review is not applicable to all of the issues presented on appeal, Appellants are required to include a separate section with the heading "Standard of Review" at the start of the argument on each issue with citations to relevant case law establishing this standard of review. Next, Rule 208(b)(1)(E), SCACR provides that Appellants' brief shall be divided into as many parts as there are issues to be argued, set forth in distinctive type, followed by discussion and citations of authority. Finally, Rule 208(b)(4), SCACR mandates that Appellant's brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials, which may be properly included in the Record on Appeal to support the salient facts, alleged. This rule specifically requires Appellants to make references to where relevant objections and rulings occurred in the transcript, either to the page and line number of the transcript prepared by the court reporter, or the page of the material to be referenced.

Here, Appellants' Initial Brief fails to comply with the Rule 208, SCACR in the following particulars, and without limitaion:

1) **Appellants' Introduction.** In addition to the sections required under Rule 208 (b)(1)(B), Appellants improperly include the additional sections, A. Introduction, E. Relevant Orders, and

R. Evidence that Alice Shaw-Baker Intended Animal Charities Benefit from her Probate and Non-Probate Estate, each of which sections, and the footnotes thereto, contains improper argument, inapplicable law, and disputed, irrelevant, and untrue facts, with little or no citation either to relevant authority or to matter to be included in the Record for reference. Appellants' failure to make specific reference to the transcript and materials to be included in the Record in these sections, with regard to the facts and argument, puts Respondents in the unreasonable position of having to guess at what Appellants are talking about. Further, Appellants attempt to raise issues for the first time here on appeal, and re-address issues, which they abandoned at trial and on which the trial court granted a directed verdict.

By way of example, Appellants argue in their section "A. Introduction" that ample evidence exists "that Alice Shaw-Baker had an expectation that her monies were to be used for charitable purposes for animals," and that Respondent Slade had a fiduciary duty as a trustee to disclose to Alice that she was not using the money for the "rescue" she worked with. [Appellants' Int. Brief, p. 1-2; p. 2, fn. 1]. Appellants have never argued before now that Respondent Slade had a fiduciary duty to Alice by virtue of being named as a beneficiary in her will. Furthermore, there is no evidence or law to support this new claim. Appellants' citation to the law of other jurisdictions supporting a totally different proposition of law is of no avail and is inapplicable [See Appellants' Int. Brief, p. 2, fn.1 ("In New York case Mandarin Trading Ltd. v. Wildenstein, 16 N.Y. 3D 173, 178 (2011), the court held that a special relationship (sic) where the defendant owes fiduciary duties to the plaintiff required the defendant to disclose information.")].

In the very next paragraph Appellants misstate South Carolina statutory law claiming S.C. Code § 62-2-601 "mandates reformation of a will 'even if unambiguous, to conform the

terms of the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement." (emphasis supplied). First, nothing in §62-2-601 mandates reformation of a will, even under the conditions indicated in the remainder of that provision. See S.C. Code Ann. § 62-2-601(B)("Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous . . .)(emphasis added). Subsection (A) of that provision clearly provides " the intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions." Appellants neither pleaded in their Complaint, asked the trial court to find, or presented evidence to demonstrate that the terms of Alice's will were in any way ambiguous so as to bring the will within the effect of §62-2-601, [see generally, Complaint]. Moreover, neither the trial court or the jury made any find whatsoever that Alice's will contained any ambiguity.

Appellants argue in similar "stream of conscious" manner through the remainder of their Introduction section, making various references to trust law and the oral creation of trusts [Appellants' Int. Brief, p.3] and to the standing of third-parties (not the personal representative) to take legal action to protect a decedent's wishes [Id.]. Appellants fail, however, to point to any aspect of this case where those issues are relevant or applicable.

2) **Appellants "Statement of the Issues"** violates Rule 208(b)(1)(B), SCACR which requires a statement of each of the issues presented for review. The statement shall be concise and direct as to each issue. Appellants Issues 1 and 2 each contain multiple issues collapsed into one, and in both, Appellants have improperly included issues which were never before the trial court, and never ruled on. For instance, in Appellants' Issue 1, Appellants are essentially assigning error to the lower court's finding that Appellants lacked standing to prosecute the will contest matter and the equitable causes of action, where the lower court only ruled that

Appellants lacked standing to pursue the equitable claims. Moreover, Appellants' Issue 1, set forth in the statement of issues does not relate to the argument under the corresponding heading in the body of their brief. Appellants, in their Argument section, merely set out the issue in the heading, and then proceed with a totally different argument having to with latent ambiguities in a will, and equitable deviation from the terms of a trust. The will contest on appeal did not involve ambiguity in the terms of the will, equitable deviation, reformation of the will, or a trust.

Likewise, Appellants' Issue 2 contains at least 6 separate issues. As set out in the statement of issues, Appellants Issue 2 is "[w]hether Appellants were deprived of a fair trial based on the trial court's independent investigation, secret meeting, ex-parte communications with Respondents' counsel, trial rulings (including demand for private financial records), and bias mandate reversal." This issue violates Rule 208(b)(1)(B), SCACR in that it is not a brief and concise statement as to a single issue, but rather a broad general statement of several issues, before, during, and after the trials purporting to have deprived Appellants of a fair trial. Broad, general statements may be disregarded by the Court, or may be cause for dismissal of the appeal.

3) **Appellants' "Statement of The Case"** violates Rule 208(b)(1)(C), SCACR in the same manner as the Introduction, as it is comprised almost entirely of disputed facts, editorialization, and improper argument with virtually no citation to material to be included in the Record. Here again, Appellants also attempt to raise issues they abandoned in the trial court [see e.g. Appellants' Int. Brief, p. 8 fn. 5, p. 9 (references to unjust enrichment of Respondents due to actions of Respondent Lisa Fisher][2], and include material which was irrelevant to the will contest and irrelevant to this appeal. Most troubling, however, is that Appellants replete their

[2] Respondents address Appellants' abandonment at trial of each of their equitable causes of action other than for constructive trust in Section II of Respondents' Argument.

"Statement of the Case" with allegations of fact, which are not only disputed, but are patently false.

By way of example, Appellants state as fact 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 plaintiffs and is contrary to South Carolina law." [See Appellants' Int. Brief, p. 5]. However, Alice, Appellants, and Appellants' former attorney were all present at the hearing at which the probate court appointed Appellant Lisa Fisher as conservator and ordered that neither Alice, nor anyone on her behalf, may revise or revoke her will or execute a new will, unless specifically ordered by the Probate Court. [See Hon. Tamara Curry's Order Appointing Lisa Fisher as Guardian and Conservator of Alice Shaw-Baker, signed November 19, 2009]. Similarly, Appellants state as fact that "[a]fter the bench trial, the Judge actively assisted Respondents by assisting them with "collection" of monies, without notice to Appellant." [See Appellants' Int. Brief, p. 7]. No such thing occurred, and Appellants cite to no materials or make reference to nothing in any transcript which gives credence such misrepresentation.

Without addressing each and every instance in which Appellants' Statement of the Case makes material misrepresentations of facts, Respondents object it, in its entirety, as improper and not supported by the materials to be included in the Record.

3) **Appellants' Standard of Review** violates Rule 208(b)(1)(D), SCACR by failing to set forth the standard of review in a separate section at the start of the argument on each of her multiple issues, and by failing to accurately and completely set forth the appropriate standard of appeal for review of sanctions under the South Carolina Frivolous Proceedings Sanctions Act, and under Rule 11, SCRCP.[3]

[3] Appellants improperly set forth the standard of review for sanctions under S.C. Code Ann. § 15-36-10 (*et seq.*), South Carolina Frivolous Civil Proceedings Sanctions Act, and Rule 11, SCRCP simply as a *de novo* review. [See Appellants' Int. Brief, p. 10]. However, the abuse of discretion standard plays a role in the appellate review of a

4) **Appellants' Section E "Relevant Orders".** Appellants' include and an additional section not called for under Rule 208, SCACR. In this Section Respondent Lisa Fisher sets forth excerpts of the trial judge's findings in various order of the trial court, without any context, in what appears to be her attempt to claim that those findings are damaging to her reputation, and demonstrate the court's contempt for her personally. [See Appellants' Int. Brief at 10, 11, fn. 8]. Damage to Lisa Fisher's reputation is not an issue on appeal, nor is it relevant. Appellants next argue that reversal of the orders is mandated because they claim Judge Hughston's order contained findings that "are not based on equity, and not on point with regard to the issues in the case," [see Appellants' Int. Brief, p. 11], and that they are vague in dereliction of Rule 52, SCACR [Id.]. Appellants fail to specify which order they claim contains vague findings, how the findings were in any way vague, and fail to provide legal analysis and citation to authority to support their position. They merely state it. Appellants provide no legal analysis in support of that position, and they have not included the argument in their Issues on Appeal. An issue that is raised in a brief by not supported by authority may be deemed abandoned and not considered on appeal. See Broom v. Jennifer J, 403 S.C. 96, 742 S.E.2d 382 (2013), see also, Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues.").

5) **Appellants' Section F "Evidence that Alice Shaw-Baker Intended Animal Charities to Inherit her Probate Estate and Non-Probate Assets".** This section is also improper and violates Rule 208, SCACR in that it, once again, is extraneous to the Argument section, and makes improper and fallacious argument without any reference to South Carolina

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sanctions award. Ex parte Gregory, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008)(citing Father v. South Carolina Dep't of Soc. Servs., 353 S.C. 245, 579 S.E 2d 11 (2003)).

Authority. Appellants again attempt to raise the issue of ambiguity in the will, which is not an issue before the court, and they apply misconstrued law to misrepresented testimony of Respondent Slade at trial, without citation to the relevant testimony in the transcript. [See e.g. Appellants Int. Brief, p. 14 ("Respondent Slade never told Alice that she had **no** intention of using Alice's money to buy land, therefore her silence, when she had a duty to disclose to Alice her true intentions . . .")].

6) **Appellants' Argument Section.** Appellants' Argument I (Appellants' Int. Brief, pp. 15-17); Argument II, subsections A (pp. 18-19), B (pp. 19-23), C (2)(p. 24) and (3)(p. 25), D (pp. 25-27), E (pp. 27-29); Argument III, subsection A (pp. 30-32); Argument IV, subsection A (pp. 32-35) and B (pp. 35-36); Argument V (p. 36). In each of the foregoing argument designations, which represents nearly the totality of Appellants' brief, Appellants either fail to present any argument related to the issue, present only broad conclusory statements and allegations without supporting authority or citation to the Record[4], or argue issues which were not raised in the trial court below[5].

The preceding sections are not only improper and wasteful, but they represent blatant violations of the Appellate Court Rules related to the presentation of the appeal and the content of the briefs. Respondents submit the Court should dismiss Appellants' appeal due to the

[4] South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. See Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App.1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

[5] Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); Long v. Dunlap, 87 S.C. 8, 68 S.E. 801 (1910) (Supreme Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court); Gaffney v. Peeler, 21 S.C. 55 (1884) (question of law which was not presented to or passed upon by the trial court cannot be raised on appeal); Rule 210(c), SCACR (record on appeal shall not include matter which was not presented to lower court).

violations of the Rules and other defects with their brief discussed above. They, nevertheless, address Appellants' arguments below.

II. The Trial Court Correctly Dismissed Appellants' Bifurcated Causes of Action for Lack of Standing (Appellants' Issue I).

Appellants claim the judgment must be reversed because they have standing to prosecute both the will contest matter and their equitable causes of action for the benefit of animal charities. Appellants do not appear to assign any error on the part of the trial court, much less address any ruling the trial court made with regard to the issue of standing. The trial court did not rule that Appellants did not have standing to pursue the will contest matters, although it did ultimately dismiss their equitable causes of action on that basis. [See Order of Judge Hughston, June 29, 2018, p. 2]. Appellants do not indicate what ruling, if any, they challenge. They begin their standing argument by citing to the Probate Code which provides that any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed . . ." This, they claim, endows Betty Fisher with standing to seek determination of the rights over the property (presumably the property belonging to the Estate of Alice Shaw-Baker). However, any standing which this statute could confer on Betty Fisher would necessarily be limited to estate property and assets, and only to the extent those were not effectively disposed of by Alice's will. The statute would have no effect of conferring standing on Betty Fisher with regard to Alice's non-probate assets.

However, the trial court did not find Appellants lacked standing to pursue the will contest matters, and Appellants fail to cite to any authority or make any argument in support of her standing to pursue her equitable causes of action (constructive trust on behalf of animal charities) against Alice's non-probate assets.

Lisa Fisher claims she has standing through S.C. Code Ann. § 62-5-425(d) and §62-7-707(a) under which she states she has the duties of a trustee and the powers to protect the trust property. Other than merely stating it as a fact, Appellants provide no reasoned argument as to why that would be the case, particularly because there is no trust involved in this matter. Where an appellant fails to provide argument or supporting authority for his assertion, he is deemed to have abandoned the issue. Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991).

Appellants' discussion of ambiguity in the language of a will, of equitable deviation, and of reformation are all non sequitur. Moreover, none of those issues support an argument for standing, none were pleaded in Appellants' Complaint [see Complaint], nor were the issues raised or tried by consent before the lower court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Finally, Judge Hughston ruled in favor of dismissing Appellants equitable causes of action only after he held a bench trial on them, took evidence, and heard testimony.[6] Judge Hughston also "considered the equitable principals that relate to a constructive trust and [found] by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust." [Id.]. Because the trial court has already heard and ruled on the merits of Appellants' equitable causes of action, their Argument I is moot. See Wallace v. City of

[6] Judge Hughston states in his June 29, 2018 order, "[p]rior to the non-jury trial, Defendants moved to dismiss the 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 . . . I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing." [Order of Judge Hughston, June 29, 2018, p. 2]

York, 276 S.C. 693, 281 S.E.2d 487 (1981); Grant v. Osgood, 241 S.C. 104; 127 S.E.2d 202 (1962)(Issues which have become moot are not a proper subject of review).

III. Appellants Were Not Deprived of a Fair Trial (Appellants' Issue II).

A. Appellants argue generally that they were deprived of a fair trial, and then string together allegations, again without providing any legal authority for the propositions they wish to prove, related to alleged occurrences before, during, and after the jury and bench trials. Appellants take the position that prior to the bench trial, Judge Hughston engaged in independent investigation of the facts of the case by looking at the files in this and the related conservatorship matters, and in requiring the parties to produce all discovery and that as a result, the suffered harm. Appellants do not go so far as to indicate how they were harmed, nor do they cite to any authority to support their belief that a judge looking at the files and discovery in a case over which he is presiding is in any way improper. Neither do they provide any indication that any review of the files prejudiced them in some way. Appellants blindly assert the proposition that pre-judging the issues deprives the proceeding of impartiality and denies due process [Appellants' Int. Brief, p. 19], but they fail to demonstrate how the trial judge, in this matter, pre-judged anything.

B. Next Appellants argue that they were deprived a fair trial because they claim that after the will contest and the equitable trials, the judge held a secret hearing with the Respondents, without notice to them which they claim somehow prejudiced them. Not only is it patently untrue that the trial judge held a "secret hearing" with Respondents, but Appellants again fail to indicate in any way how they suffered prejudice by any communications they allege were ex-parte, particularly considering the trials had already taken place and the issues decided. Furthermore, as is apparent from the transcript, which Appellants set out in their brief, the

communications at issue related to purely administrative matters (releasing Estate funds and property held in the court to the personal representative). Furthermore, this Court held in Burgess v. Stern, 311 S.C. 326, 428 S.E.2d 880, cert. denied, 510 U.S. 865, 114 S.Ct. 186, 126 S.Ed.2d 145 (1993), that ex parte communications do not constitute grounds to reverse court orders unless the record reflects partiality or prejudice. Review of the Record demonstrates neither is the case in this matter.

C. Appellants next claim they were deprived of a fair trial because of errors during the will contest. First, Appellants argue the trial court erred in finding Lisa Fisher was disqualified under the Dead Man's statute to testify as to what Alice told her about her will. For this proposition, Appellants cite to McBeth v. Bishop, 278 S.C 443, 298 S.E.2d 441 (1982) which held that testimony incompetent under the Dead Man's Statute is admissible if no objection is made on that ground. (emphasis supplied). However, here, Lisa Fisher's testimony regarding anything Alice allegedly told her regarding her will and estate was disallowed because of objections interposed by counsel for Respondents. [See Jury Trial Trans., 143-154].

Subsections 2 and 3 of Appellants' arguments, Exclusion of expected testimony of Dr. Waid, and Exclusion of evidence of Alice Shaw Baker's intent are merely headings without any argument, and are abandoned. See Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App.1991), supra.

D. Appellants' claim that the trial court demonstrated bias against them in the proceedings is unsupported by authority, other than California law, but rather reads as a list of grievances regarding Judge Hughston's orders and rulings. There is no argument at all and Appellants do not specify how the language in the orders manifests prejudicial bias.

E. Appellants next argue that Judge Hughston's order that Appellants provide their financial information to the Court amounts to a violation of their Constitutional rights and statutory provisions regarding punitive damages cases. First, without giving credence to the idea that the Constitution or any statute protects a party's financial information, this is not a case in which punitive damages have been awarded. Again, Appellants merely state a conclusory statement of law containing the words "Constitutional right" without providing any analysis or application whatsoever as to how Judge Hughston's order would be violative of Appellants' privacy rights. Appellants brought this action and have placed themselves within the court's authority to require that such information be provided to the court ("for [its] eyes only" in this case). [See Email Correspondence regarding Lisa Fisher's financial disclosure, March 16, 2018]. Appellants demonstrate no error in this argument.

IV. The Trial Court Did Not Improperly Instruct The Jury With Regard To The Law Related To Revocation Of A Will. (Appellants' Issue III).

Appellants next argue that the trial Judge's instructions regarding Mrs. Shaw-Baker's ability to revoke her will were in error. Appellants have not demonstrated an abuse of discretion, nor have they shown in the record how the instructions were in error. Appellants' argument that the probate court order should be void is not only entirely wrong, but it is irrelevant to the jury instructions. Moreover, Rule 201(g) of the South Carolina Rules of Evidence requires the Court to instruct the jury to accept as conclusive any fact judicially noticed. Judge Hughston took judicial notice of Judge Curry's conservatorship order in which the court ordered that Mrs. Shaw Baker was an incapacitated person under South Carolina Code Section 62-5-111 and ordered that neither she nor anyone on her behalf could revoke or revise her will without further court order. Appellants have failed to show not only that Judge Hughston's jury instructions amounted to an abuse or discretion, but that there was any error at all.

V. Sanctions against Appellants were Warranted (Appellants' Issue IV).

Judge Hughston's orders are very clear as to his findings regarding Appellants' frivolous acts. In his Order of March 21, 2018, Judge Hughston indicates, "it is clear to me that Plaintiffs' claims were entirely frivolous, and for that reason I find Plaintiffs . . . are subject to sanctions . . ." [See Order of Judge Hughston, March, 21, 2018, p. 6]. "Plaintiffs' claims were completely baseless . . . " [Id.], "Plaintiffs have done nothing but delay and harass Defendants." [Id.] "Plaintiffs . . . were subject to sanctions based on the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is without proper grounds, or for oppressive and improper purposes." [Id.]. "This is the worst case of frivolous acts that I have experienced." [Id., p. 9].

Judge Hughston continues in his Order of May 29, 2018, following a hearing on Plaintiffs' SCRCP, Rule 59 motion for a new trial, at which he took substantial additional testimony, including from Plaintiffs, Respondents, and one of Alice Shaw-Baker's caregivers during her life:

> One cannot fully comprehend the total waste of time and expense in this case without reading everything including all of the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times 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.**

[Order of Judge Hughston, June 29, 2018, p. 1]. "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 to delay has been used and abused by Plaintiffs for no good reason." [Id., p. 4].

Judge Hughston's findings are even more specific with regard to the reasonableness of Plaintiffs' claims in the will contest and related actions:

> 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 mentally incompetent person lacks capacity to revoke a Will. **Without question, Alice Shaw-Baker lacked capacity to revoke her Will.** [Order of Judge Hughston, May, 29, 2018, p. 2-3].

Judge Hughston has specifically found Appellants' actions unreasonable and sanctionable according to the criteria set out in the FCPSA. This could not be more clearly stated than in his Order of June 29, 2018 at page 4:

> 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 existed other than that attorney's say so, and that attorney's mother is an heir if the Will was revoked along with some other heirs who are not parties, 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".** [Order of Judge Hughston, June 29, 2018, p. 5] (emphasis added).

Judge Hughston is an experienced trial judge with 33 years on the bench. [See Order of Judge Hughston, June 29, 2018, p. 7]. He had the benefit of experiencing the entirety of the proceedings and of intently studying the entire file multiple times. It was from his informed and experienced perspective that he made all of his findings, including his findings related to Plaintiffs' and Appellant's frivolousness, "by a standard of overwhelmingly clear and convincing

evidence considering the case as a whole, and that is the only way one can ever begin to understand this case – as a whole." [See Order of Judge Hughston, March 21, 2018, p. 1].

CONCLUSION

For the foregoing reasons, this Court should dismiss the Appellants' appeal or, in the alternative, affirm the trial court's orders.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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' Initial Brief and Designation of Matter to be Included in the Record by depositing a copy in the United States Mail, postage prepaid, on September 10, 2018, addressed to Appellants separately at their address of P.O. Box 91112, Long Beach, California 90809-1112.

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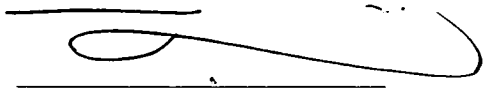

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