

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
WRIT GRANTED ON 08-02-18

Appellate Case No. 2017-000743

Betty Fisher and Lisa Fisher, Petitioners

v.

Bessie Huckabee, Respondent

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER PETITIONERS' APPEAL SHOULD BE DISMISSED WHEN THE ISSUES ON APPEAL HAVE BECOME MOOT AND THE PETITIONERS HAVE NO STANDING TO BRING THE APPEAL?
2. AND 7. WHETHER THE COURT OF APPEALS WAS CORRECT IN FINDING THAT THE PROBATE COURT HAD JURISDICTION TO APPOINT A SPECIAL FIDUCIARY IN THE CONSERVATORSHIP OF ALICE SHAW-BAKER?
3. WHETHER THE COURT OF APPEALS WAS CORRECT IN FINDING THAT RESPONDENT BESSIE HUCKABEE HAD STANDING TO REQUEST APPOINTMENT OF A SPECIAL FIDUCIARY WHEN THERE WAS PENDING LITIGATION REGARDING THE VALIDITY OF ALICE SHAW-BAKER'S WILL IN A SEPARATE MATTER?
4. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE PROBATE JUDGE'S FINDINGS AT THE HEARING ON APPOINTMENT OF A SPECIAL FIDUCIARY WERE SUFFICIENT TO CURE ANY RULE 11 DEFECTS?
5. WHETHER THE COURT OF APPEALS' REMAND OF THE ISSUE OF LISA FISHER'S REQUEST FOR COMPENSATION WAS CORRECT WHEN THE COURT MADE FACTUAL FINDINGS AS TO THE VALUE OF THE ESTATE BASED ON THE CONSERVATORSHIP ACCOUNTINGS THAT THE FORMER CONSERVATOR DRAFTED, SIGNED IN THE PRESENCE OF A NOTARY PUBLIC, AND FILED WITH THE PROBATE COURT?
6. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE PROBATE COURT'S ORDER FREEZING CONSERVATORSHIP ACCOUNTS AFTER IT WAS DISCOVERED THAT THE DISCHARGED CONSERVATOR HAD CONTINUED TO EXPEND CONSERVATORSHIP FUNDS WITHOUT AUTHORITY AND WITHOUT COURT AUTHORIZATION?
8. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE PROBATE COURT'S DENIAL OF LISA FISHER'S MOTION FOR EXTENSION TO TURN OVER CONSERVATORSHIP ASSETS PURSUANT TO COURT ORDER?
9. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE PROBATE COURT HAD AUTHORITY TO APPOINT A SPECIAL FIDUCIARY WITHOUT NOTICE PURSUANT TO SOUTH CAROLINA CODE ANN. § 62-3-614(E)?

STATEMENT OF THE CASE

Alice Shaw-Baker (hereinafter "Alice") died testate on February 25, 2009. (App. 203). In July 2008, guardianship and conservatorship proceedings were initiated in Charleston County Probate Court case number 2008-GC-10-088¹ due to Alice Shaw-Baker's incapacity. (App. 70, 73, 76). Alice's great-niece, Lisa Fisher, an attorney in California, sought appointment and was appointed permanent guardian and conservator for Alice on November 19, 2008, four months prior to Alice's death. (App. 28). On February 27, 2009, probate Judge Tamara Curry executed order granting fees in the amount of \$44,530.00 to be paid to Lisa Fisher as reimbursement for her legal expenses. (App. 38-41). Following Alice's death, Lisa Fisher requested fees in the amount of \$6,607.00 in April 2009.² (App. 50, 51, 205, 223). On July 21, 2009, Lisa Fisher requested additional fees in the amount of \$67,814.50.³ (App. 249-72).

Upon Alice's death, Lisa Fisher delivered Mrs. Shaw-Baker's last will to the probate court and Respondent Bessie Huckabee was appointed personal representative pursuant to said last will in Charleston County Probate Court case number 2009-ES-10-378.⁴ (App. 52, 204). Lisa Fisher and her mother, Betty Fisher, would-be intestate heir of Alice's estate, sought by petition to void appointment of the personal representative, contest the will, appoint an intestate heir as personal representative, appoint a special administrator and contest the beneficiary designations of additional non-probate assets. (App. 56, 287, 313). Petitioners removed these actions to Charleston County Court of Common Pleas case number 2009-CP-10-3010 by statutory right. (App. 315). John Hughes Cooper, Esquire was sponsor for Lisa Fisher's pro hac

¹ This case was subsequently transferred to Beaufort County and is still open as case number 2017-GC-07-37 for the limited purpose of reviewing Ms. Fisher's accountings pursuant to S.C. Code §§ 62-5-419 and 62-5-429(d).

² Lisa Fisher later wrote herself a check from conservatorship funds for \$6,090.00, the amount reflected in amended request for fees, without court authorization, after discharge as conservator. (App. 50, 51).

³ This amounts to an average of \$16,953.63 per month in conservator fees.

⁴ This case was subsequently transferred to Beaufort County and is still pending under case number 2017-ES-07-949.

vice appointment and represented Betty and Lisa Fisher⁵ in various actions, to include the will contest, which was tried in a bifurcated action in October 2017 and March 2018. (App. 782). Respondent and the beneficiary defendants prevailed on all causes of action, to include jury verdict finding that the Last Will and Testament of Alice Shaw-Baker, and thus the appointment of Respondent as Personal Representative, was valid. (Orders of Honorable Thomas Hughston, Jr. executed March 21, 2018 and July 9, 2018; Order (jury verdict) entered October 26, 2017, hereinafter "Jury Verdict").⁶

Lisa Fisher was discharged as conservator by Charleston County Probate Court Order executed May 11, 2009 and she was ordered to provide a final accounting and turn over all assets in her possession to Bessie Huckabee, as personal representative, within fifteen days. (App. 54). Ms. Fisher filed final conservatorship accounting on May 26, 2009, covering the period of January 1, 2009 through May 26, 2009, showing total estate assets in the amount of \$146,217.33 and total disbursements in the amount of \$123,405.45 for that period. (App. 238-45). The former conservator sought to maintain control over the estate assets by filing motions for extension to turn over estate assets. (App. 248, 273-80). During that time, Lisa Fisher did not file annual accountings for the estate for years 2009 or 2010, nor did she provide accounting information to the probate court or to attorney for personal representative when requested. (App. 282, 286, fn. 3). Former conservator filed Motion for Extension to turn over assets on May 13, 2011 and in response, the personal representative filed Motion to Appoint Special Fiduciary and opposition to Conservator's Motion for Extension. (App. 280, 281-82).

⁵ John Hughes Cooper, Esquire also acted as counsel for Alice Shaw-Baker during the guardianship/ conservatorship proceedings. (App. 105).

⁶ On September 5, 2018, Respondent filed *Motion to Supplement the Appendix on Appeal*. On September 7, 2018, Respondent mailed Motion for Judicial Notice for filing, pursuant to Rule 201(d), SCRE which states that "A court shall take judicial notice if requested by a party and supplied with the necessary information." Due to the expedited schedule in this matter, Respondent has included reference by title as designated in the *Motion for Judicial Notice*.

On June 1, 2011, Lisa Fisher filed Amended Conservatorship Annual Accounting for the period of December 23, 2008 through December 31, 2009, reflecting disbursements in the amount of \$233,378.99 (\$109,973.54 more than original "final conservatorship accounting"). (App. 292-300). She filed Conservator Annual Accounting for the period from January 01, 2010 through December 31, 2010 on the same date, reflecting additional disbursements in the amount of \$12,669.85 after she was discharged as conservator. (App. 302-09, 54). The Court ordered appointment of J. Heyward Harvey, Jr., Esquire as Special Fiduciary, finding that there was "an emergent need for authority as to [the] estate assets."⁷ (App. 55-56). The lower court froze accounts in the name of the Decedent pending transfer to the Special Fiduciary and further denied Petitioner Lisa Fisher's request for fees. (App. 59, 61). In the consolidated appeal, the Court of Appeals upheld the appointment of Special Fiduciary and the orders freezing assets. (App. 790). The issue of attorney's fees was remanded. (App. 790). Petitioners sought rehearing and the Court of Appeals denied Petitioners' request. (App. 805, 836).

Lisa Fisher did not turn over any estate assets to either a special fiduciary or to the personal representative until this Court ordered her to do so on June 13, 2018, almost a decade after she was discharged as conservator and ordered to turn over the conservatorship assets in her control. (Order of Supreme Court executed June 13, 2018 and filed June 14, 2018 in Appellate Case No. 2018-000566).

⁷ Court-appointed Special Fiduciary J. Heyward Harvey, Jr., Esquire died on January 18, 2015.

STANDARD OF REVIEW

“The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity.” University of Southern Cal. v. Moran, 617 S.E.2d 135, 136, 365 S.C. 270 (2005). “When legal and equitable causes of action are maintained in one suit, the court is presented with a divided scope of review.” Church v. McGee, 391 S.C. 334, 705 S.E.2d 481, 485 (Ct. App., 2011) “If probate proceedings are equitable in nature, then the circuit court on appeal may make factual findings according to its own view of the preponderance of the evidence.” In re Estate of Weeks, 495 S.E.2d 454, 459, 329 S.C. 251, 260 (Ct. App., 1997). “If the proceeding in the probate court is in the nature of an action at law, the circuit 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.” Id. “The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury.” Id. Actions for appointment of a special administrator are equitable in nature. See, Church, 391 S.C. at 343. An equitable standard of review does not require this court to ignore the findings of the trial judge who heard the witnesses. Id.

All of the issues presented in this appeal are equitable in nature as they pertain to the Probate Court’s appointment of a Special Fiduciary unless otherwise designated in the particular section, pursuant to Rule 208(b)((1)(D), SCACR.

ARGUMENT

I. PETITIONERS' APPEAL SHOULD BE DISMISSED AS THE ISSUES ON APPEAL HAVE BECOME MOOT AND PETITIONERS LACK STANDING TO BRING THE APPEAL.

a. THE ISSUE OF APPOINTMENT OF SPECIAL FIDUCIARY TO HOLD CONSERVATORSHIP ASSETS PENDING RESOLUTION OF THE WILL CONTEST IS MOOT AND THIS APPEAL SHOULD BE DISMISSED.

On May 11, 2011, the Charleston County Probate Court appointed J. Heyward Harvey, Jr., Esquire as Special Fiduciary to marshal and hold conservatorship assets pending resolution of the will contest in Mrs. Shaw-Baker's estate. (App. 55). The will contest was tried in October 2017 and March 2018. The issue of appointment of Special Fiduciary is now moot and the appeal should be dismissed. "When an event occurs while a case is pending on appeal so there remains no actual controversy between the parties, the case is moot and the appeal will be dismissed." First Union Nat. Bank of S.C. v. FCVS Commc'ns, 328 S.C. 290, 292, 494 S.E.2d 429, 430 (1997). "A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court." S.C. Ret. Sys. Inv. Comm'n v. Loftis, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). The function of appellate courts is not to give opinions on abstract questions, but to decide actual controversies injuriously affecting the rights of some party to the litigation; accordingly, issues which have become moot are not a proper subject of review. Wallace v. City of York, 276 S.C. 693, 281 S.E.2d 487 (1981); Grant v. Osgood, 241 S.C. 104; 127 S.E.2d 202 (1962); Berry v. Zahler, 220 S.C. 86, 66 S.E.2d 459 (1951). "Where the questions presented by an appeal are moot, the appeal will be dismissed." Schein v. Lamar, 284 S.C. 252, 255, 325 S.E.2d 573m 574 (Ct. App. 1985).

At the time Petitioners filed their Petition for Certiorari with this Court, they also had an action pending in the Circuit Court challenging the validity of the Last Will and Testament of Alice Shaw-Baker and related matters pertaining to Mrs. Shaw-Baker's estate. (App. 56, 287, 313). Although the Probate Court's order of May 11, 2009 discharged her as conservator and discharged her of any duty she had, Lisa Fisher refused to turn over the conservatorship assets pending trial on the will contest. (App. 248, 273-80). Jury trial on the validity of the Last Will and Testament naming Bessie Huckabee Personal Representative of the Estate of Alice Shaw-Baker was held in October 2017, with the jury finding that the Last Will and Testament, and thus Ms. Huckabee's appointment as personal representative, was valid. (Jury Verdict). Bench trial on the bifurcated equitable claims pertaining to Mrs. Shaw-Baker's estate was thereafter held in March 2018, and final orders upholding the validity of the will, dismissing Petitioners' remaining claims and ordering Lisa Fisher to turn over the estate assets to Bessie Huckabee were issued in March and June 2018. (Orders of Honorable Thomas Hughston, Jr. executed March 21, 2018 and July 9, 2018 in Fisher, et al. v. Huckabee, et al., 2009-CP-10-3010, Jury Verdict). This Court subsequently ordered Lisa Fisher to turn over all assets in her possession to the circuit court or to the personal representative. (Order of Supreme Court executed June 13, 2018, filed June 14, 2018). Lisa Fisher has turned over most of the conservatorship assets in her possession.⁸ (*Objection and Opposition to Informal Correspondence of Jessica Crowley Letter Dated June 25, 2018; Notice of Compliance with Order re Delivery of Alice Shaw Baker's Property and Assets*, received June 27, 2018 in Appellate Case No. 2018-000556) (hereinafter "Notice of Compliance").

⁸ In defiance of this Court's direct order to turn over all property, Lisa Fisher has taken it upon herself to retain some of Mrs. Shaw-Baker's property in violation of the June 13, 2018 Order. See Notice of Compliance.

Regardless of the outcome of Petitioners' appeals related to the will contest, the assets of the decedent are rightfully in the estate and no longer in the conservatorship, which has been terminated. (App. 52). Even if this Court reversed the appointment of Special Fiduciary, there is no scenario wherein the estate assets would be returned to the conservatorship of Alice Shaw-Baker. The claim regarding the Probate Court's orders freezing the conservatorship assets is also moot as all of the funds held in the conservatorship have been delivered to the Circuit Court pursuant to this Court's Order of June 13, 2018. (Order of the Supreme Court executed June 13, 2018 and filed June 14, 2018 in Appellate Case No. 2018-000566). The frozen accounts have been closed and Lisa Fisher no longer retains the estate assets as former conservator.

Petitioners' Issues 2 and 7 relate to the jurisdiction of the Probate Court to appoint a Special Fiduciary pending resolution of the will contest. This issue of appointment of a Special Fiduciary is now moot following trial on the will contest and should be dismissed. Issue 3 relates to personal representative Bessie Huckabee's standing to request appointment of a Special Fiduciary during the pendency of the will contest. The trial on the validity of Alice Shaw-Baker's last will and testament has occurred, confirming Bessie Huckabee's appointment as Personal Representative, and this issue is therefore moot and should be dismissed. Issue 4 regards to an alleged violation of Rule 11 notice in the filing of Respondent's Motion for Appointment of Special Fiduciary, which Petitioner claims should void the order. Voiding the Order would have no effect and the issue is therefore moot and should be dismissed. The Court of Appeals remanded the issue of conservatorship fees to the Probate Court and therefore Petitioners' Issue 5 is not properly before this Court and should be dismissed. Petitioners' Issue 6 pertains to the Probate Court's Orders freezing the conservatorship accounts. All money in these accounts has been turned over to the Circuit Court and the accounts have been closed. This

issue is therefore moot and should be dismissed. Petitioners' Issue 8 regards the Probate Court's denial of Lisa Fisher's Motion for Extension to turn over conservatorship assets to the Personal Representative. Lisa Fisher is no longer in possession of any of the conservatorship assets and this issue is therefore moot and should be dismissed. Issue 9 pertains to the alleged failure of Respondent to give notice of the Motion for Appointment of Special Fiduciary to Betty Fisher. The assets have been transferred to the estate and this issue is therefore moot and should be dismissed.

The issue of appointment of a Special Fiduciary to hold the conservatorship assets pending resolution of the will contest is moot, the assets have all been transferred to the estate, and all portions of this appeal relating to said appointment should therefore be dismissed.

b. PETITIONERS LACK STANDING TO BRING AN APPEAL ON BEHALF OF THE CONSERVATORSHIP OF ALICE SHAW-BAKER.

Petitioners have no standing to maintain their appeal on the issues on which this Court has granted Certiorari. "A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy. No justiciable controversy is presented unless the plaintiff has standing to maintain the action." Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct.App.1994). "A plaintiff must allege an actual controversy in which he has a personal stake." Energy Research Found. v. Waddell, 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988). "For a plaintiff to possess standing three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact, which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. Second, a causal connection must exist between the injury and the challenged conduct. Third, it must be likely that a favorable decision will redress the injury." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 753 S.E. 2d 846, 850 (2014) (internal citations omitted). The injury alleged cannot

be conjectural or hypothetical. Atc South, Inc. v. Charleston County, 380 S.C. 19, 669 S.E.2d 337 (2008).

Lisa Fisher has brought this appeal in her capacity as “former conservator” for Alice Shaw-Baker. Issues presented by Petitioner, to include 2, 3, 4, 6, 7 and 8, all pertain to Lisa Fisher’s role as conservator for Alice Shaw-Baker. Issue 5 regarding the probate court’s denial of Ms. Fisher’s request for fees has been remanded and so is not properly before this Court. Issue 9 pertains exclusively to Ms. Betty Fisher’s receipt of notice and cannot be argued by Lisa Fisher (see Section VIII, below).⁹ Lisa Fisher does not represent the estate of Alice Shaw-Baker and she has no duty under the law to retain the assets or act on behalf of the estate. In the May 11, 2009 Order discharging Lisa Fisher as conservator for Alice Shaw-Baker, Judge Curry found:

South Carolina Probate Code Section 62-5-425(c)(1) states that the Conservator, when satisfied that the disability has ceased, shall petition the court. That Petition is one for discharge. Subpart (d) of Section 425 informs the conservator, as part of her duty and under the jurisdiction of this Court, that if a protected person dies, the Conservator shall delivery [sic] the estate assets. The Court finds that upon the death of Ms. Shaw-Baker, the conservator should have petitioned this Court for discharge. The unambiguous meaning of this statute is to terminate the authority of the Conservator and deliver the estate assets to the Personal Representative of the estate. (App. 53).

Lisa Fisher and Betty Fisher cannot show that they have a personal stake in this appeal because the harm complained of pertains to the assets belonging to Alice Shaw-Baker and her estate, not to Lisa or Betty Fisher individually. See, Fisher v. Huckabee, Opinion No. 27765 (February 28, 2018) (no third party standing to act on behalf of the decedent). Petitioners cannot show an injury-in-fact arising out of any of the issues before this Court. Lisa Fisher is

⁹ Respondent contends that Betty Fisher received statutory notice by and through her counsel, John Hughes Cooper, although it was not required. (App. 281-84).

proceeding pro se and cannot argue in a representative capacity for Mrs. Shaw-Baker, Betty Fisher, or the Attorney General's office without engaging in the unauthorized practice of law.

Lisa and Betty Fisher lack standing to argue on behalf of the conservatorship estate of Alice Shaw-Baker and this appeal should therefore be dismissed.

Because each issue Petitioners have appealed is now moot and because they lack standing to maintain an appeal of those issues, the Court should dismiss the Petition outright. Respondent nevertheless will address the merits of each issue.

II. THE COURT OF APPEALS WAS CORRECT IN FINDING THAT THE PROBATE COURT HAD JURISDICTION TO APPOINT A SPECIAL FIDUCIARY (PETITIONERS' ISSUE I).

The Court of Appeals correctly affirmed the Probate Court's appointment of a Special Fiduciary to receive and hold estate assets based on the Probate Court's exclusive original jurisdiction over all subject matter related to estates of decedents to the fullest extent permitted by the Constitution. SC Code Ann. § 62-1-302(a) (2015). (App. 796). The Court of Appeals relied on Ulmer v. Ulmer for the proposition that South Carolina Code § 62-1-308(h) "does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease [on appeal] are those proceedings addressed in the orders from which an appeal was taken." 632 S.E.2d 858, 861, 369 S.C. 486, 491-92 (2006). (App. 797). The Court of Appeals held that the estate issues were not related to the appointment of a special fiduciary in the conservatorship and that "the probate court had jurisdiction to appoint a special fiduciary under sections 62-1-302(a) and 62-3-614." (App. 797). At the time the Special Fiduciary was appointed, the only issues on appeal related to appointment of the Personal Representative of the Estate of Alice Shaw-Baker. The order discharging Lisa Fisher as Conservator was never

appealed. The Court of Appeals' determination that the Probate Court had jurisdiction to appoint a Special Fiduciary is correct.

As an additional sustaining ground, this Court may find jurisdiction is proper on the basis of South Carolina Code Section 62-1-302(f), which provides that when an action is removed to the circuit court "the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that removal of such related matter . . . would be in the best interest of the estate or in the interest of judicial economy." It further provides that "[t]he removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction." S.C. Code Ann. § 62-1-302 (2017). South Carolina Code Section 62-5-403 provides that the Probate Court has "exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed . . ." S.C. Code Ann. §62-5-403(2) (2017).

Petitioners offer no statutory authority or case law to demonstrate how and why the Court of Appeals erred in finding the Probate Court had jurisdiction over the assets of Mrs. Shaw-Baker. Petitioners' argument is erroneous as it ignores the fact that two different probate cases are being discussed in their appeal: the Guardianship and Conservatorship of Alice Shaw-Baker wherein Lisa Fisher was appointed (and discharged as) Guardian and Conservator (probate case no. 2008-GC-10-088) and the Estate of Alice Shaw-Baker wherein Bessie Huckabee was appointed Personal Representative (probate case no. 2009-ES-10-937, Circuit Court case no. 2009-CP-10-3010). (App. 455, 287). The court did not remove the conservatorship matter to the Circuit Court pursuant to S.C. Code § 62-1-302(f) and therefore retained jurisdiction over the

conservatorship proceedings until such time as the assets were transferred to the personal representative of the estate.

Probate Code Section 62-5-306 states that “[t]he authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward.” Section 62-5-430(A) instructs that any interested person may petition the court to terminate the conservatorship. S.C. Code Ann. § 62-5-430(A) (2017). Petition for Discharge of Conservator was filed with the Probate Court on March 2, 2009 (App. 201) and, after proper notice and hearing, the Court executed Order discharging Lisa Fisher as conservator and terminating the conservatorship on May 11, 2009 (App. 52). The Court found that:

South Carolina Probate Code Section 62-5-425(c)(1) states that the Conservator, when satisfied that the disability has ceased, shall petition the court. That Petition is one for discharge. Subpart (d) of Section 425 informs the conservator, as part of her duty and under the jurisdiction of this Court, that if a protected person dies, the Conservator shall delivery [sic] the estate assets. The Court finds that upon the death of Ms. Shaw-Baker, the conservator should have petitioned this Court for discharge. The unambiguous meaning of this statute is to terminate the authority of the Conservator and deliver the estate assets to the Personal Representative of the estate . . . This Court finds that the conservatorship shall terminate based on the death of the ward. (App. 53).

Additionally, the Court ordered that Lisa Fisher be discharged in her duties as Conservator and that she had to provide an estate accounting and turn over all estate assets to the personal representative.¹⁰ However, the Conservatorship assets remained in Ms. Fisher’s control in contravention of Court Order after her authority as Conservator was terminated. In the hearing on appointment of Special Fiduciary, Judge Curry stated that:

Ms. Fisher is no longer able to act in her fiduciary capacity as conservator. There has never been a motion to have her restored in the interim, so when we look at the accountings, then everything should be status quo, and there should be, other

¹⁰ Lisa Fisher filed *Memorandum in Opposition to Discharge, etc* on April 29, 2009 (App. 219) and then, inexplicably, filed Petition for Discharge of Guardianship and Conservator [sic] on May 29, 2009 (App. 246) after she had already been discharged by Court Order.

than interest, no activity because she doesn't have the authority, and no one has the authority to act on behalf of the conservatorship . . ." (App. 548, 553, trans. 13).

There was no "duty" under South Carolina Code Section 62-5-425(d) once Ms. Fisher was discharged. That statute instructs that the conservator *shall* deliver the assets to a duly appointed personal representative. Ms. Fisher refused to turn the assets over to anyone.

Furthermore, S.C. Code Section 62-7-704(e) does not require a vacancy to exist for appointment of a special fiduciary, rather, it states that "Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint [a] . . . special fiduciary whenever the court considers the appointment necessary for the administration of the trust." The court may appoint a special fiduciary informally on the application of an interested person when necessary to protect the estate of a decedent or to take appropriate actions involving estate assets. S.C. Code §§ 62-7-704(e) and 62-3-614(1)(a) and (c).

To argue that no vacancy existed in the conservatorship pursuant to SC Code § 62-7-704 is not only inapposite under the code, it also has no merit. There was no subsequent removal by the Probate Court when it appointed a Special Fiduciary because Ms. Fisher was no longer the conservator and could not therefore be subsequently removed. Since the conservatorship assets had not been transferred to the personal representative, and thus to the estate, the Probate Court retained exclusive jurisdiction over the conservatorship assets pending delivery to the personal representative (or special administrator).

Ms. Fisher's only interest in Mrs. Shaw-Baker's estate is due to her short-lived and limited role as Conservator for the last four months of Mrs. Shaw-Baker's life. Lisa Fisher's argument that the Court could not make any orders pertaining to the conservatorship assets would result in the absurd situation where literally no court had authority over the considerable

assets of Mrs. Shaw-Baker until Lisa Fisher's *many* appeals were finally resolved and a so-called "proper person" was able to accept the assets.¹¹ Unfortunately, this is precisely what has happened, in spite of many orders to the contrary, at considerable detriment to the estate.

Petitioner makes no argument and cites no authority related to the second part of her argument regarding denial of Petitioners' due process and equal protection due to the Court's alleged consideration of improper evidence, speculation and prejudicial comments and therefore should be deemed abandoned. State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (brief conclusory statement inadequate to preserve issue); First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513, 513 (1994) (issues not argued in the request for relief are deemed abandoned and will not be considered on appeal); State v. Crocker, 366 S.C. 394, 399 n.1, 621 S.E.2d 890, 893 n.1 (Ct. App. 2005) (holding conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review, and noting failure to provide such argument and citation renders an issue abandoned).

The Court of Appeals' decision should be upheld as the Probate Court had jurisdiction over the conservatorship assets belonging to Alice Shaw-Baker.

III. THE SOUTH CAROLINA COURT OF APPEALS DID NOT ERR IN AFFIRMING THE FINDING THAT BESSIE HUCKABEE HAD STANDING TO SEEK APPOINTMENT OF A SPECIAL FIDUCIARY (PETITIONERS' ISSUE II).

The Court of Appeals correctly affirmed the lower court's finding that Bessie Huckabee had standing to seek appointment of a special fiduciary. The Court properly relied on S.C. Code Ann. §62-1-201(23), defining interested persons to include any persons "having a property right in or claim against . . . the estate of a decedent . . . which may be affected by the proceeding. It

¹¹ Ms. Fisher argues at once that she was "unlawfully removed" as conservator and that the probate court had no jurisdiction over her since she was no longer conservator. This is an irreconcilable proposition. Further, this claim arises out of Motions for Extension she filed with the Probate Court, a court which she then claimed had no jurisdiction over her.

also includes persons having priority for appointment as personal representative . . .”¹² (App. 797). The Court of Appeals cited Davis v. Davis for the proposition that “all persons having any interest [in the probate of a will] are deemed parties and concluded by the decision therein.” 214 S.C. 247, 258, 52 S.E.2d 192, 197 (1947). (App. 797). The Probate Code instructs that the commencement of a formal proceeding regarding the validity of the will “has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.” S.C. Code § 62-3-401; (see also Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873, 877 (2007) (Personal Representative defending against challenge to the will on allegations of his undue influence entitled to use estate funds to defend against the will contest).

Here again, Petitioner offers no valid argument and cites to no authority to support her contention that Bessie Huckabee lacked standing to ask the Probate Court to appoint a Special Fiduciary pending determination of the validity of Alice Shaw-Baker’s will. Instead, she poses the question: “Who is the [former] conservator to deliver assets to when the determination of status is not made?” The Probate Code amply provides response to this question: appointment of special administrator to collect, manage and preserve assets pending qualification of personal representative as described in § 62-3-614; appointment of a special fiduciary under § 62-7-704; application by conservator to act as personal representative pursuant to § 62-5-425(d); appointment of limited special administrator to be appointed for a specified time to perform particular acts, or as directed by the court under § 62-3-617; an order of temporary restraint restraining personal representative from performing certain acts under § 62-3-607. Rather, as is her custom, Ms. Fisher opted instead to defy multiple court orders to turn over the property,

¹² Bessie Huckabee is not only named Personal Representative in the contested will of Alice Shaw-Baker, and each of the previously executed wills of Alice Shaw-Baker going back to 1993, she is also a named beneficiary under each of Mrs. Shaw-Baker’s wills.

appeal each allowable appointment under the code, and to argue, without merit, that no solutions existed.¹³

Bessie Huckabee had standing to request appointment of a special fiduciary in this matter and the Court of Appeals' decision should therefore be upheld.

IV. THE COURT OF APPEALS WAS CORRECT IN FINDING THAT THE PROBATE JUDGE'S FINDINGS AT THE HEARING ON APPOINTMENT OF SPECIAL FIDUCIARY WERE SUFFICIENT TO CURE ANY RULE 11 DEFECTS (PETITIONERS' ISSUE III).

The standard of review for a lower court's determination regarding Rule 11 is an abuse of discretion standard. Jackson v. Speed, 326 S.C. 289, 310-11, 486 S.E.2d 750, 761 (1997). "Absent an abuse of discretion, the decision of the probate judge should be upheld on appeal." Coleman v. Dunlap, 306 S.C. 491, 493, 413 S.E.2d 15, 17 (1991). "An abuse of discretion arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." Id.

The Court of Appeals found that the Probate Court's findings made on the record at the hearing on appointment of special fiduciary were sufficient to cure any Rule 11 defects. (App. 798). The Court of Appeals relied on Jackson v. Speed, wherein the Court found that the trial judge's refusal to strike a motion based on a similar Rule 11(a) violation did not amount to abuse of discretion as the judge made a finding that an attempt to consult with opposing counsel about the matter would have been pointless, and this finding was enough to cure the deficiency. 326 S.C. 289, 310-11, 486 S.E.2d 750, 761 (1997).

¹³ Ms. Fisher's duty as conservator ended upon discharge. She is not admitted to practice law in South Carolina and cannot proceed in any sort of representative capacity. See Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705, 709 (2005) ("In light of our duty to ensure that parties are represented by people knowledgeable and trained in the law, we cannot say that the unauthorized practice of law simply results in an amendable defect. Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity.").

When asked to rule on the Petitioner's Motion to Strike based on failure to comply with Rule 11, the Court expressly found that Attorney Kouten had a right to file the Motion with the Court. (App. 552, trans. p. 10, ll 14-16, 798-99). Additionally, Respondent's Motion to Appoint Special Fiduciary states that Bessie Huckabee "has sought through discovery requests and subpoena to have these annual accountings provided and Lisa Fisher has not responded to these requests." (App. 281-82). The Motion is signed by the attorney and had been reviewed by the Court prior to making her finding as to the Rule 11 objection.

The Court of Appeals' decision that Judge Curry's findings regarding Rule 11(a) notice were sufficient to cure any alleged deficiency is correct and should be upheld.

- V. THE COURT OF APPEALS DID NOT ERR IN GIVING CREDIBILITY TO THE EVIDENCE PRESENTED IN THE RECORD REGARDING ACCOUNTINGS THAT LISA FISHER DRAFTED, SIGNED IN THE PRESENCE OF A NOTARY AND FILED IN THE PROBATE COURT (PETITIONERS' ISSUE IV).

Petitioners' argument that the findings of the Court of Appeals in its order *remanding* the issue of determination of Ms. Fisher's fees is without merit and is not properly before this Court. This issue should be dismissed. First, the Court of Appeals relied exclusively on its review of the accountings, which were filed by Ms. Fisher in the Conservatorship matter, in the formation of its opinions. (App. 800). Ms. Fisher signed each accounting in the presence of a notary public and filed them with the Court. (App.189, 292, 302). Each filed accounting states that "The Conservator declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and is true to the best knowledge and belief of the Conservator." (App. 189, 292, 302). The Court of Appeals expressly stated that it made "no determination of the entitlement to, or the reasonableness of the fees claimed." To argue here that "the court gives deference to alleged facts that are not supported by evidence" is utterly frivolous and has no basis in fact.

Furthermore, Ms. Fisher cannot show prejudice where the injury complained of has not occurred. (See, e.g. Atc South, Inc., 669 S.E.2d 337, 380 S.C. 191 regarding standing: “First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” (internal quotations omitted)). Ms. Fisher argues that the findings of the Court of Appeals *may* prejudice her in her recovery, a purely conjectural or hypothetical argument.

This argument is without merit, is not properly before this Court, Petitioner has no standing to make it, and it should therefore be dismissed.

VI. THE COURT OF APPEALS WAS CORRECT IN AFFIRMING THE PROBATE COURT’S ORDERS FREEZING CONSERVATORSHIP ASSETS HELD IN THE NAME OF ALICE SHAW-BAKER, AND LISA FISHER LACKS STANDING TO APPEAL THIS DECISION (PETITIONERS’ ISSUE V).

The Court of Appeals properly found that the probate court had the authority to freeze assets to protect the estate pursuant to S.C. Code Ann. § 62-1-302(a)(1) (probate court has exclusive original jurisdiction over all subject matter related to estates of decedents) and Greenfield v. Greenfield, 245 S.C. 604, 611, 141 S.E.2d 920, 924 (1965) (probate court has the authority to issue orders in the nature of injunctions) (App. 801).

Petitioners’ brief does not address the findings of the Court of Appeals or assert where there was error. Rather, Petitioners appear to address the Court’s rationale for affirming the probate court’s separate order appointing a Special Fiduciary. (App. 802). Her argument does not explicate where the Court of Appeals’ decision was erroneous as to the order freezing the assets belonging to Alice Shaw-Baker.¹⁴ Petitioner also misinterprets S.C. Code 704(e) to require an “emergent need” (for appointment of special fiduciary). This statute imposes no such requirement. Her argument should be deemed abandoned and dismissed. McCall v. IKON, 380

¹⁴ While Appellant frequently claims that her Due Process and Equal Protection rights have been violated, she fails to explain how in any of her arguments.

S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008) (An appealed order comes to the appellate court with a presumption of correctness, with the burden on appellant to demonstrate reversible error, and the appellate court is obliged to reverse when error is called to its attention, but it is not in the business of figuring out on its own whether error exists); Crocker, 366 S.C. at 399 n.1, 621 S.E.2d at 893 n.1 (Conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review, and failure to provide such argument and citation renders an issue abandoned).

Additionally, Lisa Fisher lacks standing to bring this claim. “For a plaintiff to possess standing three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact, which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. Second, a causal connection must exist between the injury and the challenged conduct. Third, it must be likely that a favorable decision will redress the injury.” Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 753 S.E. 2d 846, 850, 407 S.C. 67 (2014) (internal citations omitted). The injury alleged cannot be conjectural or hypothetical. Atc South, Inc., 669 S.E.2d 337, 380 S.C. 191.

Lisa Fisher was the discharged conservator holding funds that belonged to Alice Shaw-Baker. She has not and cannot show how freezing the accounts of another person caused her any injury-in-fact. Appellant misapplies Grosshuesch v. Cramer, where the relief sought by the plaintiffs was an actual injunction freezing the assets of defendants who had allegedly stolen money from them. 367 S.C. 1, 5, 623 S.E.2d 833, 835 (2005). That case does not apply in this instance since the frozen assets did not belong to Lisa Fisher and were already under the jurisdiction of the probate court. Appellant cannot show any of the elements to prove that she

has or will suffer prejudice because the funds were not hers, she has no standing. This question should therefore be dismissed.

VII. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE PROBATE COURT'S DENIAL OF LISA FISHER'S MOTION FOR EXTENSION (PETITIONERS' ISSUE VI).

The standard of review concerning the lower court's denial of a motion for extension is an abuse of discretion standard. Sheppard v. Kimbrough, 282 S.C. 348, 355, 318 S.E.2d 573, 577, (Ct. App. 1984). "Absent an abuse of discretion, the decision of the probate judge should be upheld on appeal." Coleman, 306 S.C. at 493, 413 S.E.2d at 17. "An abuse of discretion arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." Id.

The Court of Appeals was correct in finding that under the Rules of Civil Procedure and case law, the decision to grant or deny a Motion for Extension was within the sound discretion of the probate court. (App. 803). It is at the discretion of the court to allow or deny a motion for extension of time. Sheppard, 282 S.C. at 355, 318 S.E.2d at 577. "Unless the denial of a continuance clearly constitutes an abuse of discretion, the trial court's exercise of discretion will not be interfered with." Id.

Petitioner does not cite any statutory authority in this section of her brief, although she makes reference to statutory law. It is impossible to divine exactly what her argument is. When a party fails to provide arguments or supporting authority for her assertion, she is deemed to have abandoned the issue. First Sav. Bank, 314 S.C. 361, 444 S.E.2d at 513 ("mere allegations of error are not sufficient to demonstrate an abuse of discretion."). An appealed order comes to the appellate court with a presumption of correctness, with the burden on appellant to demonstrate reversible error, and the appellate court is obliged to reverse when error is called to its attention, but it is not in the business of figuring out on its own whether error exists. McCall, 380 S.C. at

659-60, 670 S.E.2d at 701. Conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review, and failure to provide such argument and citation renders an issue abandoned. Crocker, 366 S.C. at 399 n.1, 621 S.E.2d at 893 n.1.

Appellant has not presented an argument sufficient for response by Respondent and no error is asserted. This argument should therefore be treated as abandoned and be dismissed.

VIII. THE COURT OF APPEALS DID NOT ERR IN FINDING THAT BETTY FISHER WAS NOT ENTITLED TO NOTICE (PETITIONERS' ISSUE VII).

The Court of Appeals was correct in determining that Betty Fisher was not entitled to notice of the proceedings to appoint a Special Fiduciary to marshal the conservatorship assets of Mrs. Shaw-Baker. The Court properly relied on the statutory authority granted to the Probate Judge under Probate Code § 62-3-614 (“[a] special administrator may be appointed . . . upon application of an interested party when necessary . . . to take appropriate actions involving estate assets . . . if it appears to the court that an emergency exists, appointment may be ordered without notice.”). (App. 803-4).¹⁵

John Hughes Cooper was attorney for both Lisa and Betty Fisher in the will contest action. “Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney.” SCRPC Rule 5(b)(1). Attorney for Personal Representative filed Certificate of Service certifying that Motion to Appoint Special Fiduciary was mailed to John Hughes Cooper, Esquire on May 19, 2011. (App.

¹⁵ In conservatorships, the S.C. Code provides: “Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the request to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing.” S.C. Code Ann. § 62-5-406 (2017).

281). Betty Fisher was not a party to the conservatorship case. Any argument that Betty Fisher was not given notice is disingenuous and should be dismissed.

Additionally, Lisa Fisher is proceeding *pro se* and cannot argue in a representative capacity on behalf of Betty Fisher or the Attorney General on behalf of the unnamed animal charities. (See Joseph v. S.C. Dep't of Labor, 417 S.C. 436, 449, 790 S.E.2d 763, 770 (2016) (fundamental prerequisite that the plaintiff have a personal stake in the matter and has sustained an injury-in-fact), see also Rogers Townsend & Thomas, PC v. Peck, 419 S.C. 240, 244, 797 S.E.2d 396, 398 (2017) (“Generally, the practice of law includes the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.”).¹⁶ This argument is without merit and should be dismissed.

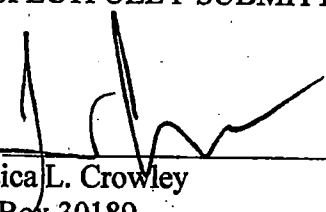
CONCLUSION

For the foregoing reasons, this Court should dismiss the Petitioners' appeal, or, in the alternative, affirm the Court of Appeals' opinion.

¹⁶ “Under the South Carolina Constitution, this Court has the duty to regulate the practice of law in South Carolina.” Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 486, 560 S.E.2d 612, 617 (2002); S.C. Code Ann. §40-5-310:

No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

RESPECTFULLY SUBMITTED,


By: _____
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THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
WRIT GRANTED ON 08-02-18

Appellate Case No. 2017-000743

Betty Fisher and Lisa Fisher, Petitioners

v.

Bessie Huckabee,Respondent

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Amended Final Brief in the above-referenced case upon the following parties by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2018 (and via electronic mail) addressed as follows:

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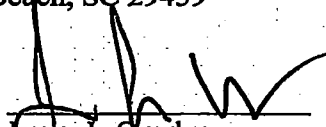
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