

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Diane Schafer Goodstein, Circuit Court Judge

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Lower Court Case No. 2017-CP-1006629  
Appellate Case No. 2018-001332

Ex Parte Lisa Fisher..... Appellant

In Re Bessie Huckabee ..... Respondent

v.

Candace Rickborn ..... Defendant

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**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

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COMES NOW Bessie Huckabee, Personal Representative for the Estate of Alice Shaw-Baker, Respondent in the above captioned appeal, and pursuant to Rule 240 (a) and (c), SCACR, hereby files her Memorandum in Support of Motion to Dismiss Appeal, showing this Court as follows:

FACTS

This matter relates to real property belonging to the Estate of Alice Shaw-Baker. Mrs. Shaw-Baker died testate on February 25, 2009. Prior to her death, beginning in late 2007, Mrs.

Shaw-Baker began manifesting symptoms associated with dementia, which progressed through 2008. On August 14, 2008, the Charleston County Probate Court found Mrs. Shaw-Baker to be an incapacitated person and appointed her a temporary guardian and conservator, who provided statutory notice of the conservatorship proceedings to Mrs. Shaw-Baker's only known family members who lived in California. On receiving notice of the conservatorship proceedings, Appellant Lisa Fisher travelled to South Carolina and petitioned the Probate Court to be appointed as Mrs. Shaw-Baker's permanent guardian and conservator, which the Probate Court granted on November 19, 2008.

After Mrs. Shaw-Baker died in February of 2008, Lisa Fisher filed her original May 21, 2001 will with the Probate Court, which the Court accepted for probate. On March 11, 2009, pursuant to the terms of the will, the Probate Court appointed Bessie Huckabee as personal representative for Mrs. Shaw-Baker's estate. Concurrently, the Probate Court discharged Lisa Fisher as guardian and conservator for Mrs. Shaw-Baker and instructed her to make a final accounting and turn over all of the assets in her possession and control to Bessie Huckabee for administration. On April 27, 2009, Lisa Fisher and her mother Betty Fisher, would-be intestate heir of Mrs. Shaw-Baker, filed an action in the Probate Court (removing it to the Circuit Court) challenging the validity of the will (Civil Action No. 2009-ES-10-0378).<sup>1</sup> The Fishers' complaint alleged 11 causes of action, including that Mrs. Shaw-Baker revoked the will by tearing up a copy of it, because they claim Ms. Shaw-Baker's true intention was to leave all of her estate and non-probate assets to unspecified animal charities.

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<sup>1</sup> It is undisputed that prior to coming to South Carolina in August of 2008 to participate in the conservatorship proceedings, Lisa Fisher had never met Mrs. Shaw-Baker in person, and her mother Betty Fisher, who is currently in her 80's, had not seen her since Betty Fisher was a child.

On February 24, 2012, the Fishers also filed an action against Bessie Huckabee and the other named beneficiaries in Mrs. Shaw-Baker's will, individually, and against their attorney, purportedly as "real representatives" acting on behalf of Mrs. Shaw-Baker's estate. Thereafter, based on her own claims against Bessie Huckabee, Lisa Fisher refused to acknowledge Ms. Huckabee as the duly appointed personal representative. In the following 9 years, Lisa Fisher refused to turn over to Ms. Huckabee the assets and funds of Mrs. Shaw-Baker's estate.<sup>2</sup>

On October 23, 2017, the parties tried the Fishers' will contest action to a jury, which returned a verdict upholding Mrs. Shaw-Baker's will and finding that she had not revoked it. During the will contest trial, the Fishers called Candace Rickborn, a former caretaker for Mrs. Shaw-Baker hired by Lisa Fisher, to testify for them, and against the beneficiaries named in the will. Ms. Rickborn's testimony at trial revealed that she was currently residing in Mrs. Shaw-Baker's home, and had been living there, without paying any rent or utilities, since Mrs. Shaw-Baker's death.

Following the jury's verdict in the will contest upholding Mrs. Shaw-Baker's will, Bessie Huckabee, as personal representative, served Ms. Rickborn with a 30-day notice to vacate. On December 8, 2017, when Ms. Rickborn failed to vacate from Mrs. Shaw-Baker's home, Ms. Huckabee commenced an ejectment proceeding in the Charleston County Magistrate Court. On January 10, 2018, the Magistrate found the residence properly belonged to the Estate of Alice Shaw-Baker, and that Bessie Huckabee, as the named and appointed personal representative for the estate had standing to bring the ejectment action. Despite Lisa Fisher's efforts to participate in the ejectment show cause hearing, the Court found that she had no legal interest in the

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<sup>2</sup> As a basis for her refusal to turn over the estate assets and funds, Lisa Fisher argued that S.C. Code Ann. § 62-7-425(d) created in her an affirmative duty to retain all assets and funds belonging to Alice Shaw-Baker's estate, and to only turn them over to the "proper person," despite multiple court orders that she turn over all such assets and funds to Bessie Huckabee.

property, and therefore had no standing to participate. On January 30, 2018, the Magistrate issued her return and writ of ejectment against Candace Rickborn. On December 28, 2017, Ms. Rickborn appealed the writ of ejectment, and posted an appeal bond on January 17, 2018 allowing her to remain in the residence during the pendency of the appeal. Lisa Fisher did not move the Magistrate for reconsideration or appeal the Magistrate's finding as to her standing to participate.

On May 22, 2018, the Circuit Court held a hearing on Ms. Rickborn's appeal of the ejectment, at which hearing Ms. Rickborn was represented by independent counsel. Moments before the hearing started, Lisa Fisher filed a Motion to Intervene and as Joinder, which she served on counsel for Mrs. Shaw-Baker's Estate and her beneficiaries as the hearing began.<sup>3</sup> Immediately following the eviction appeal, and having heard Judge Goodstein's rulings from the bench, Lisa Fisher filed a 226-page motion for emergency interim relief and for supersedeas with the Supreme Court on May 22, 2018. In response, on May 24, 2018, the Supreme Court issued a temporary stay of all orders and proceedings in all cases related to the Estate of Alice Shaw-Baker. Thereafter, on June 13, 2018, the Supreme Court entered an Order lifting the temporary stay, and ordered Lisa Fisher to deliver all real and personal property belonging to the Estate of Shaw-Baker to the personal representative, Bessie Huckabee, within seven days of the Order. The following day, on June 14, 2018, counsel for the Estate of Alice Shaw-Baker sent Judge Goodstein by e-mail (with a copy to all parties) a copy of the Supreme Court's June 13, 2018 Order lifting the temporary stay, and separate proposed orders affirming the eviction of Candace

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<sup>3</sup> Lisa Fisher filed her Motion to Intervene and as Joinder in contravention of the explicit sanction restraining her from making any further filings in the Circuit Court Judge Thomas Hughston imposed on her following the will contest action as a penalty under S.C. Code Ann. § 15-36-10, *et seq.* for what he deemed "the worst case of frivolous acts [he had] experienced. [See March 21, 2018 Order of Judgment, Hon. Thomas L. Hughston at p. 8; April 3, 2018 Order of Judgment Hughston at p. 2].

Rickborn and denying Lisa Fisher's motion to intervene. The same day, upon receiving a copy of the e-mail with the proposed orders attached, and prior to Judge Goodstein even entering any orders, Lisa Fisher filed with the Circuit Court her motion for reconsideration and objections to the orders. Incredibly, in her motion for reconsideration and objections to the orders affirming the ejection and denying her motion to intervene, Lisa Fisher argues that Judge Goodstein's orders (which at that time did not yet exist), were superseded by the Supreme Court's Order of June 13, 2018 directing her to deliver all real and personal property to the personal representative, Bessie Huckabee, and "therefore the orders related to Candace Rickborn are erroneous and meant to harass her for acting on behalf of Lisa Fisher."

On June 21, 2018, the Supreme Court having lifted the temporary stay, Judge Goodstein entered her order denying Lisa Fisher's Motion to Intervene and for Joinder, and on July 12, 2018, she entered a separate order affirming the Magistrate's ejection of Candace Rickborn. On July 23, 2018, Lisa Fisher filed a notice of appealing both Judge Goodstein's Order denying her motion to intervene in the appeal of the eviction, and Judge Goodstein's Order affirming the ejection of Candace Rickborn.<sup>4</sup> Candace Rickborn, who was represented by separate, independent counsel, did not appeal the order affirming her ejection. On July 30, Lisa Fisher made a motion in this Court to consolidate this appeal with several others pending appeals related to the Estate of Alice Shaw-Bakers that this Court has placed on an identical, expedited briefing schedule. On August 9, 2018, this Court denied Ms. Fisher's motion to consolidate.

#### DISCUSSION

Because Lisa Fisher, as a discharged conservator for Alice Shaw-Baker, has no legal interest in the real property belonging to the latter's Estate, she is not an aggrieved party under

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<sup>4</sup> Ms. Fisher's appeal of issues on behalf of Candace Rickborn most certainly raises the question of whether she has engaged in the unauthorized practice of law.

Rule 201, SCACR ([o]nly a party aggrieved by an order, judgment, sentence or decision may appeal), and therefore lacks standing to maintain this appeal.

“South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.” Lennon v. S.C. Coastal Council, 330 S.C. 414, 417–18, 498 S.E.2d 906, 908 (Ct. App. 1998); see also Waters v. South Carolina Land Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996); Crocker v. Barr, 303 S.C. 1, 397 S.E.2d 665 (Ct. App. 1990) (Goolsby, J., concurring), rev'd on other grounds. A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy. Lennon v. S.C. Coastal Council, 330 S.C. 414, 415–16, 498 S.E.2d 906, 906–07 (Ct. App. 1998). “No justiciable controversy is presented unless the plaintiff has standing to maintain the action.” Id. (citing Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994)). Furthermore, “A plaintiff must allege an actual controversy in which he has a personal stake.” Id. (citing Energy Research Found. v. Waddell, 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988)).

Standing is comprised of three elements:

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.’ Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be likely as opposed to merely ‘speculative,’ that the injury will be redressed by a favorable decision.

Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (2008) (internal citations omitted); Smiley v. South Carolina Dep’t. of Health & Env’tl Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32–33 (2007). The party claiming standing has the burden of

demonstrating each of the three elements. See Sea Pines Ass'n for the Protection of Wildlife, Inc. v South Carolina Dep't of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

“As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation.” Powell ex rel. Kelley at 444, 241 (quoting Ex Parte Morris, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006)). One must be a real party in interest, i.e. a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.” Id.

Importantly, a plaintiff “cannot obtain standing by alleging he is acting in another’s interest if he himself has suffered no individual injury.” Lennon v. S.C. Coastal Council, 330 S.C. 414, 416, 498 S.E.2d 906, 907 (Ct. App. 1998).

In Powell ex rel. Kelley, a dispute arose between the minor son of a decedent and the decedent’s wife and the decedent’s sister who converted estate funds and deposited it in accounts maintained by Bank of America. The son and wife of the decedent filed suit against the decedent’s sister and the Bank, which interpleaded the funds into the court. The son and wife of the decedent reached a settlement agreement regarding apportionment of those estate funds, which the court effectuated through an order. The bank objected to the settlement agreement and advocated for the son to receive a greater apportionment of the funds, in hopes of minimizing the son’s ultimate damages claim against it. Bank of America argued it had standing to appeal the apportionment order based on the bank’s potential, but not actual, liability to the son for damages. The Court of Appeals dismissed Bank of America’s appeal finding the bank had no interest in the subject matter of the apportionment of the estate funds, and therefore it lacked standing. See Powell ex rel. Kelley, 379 S.C. 437, at 443. Because Bank of America lacked such interest, the Court of Appeals held it was not an aggrieved part under Rule 201, SCACR. See id.

Here, Lisa Fisher is an individual who acted as conservator for Alice Shaw-Baker 10 years ago. Upon Mrs. Shaw-Baker's death, 10 years ago, the Probate Court discharged Ms. Fisher as conservator and appointed Bessie Huckabee as personal representative according to the terms of Mrs. Shaw-Baker's valid will. Since that time, Lisa Fisher refused to turn over any of the real and personal property and funds of the estate, claiming Bessie Huckabee is not the proper person to whom she is required to transfer those assets. Lisa Fisher has argued she is justified in her refusal to turn over the estate assets, despite order after order from the Probate and Circuit Courts, the Court of Appeals, and this Court that she do so, because she believes S.C. Code Ann. § 62-7-425(d) creates in her an affirmative duty, even after discharge, to only turn the estate assets over to the "proper person." Ms. Fisher reasons that otherwise, she would be exposed to liability to the estate or beneficiaries for potentially releasing the estate assets to the "wrong person."

The real property from which the Magistrate and the Circuit Court have evicted Candace Rickborn belongs to the Estate of Mrs. Shaw-Baker. It does not belong to Lisa Fisher, under any scenario. Lisa Fisher has absolutely no interest in the Estate of Mrs. Shaw-Baker as a beneficiary under the will or as a would-be intestate heir. Ms. Fisher only pretends § 62-7-425(d) endows her with continued authority, after her discharge, to control the estate assets, and determine their disposition (authority which she apparently believes surpasses even that of each court that has ordered her to turn over the assets to the personal representative). She supposes that such "self-bestowed" continued authority is subject to fiduciary duties and liabilities, which is the sole basis for her claim of standing to maintain this appeal.

Just as in Powell ex rel. Kelley, because Lisa Fisher has no legal interest whatsoever in the real property at issue, and therefore she can show no "injury in fact," or invasion of a legally

protected interest which is concrete and particularized, as a result of Candace Rickborn's ejection from that property, she is not an aggrieved party as defined under Rule 201, SCACR. Lisa Fisher has no personal stake in Candace's Rickborn's ejection, and she is totally unaffected by both the Magistrate's order of ejection and the Circuit Court's affirmance of that order on appeal.

Moreover, the Powell ex rel. Kelley court, relying on this Court's decision in Ex Parte Government Employee's Insurance Co., 373 S.C. 132, 644 S.E.2d 699 (2007) addressing the sufficiency of a party's potential liability in relationship to joinder and standing, found Bank of America's argument for standing based on the prospect of a damages claim by the son of the decedent unavailing. "Speculative liability to [son] is tangential and peripheral to the precise allocation of the interpleaded funds . . ." Powell ex rel. Kelley, 379 S.C. 437, at 446.

The hypothetical and speculative liability Lisa Fisher imagines she faces if she turns the estate assets over to the "wrong person," even after court order to do so, is insufficient to qualify her as an aggrieved party under Rule 201, SCACR, and to create standing in her to maintain this appeal. Nevertheless, Ms. Fisher's reasoning in relying on potential liability for turning estate assets over to the "wrong person" as a basis for standing to appeal misses the mark. Obviously, the Magistrate's order ejecting Candace Rickborn has no effect whatsoever on the title to the real property or even on the duty Lisa Fisher believes she has to turn the property over to the "proper person."

Ms. Fisher was neither a party to the original ejection action in the Magistrate's Court nor to the appeal in the Circuit Court. She now tries, still as a non-party, to intervene and appeal the Circuit Court's affirmance of the Magistrate's ejection of Ms. Rickborn. Ms. Fisher's motion for reconsideration of the Circuit Court's orders, stating error and harassment as grounds

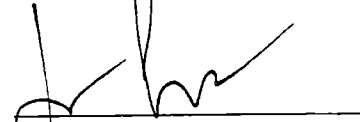
in light of this Court's June 13, 2018 Order mandating she turn over all estate assets to Bessie Huckabee, demonstrates the level of bad faith under which she operates in filing the present frivolous appeal.

#### CONCLUSION

For the foregoing reasons, this Court should dismiss the appeal, and consider issuing appropriate sanctions against Ms. Fisher under Rule 269, SCACR for having filed this frivolous appeal.

Respectfully submitted,

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