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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the 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 Court 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.

APPELLANTS' INITIAL <u>REPLY</u> BRIEF;
JOINDER BY BETTY FISHER

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I.
CHANGING PUBLIC POLICY AND CIRCUMVENTION OF ALICE SHAW BAKER'S RIGHTS SUPPORT THIS COURT'S LATITUDE IN CONSIDERING THE PURPORTED "DEFECTS" IN APPELLANTS' BRIEF

There can be no doubt that the history of law has not encompassed justice for all. The United States Supreme Court held in *Dred Scott,* 60 U.S. 393 (1857) held that African Americans, whether free men or slaves, could not be considered American citizens. Less than 50 years later, in *Plessy v. Ferguson,* 163 U.S. 537(1896), the court upheld segregation laws as "separate but equal." In *Buck v. Bell,* 274 U.S. 200 (1927), the United States Supreme Court also upheld the forced sterilization of those with intellectual disabilities "for the protection and health of the state."

These cases dealt with injustice that affected the lives of individual people. While Alice Shaw Baker's case may not affect all probate cases and the public policy issues may seem less important, due to the "financial" aspect of a person's life rather than their "personal" liberty. Alice Shaw Baker's case is an example of one of the most important legal maxims recognized in law, that "No one should suffer by the act of another."[1]

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[1] Appellants' assert that Alice Shaw Baker was forbidden to revoke her will after she discovered Respondent Kay Passailague Slade's claim that she owned a dog rescue were false. This max cited as "Res inter alios acta alteria nocere non debet" has been cited in prior cases, and is a principle that "...the law of evidence, forbids in general... that any one shall be bound by acts or conduct of others, to which neither in fact nor in law, he was a party or privy." (See Wharton, George Frederick, Legal Maxims , with Observation and Cases, 1878 (citing to Broom's Maxims, 432).) Here, Alice was held to the order by the probate court, despite lack of notice, non-attendance at the hearing, and no ability to object to Judge Curry's order.

At the core of this case, Judge Hughston's acceptance of the order, contrary to known South Carolina law, created a firestorm of problems which led to an unjust award of sanctions and attorneys fees. (As one court explained, the principles of due process is so fundamental to the legal system, that a judgement creating a guardianship without notice is "no judgment at all–upon the plainest principles of natural justice, and under the Fourteenth Amendment, is

Alice Shaw Baker had expectations about her estate, Respondents ask this court to ignore the extrinsic evidence presented to the trial court--to forget her handwritten notes which on their face are unambiguous:

> "" ...custodian of pets and rescue–governed by will...." (Trial Exhibit, Dated 9/14/2004)
>
> And
>
> "...Current bene[ficiary] works on A dog rescue and $ to go to the dog rescue...." (Trial Exhibit___, dated 2/14/2001)
>
> And
>
> "**Upon death my estate is all going to charity.**"
> (Trial Exhibit 18, ING, Date 1-14-2000, Handwritten notes, Ing, Trial Exhibit, p. 8, emphasis added.)

They further wish the court to ignore important testimony from John Smoak (R.T.___), Carol Linville (R.T.____), Candace Rickborn (R.T.___), Dr. Waid. (R.T. ___),[2]and Dr. Shannon Honney, M.D. (____)[3] They wish Appellants to change their goal in this case, as to

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absolutely void." (See *In re Hanrahan's Will,* 194 A. 471, 477 (Vt. 1937).) Another court went so far as to state ward needs compassionate accommodation and assistance rather than cold adjudication of incompetency and loss of control of most aspects of her life without full due process. (See *McGill v. Hendrix,* 913 S.W. 2d 184 (Tenn. Ct. Ap. 1995)

Therefore, as argued herein, the order precluding Alice Shaw Baker without notice is also void.

[2] Respondents' statement that "After receiving Dr. Waid's report, Lisa [Fisher] and her attorney did not provided [sic] it to the Probate Court." (Respondents' Brief, p. ___) In fact, Attorney Kouten wrote a letter report to the Conservatorship court on Dr. Waid's report. (Rec. ____)

[3] This document is part of the record in Alice Shaw Baker's conservatorship case, and as Judge Hughston indicated that he reviewed the entire files, it would seem that he considered (or should have considered) this report. (Rec.____)

preserve Alice Shaw Baker's wishes, making incredible conclusions that these issues were not preserved and that they did not cite to the record. (Respondents Amended Brief, p. 15 ["...Respondents object to it [statement of the case], in its entirety, as improper and not supported by the materials to be included in the record."].)[4]

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[4] Respondents make this claim despite the fact that their own Statement of the case, save a few references to the transcript, is completely devoid of references to the record. Moreover, their statement of the case is a manipulation and creation of facts that are inaccurate. To the extent that the court is considering the "facts" of Alice Shaw Baker's life, Appellant objects to the presentation of facts without reference to the record. (Rule 208(b)(4), SCACR ["the brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210 (c)] to support the salient facts alleged."])

Moreover, it appears that the court amended rule 208, SCACR. In said amendment, the rule states that the parties shall not include any contested fact. To the extent that Appellants inadvertently included facts in the statement of the case, they apologize. However, they believe that they have substantially complied with the rule. The inclusion of the introduction amounted to merely a summary of the issues and relevant law. The case is very complicated, and Appellant Lisa Fisher thought it helpful for the tone of the brief. Also, Respondents are ignoring the law cited, that does not make it irrelevant. (E.g. Respondent claims *Mandarin Trading Ltd v. Wildenstein,* 16 N.Y. 3d 173, 17 (2011)) is a different proposition of law, however Appellant claims that this idea of a "special relationship" is on point. Kay Passailague Slade had a duty to inform Alice that she was not a charity, and not going to use the monies to purchase real property for a *charitable purpose.*)

Also, separating the orders and the evidence was merely for clarity. (Rule 208(e), SCACR, does provide for the inclusion of a separate statement of facts [" party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contentions." To the extent that she did not put these sections under Argument, she asks the court for its indulgence and find that she has "substantially complied" to ensure that an injustice does Not occur in this matter.

Finally, Respondents spent over 8 pages citing to Appellants "disregard" to the SCACR. Appellants have the utmost respect for this Court and the Appellate Court rules. However, they didn't bring a motion to dismiss, which would have stayed the time for these proceedings under SCACR, rule 240(b). Appellants assert that the allegations are without merit, and they chose to address these issues instead of commenting on the real issues in the case.

In so doing, Respondent asks this Court to be a part of their plan to undo her constitutionally protected right to leave her estate to charities. They also ask this Court to remove the only ones willing to stand up for her, based on Respondents' narrow view of standing--Lisa Fisher and joining party, Betty Fisher.

As laws have changed in America, where we now view *Dred Scott, Plessy v. Ferguson,* and *Buck v. Bell* as embarrassment to our legal jurisprudence, we also are changing our notions of equity in transfers of property through will reformation and equitable relief[5] through changes in state law, restatement of trusts, restatement of wills, and changes in the uniform probate code. As one author noted in an American Bar Association article:

> "Leading modern authority in a number of American states has now reversed the strict compliance and no reformation rules. Both by judicial decision and by legislation, the courts have been empowered to excuse harmless execution errors and to reform mistaken terms. Section 2-503 of the revised Uniform Probate Code, promulgated in 1990 and now adopted in several states, treats a noncomplying will "as if it had been executed in compliance with [Wills Act formalities] if the proponent ... establishes by clear and convincing evidence that the decedent intended the document" as his or her will. (**This provision also applies to cases of defective compliance with the formalities for revocation, in which a similar strict compliance rule was applied**.)"[6]

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[5] "A party need not use the exact name of a legal doctrine, but it must be clear the argument has been presented on that ground." (See *State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E. 2d 565 (2010).)

[6] Langbein, John H., "Curing Execution Errors And Mistaken Terms In Wills: The Restatement of Wills Delivers New Tools (and New Duties) to Probate Lawyers, https://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/executionerrors.html, emphasis added.

The author goes on to note: "This movement to excuse harmless execution errors and to reform mistaken terms in wills has now received powerful reinforcement in the American Law Institute's Restatement (Third) of Property: Wills and Other Donative Transfers." He further states that "The reorientation toward a more intent-serving approach to the Wills Act formalities is the product of many influences. The scholarly literature that has accompanied the change has drawn attention to four main factors:

> "(1) the rise of the nonprobate system;
> (2) experience in other jurisdictions;
> (3) growing embarrassment that failure to cure well-proved mistakes inflicts unjust enrichment; and
> (4) concern to spare lawyers from needless malpractice liability."

This issue of unjust enrichment is real.[7] In a September 11, 2018 article in Forbes entitled "Elder Financial Abuse Will Get Worse As Americans Age," it stated the Government Accountability office found elder abuse to be a growing epidemic.

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[7] Author Langbein further explained:

> "When an innocuous execution error defeats a will, or when a scrivener's mistake defeats a devise, the failure to implement the testator's intent not only frustrates the testator's wishes, but it also works unjust enrichment. The devisee or distributee who takes is unjustly enriched at the expense of the intended beneficiary. **Preventing unjust enrichment is the central policy value of the law of restitution**. The field of restitution emerged only in the twentieth century as a result of the fusion of law and equity, which allowed the common principle of preventing unjust enrichment to be generalized from the older law of quasi-contract and constructive trust. The modern understanding of the importance of avoiding unjust enrichment has been an important stimulus to the development of the rules curing harmless execution errors and reforming mistaken terms." (Emphasis added)

These changes in the law, the promotion of the importance of testator's intent and avoiding unjust enrichment are real legal concepts. They demonstrate and support Appellant Lisa Fisher, joining appellant Betty Fisher and their former counsel's, efforts to protect Alice Shaw Baker and ensure her desires were established. [8]

Contrary to respondents' position and the judgment in this case, Appellants can not be deemed to have engaged in frivolous acts warranting sanctions. Such a result would preclude attorneys from seeking justice in difficult cases. Should the court allow sanctions and a judgment which stifles attorneys' ability to help those litigants with difficult cases, bad facts, or ambiguous law? Such a result would lead to further elder abuse, and unjust judgements as here.

Appellants respectfully request that the court reverse the judgments in their entirety.

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[8] It has to be worth noting that as a devout Catholic, she chose the patron saint of animals, to be engraved on her headstone. His principles embodied her in all she did:

> "All creatures have the same source as we have. Like us, they derive the life of thought, love, and will from the Creator. Not to hurt our humble brethren is our first duty to them; but to stop there is a complete misapprehension of the intentions of Providence. We have a higher mission. God wishes that we should succour [assistance and support in times of hardship and distress] them whenever they require it." (See The Wisdom of Saints: An Anthology, ed. Jill Haak Adels, p. 124) (Plaintiff's Exhibit 2 ____, referencing gravestone)

Her life's devotion must not be ignored. Even in an early letter to the life insurance company, she asked them to call her after 3 p.m. **"allowing the phone to ring so that I can jump over the dog to answer -my dog feels all telephone calls are for her."** (Rec., NLIC 105___)

Her animals meant everything to her. The symbol of St. Francis of Assisi is just another piece of evidence that her will or oral trust or extrinsic evidence supporting equitable relief mandate reversal and distributing all probate and non-probate assets to animal charities.

II.

THIRD PARTY STANDING IS AVAILABLE ESPECIALLY TO SUPPORT THIS COURT'S DUTY TO DETERMINE A TESTATOR'S INTENT, BECAUSE WITHOUT THIRD PARTY STANDING RESPONDENTS WOULD BE UNJUSTLY ENRICHED AND ALICE SHAW BAKER'S CONSTITUTIONAL RIGHTS TO CHANGE HER WILL WOULD BE DENIED.

There is no doubt that the issue of whether a party has standing is essential as to whether she may obtain justice and enforce a law. However, one can argue that the court's primary function is to enforce "testator's express intent..." (See *Fidelity Union Trust Co v. Margetts*, 82 A.2d 191, 7 N. J 556, 566 (1951).) There is further discussion that "a court may act on its own motion if it becomes aware of a possible breach of trust by a trustee." (See *Restatement (Second) of Trusts* § 200 cmt. H (1959) *see also Unif. Trust Code* § 706 (a), 7 CULA 575 (2006).)

Here, Appellants certainly have the close relationship and there is no one else who will seek to demonstrate the revocation of her will or to enforce her intention to benefit animal charities, without some exception by this court, Respondents will be unjustly enriched.
In so doing, the court must have some latitude with regard to standing, which is contrary to the role Respondents would have it consider. No matter what the court decides with regard to standing, this court must act to protect Alice Shaw Baker's wishes, with the evidence presented demonstrating that the monies were to benefit charity.

Also, Third party standing is not a foreign legal concept. The United States Supreme Court has allowed standing in cases where the constitutional rights of one were there is a hindrance to the parties right to protect his own interests.[9] Other cases have allowed third party

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[9] The Supreme Court denied the right to third party standing in *Kowalski v. Tesmer,* 543 US 125 (2004) but in precluding the rights of attorneys in asserting the rights of indigent litigants, the court set a standard for third party standing. First, a party must have a close

standing. (See *Craig v. Boren,* 429 U.S. 190, 192-197 (1976) [beer vendors have standing to raise the rights of their prospective customers]; *Powers v. Ohio,* 499 US 400, 410-416 (1999) [criminal defendants have standing to raise rights of jurors]; *Carey v. Population Services Intl,* 431 U.S. 678, 682-684 [sellers of mail order contraceptives have standing to assert the rights of potential customers]; *Eisenstadt v. Baird,* 405 US. 438, 443-446 (1971) [distributor of contraceptives to unmarried persons conferred standing to litigate rights of the recipients]; and *Barrows v. Jackson,* 346 U.S. 249 (1953) [standing of white owners to litigate the constitutional rights of potential black purchases.])

In Trust matters, a court reversed the lower court's denial of standing, the appellate court acknowledged the traditional rule that would deny standing but noted an "exception to the general rule...where an individual seeking enforcement of the trust has a 'special interest in continued performance of the trust distinguished from that of the public at large."(*Hooker v. Edes Home*, 579 A. 2d 608 (D.C. 1990).) The Hooker case analyzed the Restatement Second of Trusts § 391, comment c, wherein Professor Bogert explained that :

> "These [modern] decision recognize that application of the strict traditional rule denying standing to 'potential' beneficiaries of a charitable trust may be inimical to trust purposes in cases where a suit to enforce the trust does not present the dangers the rule was intended to guard against."

The Restatement Second of Trust sct, 391 cmt.c (1959) discuss "where a charitable trust is created for the poor members of a particular church, and such member of the church can maintain a suit against the trustees for the enforcement of the trust."

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relationship with the person; and 2) there must be a hindrance to the possessor's ability to protect his [or her] own interests. Petitioner contends that the revocation and the absence of any stated party to protect the charitable intent of Alice Shaw Baker meets the requirements in *Kowalski.*.

As Appellants have argued through this case, Standing is not an issue. Here, Lisa Fisher had standing to enforce the trust due to her unique position as Conservator of Alice Shaw Baker[10] and her personal knowledge that:

1) Prior to Alice Shaw Baker's death, she revoked the will, based on Alice's understanding that Kay Passailague Slade did NOT run an animal charity.

2) Lisa Fisher learned that there was written evidence that supported her prior understanding that Alice Shaw Baker's estate was going to charity.

With regard to South Carolina Attorney General's actions or inaction in Alice Shaw Baker's case:

1) If the court deems their failure as a declination to participate, case law in *Kapiolani Park Pres. Soc'y v. City of Honolulu,* 751 P.2d 1022, 1025 (Haw. 1988) is instructive:

> "Where a trustee of a public charitable trust is a. governmental agency...[that] will not seek instructions of the court as to its duties, ... and where... the attorney general as parens patriae, has actively joined in supporting the alleged breach of trust, the citizens of this State would be left without protection or a remedy, unless we hold, as we do, that members of the public as beneficiaries of the trust, have standing to bring the matter to the attention of the court. Were we to hold otherwise, the City would be free to dispose...[of] the trust comprising Kapiolani Park...without the citizens of the City and State having any recourse to the courts. Such a result is contrary to the principle of equity

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[10] Respondent manipulates the relationship of Alice Shaw Baker and Appellants. (Respondents' brief, p. 2) Alice Shaw Baker sought help from Appellants, *after* Respondents abandoned her. There was no dispute that this betrayal hurt Alice and she sought help from family. (R.T. ____)

and shocking to the conscience of the court."

Or

2) The Court could determine that the Attorney General's continued role in the case was an affirmative showing that they supported Lisa Fisher's position. They did not seek dismissal or join in any of Respondent's actions.

Therefore, Appellants contend that dependent on this court's decision, the Attorney General will apply Alice Shaw Baker's monies for charitable purposes.

Here, Appellants certainly have the close relationship and there is no one else who will seek to demonstrate the revocation of her will or to enforce her intention to benefit animal charities, without some exception by this court, Respondents will be unjustly enriched.

III.
APPELLANTS SOUGHT EQUITABLE RELIEF ON BEHALF OF ALICE SHAW BAKER, THEREFORE THE RELIEF SUPPORTS REFORMATION, EQUITABLE DEVIATION OR CONSTRUCTIVE TRUST.

Respondents claim that Appellants "...merely set out the issue in the hearing, and then proceed with a totally different argument having to do with latent ambiguities in a will, and equitable deviation form 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." (Respondents' brief, p. 14)

However, this is not correct. Both the argument during the bifurcated trial and the Opposition to the Summary Judgment were directly related to the ambiguities in the will. (See

R.T., 3/12 and 3/13, pp. 202, 203, 204______ and Rec. , Return, ____) Respondents failed to address this legal issue at any time, however ambiguities in the will were the main issues brought by Appellant. [11]

On page 19 of the Amended Brief, Respondents claim that "Appellants provide no reasoned argument as to why [she had a duty to protect the trust property], particularly because there is no trust involved in this matter." However, Appellants argument is that conservatorship assets are held in trust (S.C. Code Ann. § 62-5-417)[12] and that oral trusts are permitted in South Carolina. (See S.C. Code Ann. § 62-7-407).

Respondents further argue that "Because the trial court has already heard and rules on the merits of Appellants' equitable causes of action, their Argument 1 is moot.[13] However, the cases

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[11] In construing the language of a will, the reviewing tribunal must give the words contained in the document their ordinary and plain meaning unless it is clear the testator intended a different sense or such meaning would lead to an inconsistency with the testator's declared intention. (See *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct.App.1997).)

The same procedure for determining intent in wills is used in trusts and non-probate assets.

[12] The code provides: "In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62-7-933." Also, see S.C. Code § 62-7-701 (a) which provides: "...a person designated as trustee accepts the trusteeship:
***
(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship."

Under this premise, Appellant was duty bound to protect the property. Therefore, the arguments made in the brief demonstrate Appellants good faith in pursuing this litigation.

[13] Under South Carolina law, there are several exceptions to the mootness doctrine in an appellate court where the court may take jurisdiction under the following doctrines. (See *Byrd v. Irmo High School,* 321 S.C. 426, 468 S.E.2d 861 (1996) [capable of repetition, yet evade review]; *Curtis v. State,* 345 S.C. 557, 549 S.E. 2d 591 (2001)]"questions of imperative and manifest interest... and collateral consequences for the parties]; *Berry v. Zahler,* 220 S.C. 86, 66

cited do not stand for the proposition set forth by Respondents. In fact, the court in *Grant v. Osgood,* 241 S.D. 104, 110, 127 S.E.2d 202 (1962) decided it would not rule on the issue of mootness, but held that:

> "We do hold, however, that an executor cannot properly qualify so long as he is actually contesting the instrument which creates the trust he proposes to accept. **It would be a mockery to allow respondent to qualify as executor and trustee while occupying the status of an opponent of the will.** Should the respondent be successful in his contest of the will, the primary issue involved in the appeal would, of course, become unqualifiedly and permanently moot." (Emphasis added)

Although the argument is not the same as Appellants, the rationale is the same. Distributing the property to Respondent Bessie Huckabee, while the action is contested is a mockery. If Appellants had won, this interloper would have interfered with those very things Alice Shaw Baker loved.

IV.
APPELLANTS WERE DEPRIVED OF A FAIR TRIAL, AND REVERSAL IS MANDATED

As more fully set forth in Appellants' Brief, the actions of the judge in his independent investigation, ex parte communications, and premature orders for financial documents all demonstrate bias.

Respondents claim that "Appellants do not go so far as to indicate how they were harmed [by the independent investigation of facts by Judge Hughston], 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." (Respondents' brief, p. 20)

S.E. 2d 459 (1951) [public interest.])

Appellants repeat that it does not look like counsel reviewed Appellants' brief. However, assuming for the moment that were true, the prohibition set forth in American Bar Association Formal Opinion 478 appears to make the lack of prejudice unnecessary. Appellant repeats: "Independent investigation of adjudicative facts generally is prohibited unless the information is properly subject to judicial notice. The restriction on independent investigation includes individuals subject to the judge's direction and control."[14] (See also SCAR, Rule 501 Judicial Conduct, Canon 3, B(7).) To this day, Appellants have no idea what the court considered to make it so angry that it would make the false statements about Appellants.

The well settled principle that a judge will **"consider only the evidence presented by the parties"** is essential to insuring a fair trial.

As the court in *Ellis v. Proctor & Gamble Dist. Co,* 315 S.C. 283 ,285, 433 S.E. 2d 856 (1993), bias is demonstrated when factual findings not supported by the records. Also, pre-judging issues deprives the proceeding of impartiality and denies due process. (See *Marshall v. Jerrico,* 446 US 238, 242, 200 S.Ct. 1610, 64 L.3d 182 (1980).)

Respondents claim that Appellants assertion that there was a secret meeting was "patently untrue." The court admitted it as do Respondents. They claim that the issues were "administrative", but the fact of the matter is that they did not follow the State's own procedure regarding collection on a judgement in and of itself demonstrated prejudiced and interfered with Appellants opportunity to seek relief.

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[14] There is no argument that a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. (See *Wise v. Wise,* 394 S.C. 591, 716 S.E.2d 117 (2011).) The problem is that Appellants were not on notice of what records were reviewed. It also is questionable the purposes of looking at the conservatorship file, when not raised by Respondents, on a Will Contest.

The issue of due process and equal protection is a problem throughout this case. The United States Supreme Court has held that the fundamental touchstone of procedural due process is "the opportunity to be heard." *Goss v. Lopez,* 419 U.S. 565, 579 (1975). The Due Process Clauses of the United States Constitution and the South Carolina Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997) provides that "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."

The right to privacy is protected under the United States Constitution as recognized in *Griswold v. Connecticut,* 381 US 479 (1965). Although there was a ruling that individual depositors do not have a constitutionally protected privacy interest in their own bank records. (See *United States v. Miller*, 425 US 435 (1976) .) However, South Carolina has developed law governing the "right to privacy." (*Singleton v. State,* 313 S.C. 75, 437 S.E. 2d 53 (1993).) Coupled with the passage of the Right to Financial Privacy Act (RFPA) 12 USC § 3401 et seq. issues about the underlying ability of a court to make any orders relating to financial records rises to the level of constitutional due process protections.

Appellants reference to punitive damages supports this position. If the court has to follow procedures in punitive damages cases, it begs to reason that the court can't just ask about a person's finances **<u>in the middle of trial.</u>**

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V.
SANCTIONS AND ATTORNEY FEES WERE UNWARRANTED, AND REVERSAL IS MANDATED

Respondents claim that actions were warranted, because in part Judge Hughston made the false remark that "there are no facts supporting these claims made up by essentially strangers to Alice Shaw Baker and her friends." (Respondents Brief, p. 23) He further claimed that Judge Curry's order should have told Plaintiffs not to claim the will was revoked. (Respondent's brief, p. 24) Also, the court claimed that Lisa Fisher was attempting to gain the funds for her mother and that there was an equitable trust was unreasonable because it was in its ninth year.

There is no doubt that the case has taken a long time, however Appellants claim that Respondents were responsible for the delay. They did nothing. As cited in the opening brief, *PDHC v. Estate of Thompson*, 418 S.C. 557 (2016) , a tactical decision of defendants does not warrant attorneys fees.

The standards in FCPSA and Rule 11 were not met in this case. As set forth herein, there were facts and law that established "a good faith argument for an extension, modification or reversal of the existing law" as interpreted by Judge Hughston.

Appellants argue that, in fact, the law is presented and pursued in this case was correct law, and that Respondents were trying to circumvent the clear intent of the law governing the intention of Alice Shaw Baker to benefit animal charities. Pursuing legitimate liberty and property interests through these will contest and equitable trial was a duty that Appellant Lisa Fisher was required to enforce. Anything less and she would be an accessory to the wrongdoing of Respondents.

Respondents misstate the facts throughout the brief, and use it as support for wrongdoing

by Appellants. They give credence to Attorney Kouten, who "remained as counsel for the Respondent personal representative." Respondents further claims that the only reason that Appellants sought Wills disqualification was faulty service, that is not correct. The non-writeable conflict of interest is an issue throughout this case. The facts supported Appellants' belief that original opposing counsel Peter Kouten did not have a right to continue his representation in this matter. [15]

Respondents make light to the fact that Judge Hughston restored Attorneys fees to Respondents "finding that he had incorrectly evaluated Attorneys Kouten's and Crowley's affidavits and mistakenly reduced their award of fees". (Respondents' brief, p. 8) However, they fail to inform the court that Judge Hughston did not provide Appellants' with an opportunity to be heard. Again, depriving Appellants of their right to notice and an opportunity to object. [16]

All of these facts support the actions taken by Appellants. She knew (as they know) that Alice Shaw Baker did not leave the property to Kay Passailague Slade as a fried. The record

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[15] The facts which led to Motions to disqualify Peter Koutén were that: 1) Peter Kouten was clerk for Judge Condon; 2) Peter Kouten was receiving multiple court appointments from the probate court; 3) It is undisputed that he was Court appointed attorney, guardian ad litem, and court appointed visitor for Alice Shaw Baker; 4) It is alleged (and facts support) Peter Kouten represented Slade and Huckabee during Alice Shaw Baker's life; 5) Peter Kouten did not seek appointment of the Special Fiduciary in the Circuit Court (or more appropriately a Special Administrator); 6) Peter Kouten refused to disqualify himself despite the fact that he never obtained a conflict waiver from Alice Shaw Baker during her life to represent Respondent and Kay Passailague Slade and Sandra Byrd; 7) Peter Kouten was appointed Judge of this same Probate Court; 8)This Supreme Court found a conflict of Interest and appointed Hon. Kenneth Fulp to hear further probate proceedings. All of these facts supported Petitioner's conclusion that good cause existed to disqualify him.

[16] Appellants do not deny notice of motion, however said motion included a request for a hearing which was delayed due to the wrong address (PO Box 9112) on the motion. The court's decision did not give Appellants any opportunity to object and point out the problems with the request.

does not support such a finding. When Alice Shaw Baker knew that Respondent Slade was not the owner of animal rescue, she revoked. Such a decision is reasonable, and seeking redress in the law is also reasonable.

Judge Hughston failed to mention any of the findings in Subjection E of the FCPSA. He admitted lack of familiarity with will contest cases. (R.T. p. 60, l. 20-p. 61, l. 7, p. 69, l. 24, p.70, l. 1) He admitted what he believed were mistakes throughout the trial. (R.T. Summary Judgment denial and Injunction). When Appellants sought appellate review of the TRO of May 22, 2009, it was because Respondents sought modification of that TRO and in so doing Appellant challenged the additional relief in the TRO.

This conduct can not be deemed in bad faith. Respondents make much of the finding of Judge Hughston that "the only way one can ever begin to understanding this case –as a whole." The question remains, whose understanding? The only understanding the court cared to accept was Respondents. The problem is that the real understanding necessary in this case is that of Alice Shaw Baker–she believed God raised some people to care and protect animals, not just people. She wanted the people who changed and gave their lives for animal welfare to inherit money–"charity", as she said in her handwritten words.

VI.
REMEDY SOUGHT

Robert Kennedy once said: "Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance." (Ripple of

Hope speech delivered at the University of Cape Town on June 6, 1966.)

A will contest as "resistance", yes. Resistance to anyone who takes advantage of the elderly, demands unjust enrichment, and ignores even the smallest (yet loudest) words of intent. Appellants stand with Alice against Respondents, because Respondents ignored their promise to help, misled her about the "dog rescue," and refused to recognize the life that she led--one of decency and charity. This must not be rewarded, nor should the acts of a judge who refused to honor the legal principles promoting fairness in the courts, leaving Appellants' devastated by the character assassination, financial judgment, and bias for Respondents.

This court has the power to reverse this injustice, by either reversing the judgment in its entirety and ordering a new trial, or making equitable findings that exact a constructive trust mandating that all estate property and the non-probate assets be delivered to a proper 501(c)(3) charity. Finally, reversing all sanctions, attorney fee awards, and contempt charges against Appellants.

September 26, 2018

RESPECTFULLY SUBMITTED,

By:____________________________

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THE STATE OF SOUTH CAROLINA

In the 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 Court Case No. 2018-000566

Betty Fisher and Lisa Fisher, ...Appellants

v.

Bessie Huckabee, Kay Passailaigue Slade and Sandra Byrd,......................................Respondents

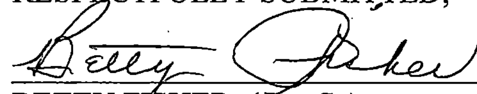
In the Matter of the Estate of Alice Shaw-Baker.

JOINDER BY BETTY FISHER IN APPELLANTS' REPLY BRIEF AND AMENDED DESIGNATION

I BETTY FISHER do hereby join in Lisa Fisher's Reply Brief and Amended Designation of Matter to be Included in the Record. I have requested that this joinder be part of the record and agree and support these documents.

September 26, 2018

RESPECTFULLY SUBMITTED,



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PROOF OF SERVICE

I certify that I have served **PLAINTIFFS' REPLY BRIEF; JOINDER BY BETTY FISHER; AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPELLANTS** postage prepaid, on September 26, 2018 (and via email) addressed as follows:

Jessica L. Crowley, Esquire
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Courtesy Copy via email to:

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Folly Beach, SC 29439

Hon. Mary France Jowers, Esquire
Assistant Attorney General
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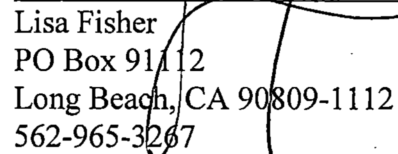
Columbia, SC 29211

August 22, 2018



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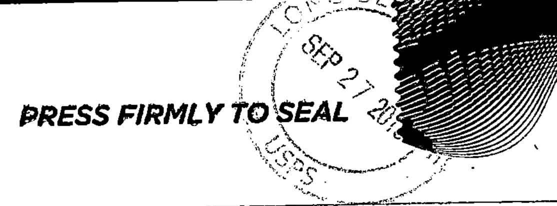

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