

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

RECEIVED

OCT 17 2018

S.C. SUPREME COURT

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.

RECORD ON APPEAL

VOLUME 1 OF 4

**CERTIFICATION;
JOINDER BY APPELLANT BETTY FISHER**

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(Appellant)

BETTY FISHER (*Pro Se*)
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(Appellant requesting Joinder)

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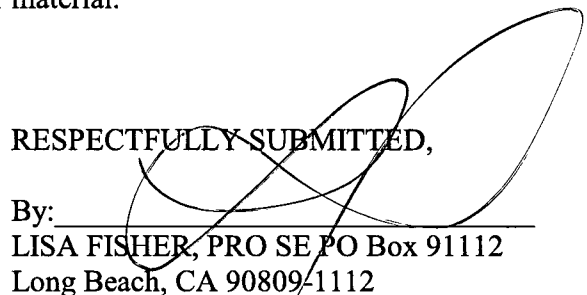
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CERTIFICATE OF APPELLANTS:

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 4, 2018

RESPECTFULLY SUBMITTED,

By: 

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THE STATE OF SOUTH CAROLINA

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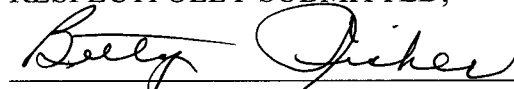
In the Matter of the Estate of Alice Shaw-Baker.

**JOINDER BY BETTY FISHER IN
FILING OF THE RECORD**

I BETTY FISHER do hereby join in Lisa Fisher's filing of the Record. I have requested
that this joinder be part of the record and agree and support these documents.

October 4, 2018

RESPECTFULLY SUBMITTED,



BETTY FISHER (*Pro Se*)

P.O. Box 91112

Long Beach, CA 90809-1112

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO: 2008-GC-10-088

ELISABETH SPENCER,)
Petitioner,)

vs.)

ALICE SHAW-BAKER, an alleged)
Incapacitated person, and)
LISA FISHER, her next of kin,)
Respondents.)

ORDER APPOINTING
LISA FISHER AS GUARDIAN
AND CONSERVATOR OF
ALICE SHAW-BAKER

Hearing Date: October 29, 2008
Judge: Hon. Tamara Curry
Petitioner: Elisabeth Spencer
Attorney for Petitioner: C. Mac Gibson, Jr.
Alleged Incapacitated Person: Alice Shaw-Baker
Guardian ad Litem: Peter A. Kouten, Esq.
Other Respondent: Lisa Fisher
Attorneys for Lisa Fisher: John Hughes Cooper, Esq.
Cain Denny, Esq.
John Townsend Cooper, Esq.
Temporary Co-Guardians: Lisa Fisher and Jane Orenstein
Temporary Conservator: Family Services, Inc.

This matter came before this Court for a hearing on appointment of Guardian and Conservator.

PROCEDURAL HISTORY

1. On July 31, 2008, Elizabeth Spencer filed Petitions for a Finding of Incapacity and for Appointment of Walter R. Kaufman, Esquire, as Guardian and for Appointment of Family Services, Inc. as Conservator.
2. On August 4, 2008 the Court appointed Walter Kaufman as Temporary Guardian.
3. After hearing on August 14, 2008 the Court appointed Walter Kaufman and Jane Orenstein as Temporary Co-Guardians and Family Services, Inc. as Conservator of Alice Shaw-Baker.

4. On August 19, 2008, Respondents filed Petitions for appointment of Alice Shaw-Baker's great-niece, Lisa Fisher, Esquire, as both Guardian and Conservator.
5. On September 4, 2008, Lisa Fisher filed a Motion for Temporary Restraining Order and a Preliminary Injunction against Removal of Alice Shaw-Baker from her home. On September 9, 2008, this Court heard Ms. Fisher's Motions.
6. By Order issued September 16, 2008, this Court:
- granted Lisa Fisher's Motion for a Temporary Restraining Order against Removal of Alice Shaw-Baker from her home;
 - appointed Lisa Fisher and Jane Orenstein as Temporary Co-Guardians; and
 - granted a request by Mr. Kaufman to be relieved as Co-Guardian.

7. By the same Order, this Court required that within two weeks Temporary Co-Guardians Lisa Fisher and Jane Orenstein:

- have the carpet replaced in Ms. Shaw-Baker's house;
- have Ms. Shaw-Baker's house cleaned and organized;
- contact Family Services, Inc. to inventory and take possession of Ms. Shaw-Baker's financial records;
- make arrangements for caretakers to supervise Ms. Shaw-Baker's daily meals, hygiene, and medical needs;
- inform Ms. Shaw-Baker that she is not permitted to smoke cigarettes inside the house but is permitted to smoke cigarettes on the porch or the exterior of the house.

8. By various orders issued September 30, 2008, this Court:
- appointed Peter A. Kouten, Esquire, as Guardian ad Litem and as counsel for Alice Shaw-Baker;
 - ordered that Mr. Kouten be sent as a visitor to Alice Shaw-Baker's residence;
 - appointed L. William Mulbry, M.D. as a physician Examiner; and
 - appointed Rebecca McCrudden, M.A., L.P.C., as an Examiner.

REPORTS

- I. Alice Shaw-Baker was interviewed in her home by the following, who each issued a report:
 - a. court-appointed Examiner Leonard W. Mulbry, Jr., M.D. on October 7, 2008;
 - b. court-appointed Visitor Peter A. Kouten, Esquire, on October 8, 2006; and
 - c. court-appointed Examiner Rebecca S. McCrudden, M.A., L.P.C., on October 16, 2008.

On October 29, 2008, this Court heard the Petitions for Appointment of Guardian and Conservator. Based on the testimony of the witnesses, the reports submitted by the Examiners, the Visitor, and Ms. Shaw-Baker's physician, the Court makes the following findings of fact:

FINDINGS OF FACT

Background

- 7-12
3-9/10
11/19/08
1. Alice Shaw-Baker was born August 14, 1929 in San Francisco, California and is currently 79.
 2. Her most closely related family members are Betty Fisher, her niece, and her great-niece, Lisa Fisher (Betty Fisher's daughter), who live in California.

Medical History

3. Ms. Shaw-Baker has diabetes, which she controls by diet.
4. She has no history of hospitalizations and only one surgery. The surgery was on her mastoid at age seven.
5. Ms. Shaw-Baker takes Boniva for her bones.
6. There is no evidence that Ms. Shaw-Baker has any history of psychiatric treatment.
7. There is no evidence that she has ever been diagnosed with depression, anxiety, or sleep disorders; however, per family members, she suffered mood deterioration after the death of her dog about a year ago.
8. She smokes approximately two packs of cigarettes a day.
9. Dr. Mulbry has diagnosed Ms. Shaw-Baker with Nicotine Dependence.

Recent Circumstances

10. Ms. Shaw-Baker resides at 306 Cassina Drive, Charleston, S.C. 29407, a single-story house which she owns with no mortgage.
11. In late December 2007, a neighbor reported that Ms. Shaw-Baker's house was becoming cluttered and unkempt.
12. She was hoarding junk mail and small items associated with Chihuahua dogs, neglecting daily hygiene, and it was not clear that she was maintaining adequate nutrition.
13. The Court intervened through this action and appointed as Temporary Co-Guardians Lisa Fisher and Jane Orenstein.

Current Circumstances

- 2/1/08
10/1/08
11/19/08
14. Ms. Shaw-Baker's house has been de-cluttered, cleaned, and repaired.
 15. New fire-resistant carpeting has been installed and the home has been freshly painted.
 16. A fire sprinkler system and hard-wired smoke detectors have been installed in the house.
 17. A fire extinguisher is installed in the kitchen.
 18. During various visits by the Court-appointed Examiners and Visitor, Ms. Shaw-Baker presented well, was well-groomed, and was properly dressed.
 19. Currently she has around-the-clock caregivers who cook and clean.
 20. Per the Court Order in place during the cleaning and repair of her home, she has been smoking on her back porch.
 21. Ms. Shaw-Baker accepts the presence of her caregivers.
 22. Ms. Shaw-Baker desires to live at home and is very opposed to moving to assisted living.
 23. If at this time or in the future she must move into an assisted living or other facility, she would prefer to do so in California.

24. Dr. Mulbry has given Ms. Shaw-Baker the following diagnoses:

AXIS I: Cognitive impairment Not Otherwise Specified versus Early Dementia
Nicotine Dependence

AXIS II: Deferred

AXIS III: Diet controlled by Onset Diabetes Mellitus.

25. Dr. Mulbry recommends that Ms. Shaw-Baker not drive until she successfully undergoes a formal driving evaluation.

Impairment

26. Based primarily upon the report and testimony of Leonard W. Mulbry, Jr., M.D., which contain cognitive evaluations and diagnoses, the Court finds that Alice Shaw-Baker is impaired by reason of mental deficiency due to limited problems with her memory and executive functions.

27. Presently, Ms. Shaw-Baker does require routine in-home assistance, but whether she requires around-the-clock assistance is unclear. She does not require placement outside her home at this time.

28. A full neuropsychological evaluation and a full medical evaluation of Alice Shaw-Baker would be helpful in determining how much care and supervision is presently necessary.

Finances

29. An inventory and appraisalment of Ms. Shaw-Baker's assets has been filed by Family Services, Inc.

30. According to the sworn testimony of Mr. Ed Jellison of Family Services, Inc., Ms. Shaw-Baker has liquid assets of \$233,000, a home with no mortgage, and total monthly income of \$2,900 per month.

Nomination

31. Ms. Shaw-Baker has the mental capacity to nominate a Guardian and a Conservator. She has nominated and consents to appointment of her grand-niece, Lisa Fisher, as her sole Guardian and Conservator.
32. Lisa Fisher, Esquire, is qualified to serve as Alice Shaw-Baker's Guardian and Conservator.

ANALYSIS

- ALL
6/6/16
11/19/18
1. This Court must exercise its authority so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions warranting the procedure. S.C. Code Ann. § 62-5-304(A) (2007).
 2. Subject to a finding of good cause by the courts, persons who are not disqualified have priority for appointment as guardian in the following order: "... (1) a person nominated to serve as guardian by the incapacitated person; ... (6) another relative of the incapacitated person; ..." S.C. Code Ann. § 62-5-311 (2007).
 3. As a general rule, close relatives are preferred as guardians or conservators of incompetent persons since they are regarded as the ones most solicitous of the ward's welfare and the ones most likely to rehabilitate the ward. 39 Am. Jur. 2d Guardian and Ward § 41 (2008).
 4. In the present case, Ms. Shaw-Baker has nominated Lisa Fisher, Esquire, to serve as guardian, and Ms. Fisher is a relative of Ms. Shaw-Baker. Ms. Fisher is not disqualified to serve. For these reasons, Ms. Fisher has priority for appointment as guardian.

CONCLUSIONS OF LAW

1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. S.C. Code Ann. § 62-5-101(1) (2007).

2. Alice Shaw-Baker is an incapacitated person as defined by S.C. Code Ann. § 62-5-101(1) (2007) due to limited problems with her executive functions and memory.
3. Appointment of a guardian pursuant to S.C. Code Ann. § 62-5-304(B) (2007) is desirable as a means of providing continuing care and supervision of Alice Shaw-Baker.
4. At the present time, the evidence currently before the Court indicates that Ms. Shaw-Baker lacks capacity to:
- a. Dispose of real or personal property, except that she may make purchases up to \$50;
 - b. Enter into contracts;
 - c. Execute instruments;
 - d. Execute a valid power of attorney;
 - e. Manage her financial affairs;
 - f. Marry or divorce; and
 - g. Drive an automobile.

At the present time, Alice Shaw-Baker has the capacity make purchases up to \$50 and has the capacity to vote.

6. The Court grants Alice Shaw-Baker's Petitions for Appointment of her great-niece, Lisa Fisher as Guardian and Conservator.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Lisa Fisher, is appointed as sole Guardian and as Conservator for Alice Shaw-Baker; and it is

FURTHER ORDERED that the contents of Alice Shaw-Baker's safety deposit box at Bank of America be turned over to Temporary Conservator, Family Services, Inc. Upon receipt of the contents of said safety deposit box, Family Services shall promptly file a copy of Alice Shaw-Baker's last will and testament with this Court. Neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will or execute a new will, unless specifically ordered by this Court; and it is

FURTHER ORDERED that Alice Shaw-Baker's Power of Attorney and Health Care Power of Attorney are hereby revoked; and it is

FURTHER ORDERED that, as soon as can be arranged, Alice Shaw-Baker shall have a full neuropsychological evaluation by Randolph Waid, Ph.D., who shall report to this Court on Alice Shaw-Baker's mental condition. This report should summarize diagnosis, treatment options, and prognosis, and should address whether or not Alice Shaw-Baker has dementia or one or more other condition(s) which may affect her cognitive function, whether or not medication may be helpful, whether or not Alice Shaw-Baker should be allowed to drive an automobile, whether or not Alice Shaw-Baker requires 24 hour daily care/supervision, whether or not less care/supervision may be sufficient. If less care/supervision may be sufficient, this report should contain a recommendation on the appropriate level of care/supervision or the proper procedure to determine same; and it is

*ALL
5/9/10
11/19/08*

FURTHER ORDERED that, as soon as can be arranged, Alice Shaw-Baker shall have a full medical evaluation by a medical doctor, who shall report to this Court on Alice Shaw-Baker's medical condition. This report should summarize diagnosis, treatment options, and prognosis, and should address whether or not Alice Shaw-Baker has diabetes, hypertension, elevated cholesterol, or one or more other medical condition(s) which may affect her cognitive function, whether or not medication may be helpful, whether or not her 1,200 calorie diet should be modified, whether or not Alice Shaw-Baker should be allowed to drive an automobile, the extent of Alice Shaw-Baker's limitations, whether or not Alice Shaw-Baker requires 24 hour daily care/supervision, and whether or not less care/supervision may be sufficient. If less care/supervision may be sufficient, this report should provide a recommendation on the appropriate level of care/supervision or the proper procedure to determine same; and it is

FURTHER ORDERED that upon receipt of the neuropsychological and medical reports in this matter, the Guardian shall file a copy of same with this Court and serve copies upon counsel for all parties; a status conference or hearing will be set upon receipt of the neuropsychological and medical reports in this matter; and it is

FURTHER ORDERED that until receipt of the said reports and until further order of this Court, Alice Shaw-Baker shall have 24 hour daily care/supervision in her home or in a day program; and it is

FURTHER ORDERED that Alice Shaw-Baker shall not smoke cigarettes inside her home, but she may smoke outside. In inclement weather only, Alice Shaw-Baker may smoke inside her home only in the pantry (with a cement floor) or in the kitchen (with a tile floor); and it is

FURTHER ORDERED that Temporary Conservator Family Services shall ensure that Alice Shaw-Baker's home is covered by appropriate homeowners insurance; and it is

FURTHER ORDERED that Alice Shaw-Baker shall not be removed from her home for placement elsewhere without further order of this Court; and it is

FURTHER ORDERED that the Guardian shall consult with Alice Shaw-Baker regarding her placement, medical care, and other major life decisions, but the Guardian shall have final decision making authority with regard to all such decisions; and it is

FURTHER ORDERED that Alice Shaw-Baker may make purchases up to \$50.00. Other than making purchases up to \$50.00, Alice Shaw-Baker may not sell personal or real property. Alice Shaw-Baker may not enter into contracts, execute instruments, execute powers of attorney, manage her financial affairs, marry, divorce, drive an automobile, or hold a driver's license. Alice Shaw-Baker can vote; and it is

FURTHER ORDERED that until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis; and it is

FURTHER ORDERED that Lisa Fisher shall report the condition of Alice Shaw-Baker and her estate annually on or before the 1st of November of each year starting November 1, 2009; and it is

FURTHER ORDERED that the Conservator shall be bonded in an amount and in such form as may be approved by the Court. Upon approval and filing of said bond, the Conservator shall take possession and control of the financial affairs of Ms. Shaw-Baker; and it is

FURTHER ORDERED that Family Services, Inc. (and/or the Conservator upon posting a bond) shall promptly pay out of Ms. Shaw-Baker's funds all of her just debts, including, without limitation, the costs of home repair and improvements, food, clothing, living expenses, medical care, elder care, the costs of this action, reasonable fees and expenses of the Court Appointed Examiners,

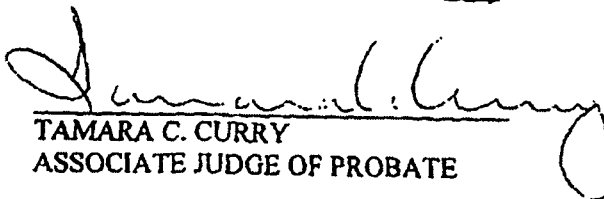
Dr. Mulbry and Ms. McCrudden, costs and premiums for the Conservator's bond, and all other reasonable expenses of the administration of Ms. Shaw-Baker's financial affairs; and it is

FURTHER ORDERED that the attorneys shall submit affidavits and proposed orders for their attorneys' fees; and it is

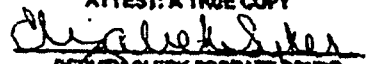
FURTHER ORDERED that this matter shall be set for review in six months; and it is

FURTHER ORDERED that this Order is subject to such further Orders of the Probate Court of Charleston County as may be or shall become necessary for the custody, control, conduct, and administration of the person and estate of Alice-Shaw Baker.

IT IS SO ORDERED at Charleston, South Carolina on November 19, 2008.


TAMARA C. CURRY
ASSOCIATE JUDGE OF PROBATE

ALL
10/28/08
11/19/08

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

Betty Fisher et al

CASE NO. 2009-CP-10-3010
v. BESSIE HUCKABEE, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Rule 43(k), SCRPC (Settled); ☐ Other ☐
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

TEMPORARY ORDER RESTRAINING P.R. FROM
DOING ANYTHING REGARDING THE ESTATE
GRANTED.

Dated at Charleston, South Carolina, this 22 day of May 2009.

T.L. Hughes
PRESIDING JUDGE

This judgment was entered on the day of , 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)
John Hughes Cooper

ATTORNEY(S) FOR THE DEFENDANT(S)
Peter Kouten

ATTEST: A TRUE COPY
CLERK OF COURT JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
Lindy D. [Signature]
DEPUTY CLERK

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
Betty Fisher et al

JUDGMENT IN A CIVIL CASE

CASE NO. *2009-CP-10-3010*
v Bessie Huckabee, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.



DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Rule 43(k), SCRPC (Settled); ☐ Other ☐

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐

See attached order. (Formal order to follow)

☐

Statement of Judgment by the Court:

*TEMPORARY ORDER RESTRAINING P.R. FROM
DOING ANYTHING REGARDING THE ESTATE
GRANTED.*

Dated at **Charleston**, South Carolina, this *22* day of *May* 20 *09*.

T.L. Hughes
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20, and a copy mailed first class this _____ day of _____, 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)
John Hughes Cooper

ATTORNEY(S) FOR THE DEFENDANT(S)
Peter Kaufman

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER and)
LISA FISHER,)

Plaintiffs,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate No.:)
2009-ES-10-0378)

**ORDER GRANTING MODIFICATION
OF TEMPORARY RESTRAINING
ORDER**

Date of Hearing:
Presiding Judge:
Defendant's Attorney:
Attorneys for Plaintiffs:

Court Reporter:

June 8, 2009
Honorable Thomas L. Hughston, Jr.
Peter A. Kouten, Esquire
Cain Denny, Esquire
John Cooper, Esquire
Brenda Cooley

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2009 JUN 10 PM 1:58

FILED

This matter comes before the Court on June 8, 2009 on Defendant Huckabee's Motion for Reconsideration and Modification of a prior Temporary Order from this Court, filed May 22, 2009, which restrained the Personal Representative of the Estate of Alice Shaw-Baker from performing any acts with regard to the estate. Present for the hearing was Cain Denny representing Plaintiffs Betty and Lisa Fisher. Attorney Peter Kouten represented Defendant Bessie Huckabee. Having considered the Defendant's Motion, counsel's argument and memoranda, applicable statutory and case law, as well as the various interests balanced by the Court at the time of the ruling, the Defendant's Motion to Reconsider is hereby GRANTED.

Although Plaintiffs have not detailed with specificity the immediate and/or irreparable harm that would occur if the Personal Representative was not temporarily restrained as required by Rule 65(b), the South Carolina Probate Code allows for restrictions on disbursements and distributions. In granting such restraint pursuant to South Carolina Probate Code § 62-3-607, the Court is bound by SCRCP, Rule 65 requiring the Court to specify reasons for the issuance and the duration of restraint. The Court requires the Plaintiff to provide a bond in the event the Defendant's sustain harm from a finding that the restraint was improperly issued. Associate Probate Judge Tamara Curry informally appointed Defendant Bessie Wyndham Huckabee as Personal Representative of the Estate of Alice Shaw-Baker on March 11, 2009. Plaintiffs filed a Complaint alleging Undue Influence and Fraud as well as various other causes of action on April 27, 2009. This case was removed from the Probate Court to the Circuit Court pursuant to S.C. Code § 62-1-302(d)(5) by an Order signed by the Honorable Tamara Curry and filed on May 13, 2009. The Court finds that, in balancing the equities, restraining the Personal Representative from making any disbursements or distributions from the estate is the least restrictive way of preserving the estate until a trial on the merits¹.

The Personal Representative shall continue to administer and preserve the estate pending a trial on the merits. This includes: (1) filing necessary documents (2) receiving and marshaling assets into the estate account, and (3) accounting for estate assets provided the authority does not include any disbursements or distributions from the estate.

SCRCP, Rule 65(c) states that no temporary injunction shall issue without the giving of security by the applicant. The Court finds that bond must be given before the Restraining Order shall issue. The Court finds that the Personal Representative shall procure a bond pursuant to South Carolina Probate Code §§ 62-3-603- 606 in the amount of one and one half times the value of the liquid assets in the estate. The Court further finds that the Plaintiff must be required to post a bond equivalent to one and

¹ This case was removed from the Probate Court to the Circuit Court pursuant to S.C. Code § 62-1-302(d)(5) by Order signed by the Honorable Tamara Curry and filed on May 13, 2009. According to the Charleston Clerk of Court staff, this case will be transferred to the trial roster and is likely be called on or about June 13, 2010.

one half time the assets of the estate to satisfy the bond issuance requirement of SCRCF, Rule 65(c). This bond may be a modification of that which was previously required of the Conservator by the Probate Court; however, that bond must be clearly modified to specify the reason for the bond as stated in Rule 65, SCRCF.

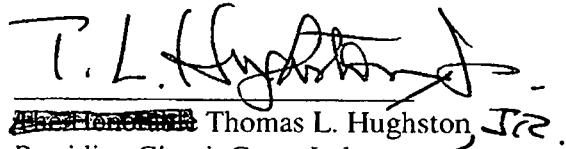
THEREFORE, based on the forgoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant's Reconsideration and Modification of the prior Order is GRANTED and the restraint of the Personal Representative is limited to disbursing or distributing any estate assets pending a trial on the merits on all issues in controversy; and it is further

ORDERED, ADJUDGED AND DECREED that the Personal Representative may continue to administer and preserve the estate, including filing necessary documents, receiving and marshaling assets into the estate account, and accounting for estate assets provided the authority does not include any disbursements or distributions from the estate; and it is further

ORDERED, ADJUDGED AND DECREED that the Personal Representative and Plaintiff shall both maintain a bond in the amount of one and one half times the liquid assets of the estate, pursuant to SCRCF, Rule 65.

AND IT IS SO ORDERED!


~~Thomas L. Hughston, Jr.~~ Thomas L. Hughston, Jr.
Presiding Circuit Court Judge
Ninth Judicial Circuit

This 9th day of June, 2009
Charleston, South Carolina

2009-CP-10-3010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Betty Fisher and Lisa Fisher, Appellants,

v

Bessie Huckabee, et al., Respondents.

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

Charleston County Probate No.: 2009-ES-10-0378/F

Appeal From Charleston County
Thomas L. Hughston, Jr., Circuit Court Judge

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 AUG - 1 PM 3:31

FILED

Unpublished Opinion No. 2011-UP-173
Submitted February 9, 2011 – Filed April 18, 2011
Withdrawn, Substituted and Refiled June 2, 2011

AFFIRMED IN PART AND DISMISSED IN PART

Cain Denney, of Charleston, and John Cooper, of
Sullivan's Island, for Appellants.

Peter A. Kouten, of Johns Island, for Respondents.

PER CURIAM: In this probate matter, Betty Fisher and Lisa Fisher appeal (1) the appointment of Bessie Huckabee as personal representative of the estate of Alice Shaw-Baker and (2) an order modifying a prior temporary order that had restrained Huckabee, in her capacity as personal representative of Shaw-Baker's estate, from taking any action regarding the estate. Under the modified order, Huckabee could continue to administer and preserve the estate, but could not disburse or distribute any estate assets pending a trial on the merits. We affirm on all issues raised by the Fishers in this appeal concerning the modification order and dismiss those issues concerning Huckabee's appointment.¹

As to the modification order, the Fishers argue (1) the order was void because Huckabee's attorney failed to copy it to opposing counsel before submitting it to the presiding judge, (2) the order lacked the required finding of a change of circumstances to warrant modifying the prior order, (3) the circuit court should have applied the standard in the South Carolina Probate Code instead of that in the South Carolina Rules of Civil Procedure in determining whether or not modification of the prior order was warranted, (4) the provision in the modification order requiring the Fishers to post a bond was improper, and (5) the modification order was based on the incorrect assumption that Huckabee had possession of the estate assets. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 81, SCRCRCP (stating the South Carolina Rules of Civil Procedure "shall apply insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts"); Mims v. Alston, 312 S.C. 311, 314 n.1, 440 S.E.2d 357, 359 n.1 (1994) (refusing to address an issue because "it was not raised or ruled upon below"); In re Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) ("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCRCP, to alter or amend the judgment in order to preserve the issue for appeal."). Furthermore, as to issue (5), we

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

hold that if the finding that Huckabee had possession of the estate assets is premature or otherwise incorrect, the error does not prejudice the Fishers in that under Huckabee, in her capacity as personal representative, has been restrained from making disbursements or distributions from the estate and counsel for the Fishers, on page 13 of the Appendix to the Record on Appeal, has implicitly acknowledged that Lisa Fisher has been ordered by the probate court to turn over the estate assets in her possession.

As to the order appointing Huckabee personal representative of the estate, the Fishers contend (1) the order is void because they were not given proper notice of Huckabee's intent to seek the appointment, (2) the order lacks the requisite findings of fact, (3) Huckabee is not qualified to serve as personal representative because her interests are adverse to those of the estate, and (4) they should not have to wait until a merits hearing in the probate court for a review of the appointment. On page 19 of the Appendix to the Record on Appeal, counsel for the Fishers advised the circuit court that he had "a pending motion to replace the PR and to appoint a special administrator." We, therefore, hold the issues raised by the Fishers to this court regarding the propriety of the appointment are interlocutory and decline to address them at this time. See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control, 387 S.C. 265, 267, 692 S.E.2d 894, 894 (2010) ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory."); Morris v. Anderson Cnty., 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (stating an appellate court "may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation") (emphasis added).

AFFIRMED IN PART; APPEAL DISMISSED IN PART.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

The Supreme Court of South Carolina

09-CP-10-3010

Betty Fisher and Lisa Fisher, as Conservator for Alice
Shaw-Baker, Petitioner,

v.

Bessie Huckabee, Kay Passailaigue Slade, Sandra Byrd,
Alan Wilson, in his capacity of Attorney General of
South Carolina, State Budget and Control Board, South
Carolina Retirement System, ING, South Carolina
Deferred Compensation Program, and National Life
Insurance Company, Defendants, of whom Bessie
Huckabee is the Respondent.

In the Matter of: Alice Shaw-Baker.

Appellate Case No. 2011-194613

FILED
2012 JUL 30 PM 4:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

We deny the petition for a writ of certiorari to review the Court of Appeals' decision in *Fisher v. Huckabee*, Op. No. 2011-UP-173 (S.C. Ct. App. filed June 2, 2011).

 C.J.
FOR THE COURT

Columbia, South Carolina
July 27, 2012
cc:
Jenny Kitchings
John Townsend Cooper
Cain Denny

Peter A. Kouten
John Hughes Cooper



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 31, 2012

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Fisher, Betty & Lisa v. Huckabee, Bessie
Lower Court Case No. 2009CP1003010
Appellate Case No. 2009-131266

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Peter A. Kouten
John Townsend Cooper
Cain Denny

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
BETTY FISHER and LISA FISHER,)
)
)
Plaintiff,)
)
v.)
)
BESSIE HUCKABEE, et al.,)
)
)
Defendants.)
)
In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate)
No.: 2009-ES-10-0378)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NOS. 09-CP-10-3010 and
12-CP-10-1332

**CONSENT ORDER
FOR SUBSTITUTION OF
COUNSEL**

FILED
2013 OCT 14 PM 1:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY 1

THIS MATTER is before this Court upon the joint motion of Peter Kouten of the Kouten Law Firm, LL and W. Westbrook Wills III, as evidenced by their signatures below, who request that the Court substitute Mr. Wills as counsel of record for the Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue in the above styled case and relieving Peter Kouten as counsel for same Defendants. Based on the foregoing, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that W. Westbrook Wills III is hereby SUBSTITUTED as counsel of record for Defendants in place of Peter Kouten. Peter Kouten is hereby relieved as counsel of record in the above-captioned matter, and W. Westbrook Wills III, of the Law Office of W. Westbrook Wills

1

III, 38 Broad Street, Suite 200, Charleston, SC 29401 shall be sole counsel of record for Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue.

AND SO IT IS ORDERED.

October 6, 2013
St. George, South Carolina



Presiding Judge, Ninth Judicial Circuit

WE SO MOVE:



Peter Kouten

The Kouten Law Firm LLC
P.O. Box 340a
Johns Island, SC 29457
pkouten@gmail.com

WE CONSENT:



W. Westbrook Wills III

38 Broad Street, Suite 200
Charleston, SC 29401
Tel: 843.805.6300
wwills@wwillslaw.com

CHARLESTON, SC
October 8th, 2013

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Kathryn E. Naugle,

Plaintiff,

v.

Denis R. Espinoza and Plaintiff
Finance Solutions,

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action Number: 12-CP-18-2004

CERTIFICATE OF SERVICE

FILED
2013 OCT 14 PM 1:03
JULIE J. ARNETT
CLERK OF COURT

I certify that on this date a copy of the foregoing *Consent Order of Substitution of Counsel* was served on each party or counsel of record by e-mailing a copy of same, and via United States Mail with sufficient postage to the following address:

Hon. Mary Frances Jowers
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Lisa Fisher, Esq.
c/o/ John Hughes Cooper
(at the above address)

John Hughes Cooper, Esq.
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464

Cain Denny, Esq.
Cain Denny, P.A.
PO Box 6
Sullivan's Island SC 29482


W. Westbrook Wills III

Dated: October 8th, 2013
CHARLESTON, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-3010

BETTY FISHER
PLAINTIFF(S)

BESSIE HUCKABEE
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41, SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Upon review of the motion and relevant case law, the Court denies without rehearing the "Motion by Plaintiffs Betty Fisher and Lisa Fisher to Reconsider, Alter, Amend, and Vacate February 10, 2014 Order Denying Motion to Disqualify and Remove Opposing Counsel Peter Kouten Due to Non-Waivable Conflict of Interest; Memoranda of Law; Affidavit of Lisa Fisher," filed on February 18, 2014.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

Date

5/5/14

FILED

2014 MAY - 7 AM 10:31
JULIE ARMSTRONG
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL
CASE

CASE NO. 2009-CP-10-03010

In the matter of Alice Shaw-Baker

Betty Fisher and Lisa Fisher,

v.

Bessie Huckabee, Kay Passailaigue
Slade, Sandra Byrd, Henry McMaster,
in his capacity as Attorney General of
South Carolina, State Budget and
Control Board, and South Carolina
Retirement System, Inc.,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(e), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐

See attached order. (Formal order to follow)

☒

Statement of Judgment by the Court:

This case was before the Court on October 18, 2017 for a hearing on Plaintiff's Motion for Order to Change Venue, Order Vacating the Date of Trial, and Order Staying Any and All Hearings

FILED
2017 OCT 19 PM 2:30
CLERK OF COURT

including Defendants' Motion for Summary Judgment, filed on August 2, 2017¹. Defendant filed a Memorandum in Opposition to this Motion on October 18, 2017. Present for the hearing were John Hughes Cooper, Esq. on behalf of Plaintiffs Betty Fisher and Lisa Fisher; W. Westbrook Wills, III, Esq. on behalf of Defendants Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd; and Jessica Crawley, Esq. on behalf of the Personal Representative Bessie Huckabee. Mary Frances Jowers, Esq. represents Henry McMaster in his capacity as Attorney General, however, she requested to be excused from attendance at this hearing and the Court granted her request.

Pursuant to their motion the Plaintiffs asked this Court to transfer venue of this case from Charleston County to Beaufort County. In support thereof, Plaintiffs argued that the Charleston County Probate Court has been disqualified and the case transferred to Beaufort County pursuant to an August 16, 2017 Order of the Supreme Court of South Carolina. Defendants disputed Plaintiffs' allegation that the Order transfers the case to Beaufort County. Defendants argued that the Order instead disqualifies all Charleston County Probate Judges from hearing any matters related to the case. The Court agrees that the Order merely disqualifies the Probate Judges of Charleston County from sitting as judges of probate in this matter, and further appoints the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or in the alternative, an Associate Probate Judge for Beaufort County, as special probate judge to sit in their stead. The Order does not, however, transfer the case to Beaufort County. At the inception of argument, Attorney for Plaintiffs, Mr. Cooper, conceded that his original argument was without support and withdrew Plaintiffs' motion to transfer venue on the basis that the August 16, 2017 Order of the Supreme Court mandates a transfer of venue.

Plaintiffs then amended their argument and asked the Court to transfer venue from Charleston County to Beaufort County, Berkeley County, or Dorchester County pursuant to S.C. Code Ann. § 62-1-303 and "in the interest of justice." Plaintiffs initially made a vague assertion that they believed they would not receive a fair and impartial jury trial in Charleston County. Plaintiffs then included an argument that a jury trial would be unfair because an associate judge of the Probate Court of Charleston County, Peter Kouten, is also a witness in their case-in-chief.² Defendants objected to the transfer of venue of this case from Charleston County asserting there is no proof a fair and impartial jury could not be selected and that a transfer in venue would work a significant hardship on the elderly litigants in the case. The Defendants further assert that prolonged travel of any sort could work a disability to these elderly parties and witnesses and have a preclusive effect. The court is further informed that all witnesses in this case reside in Charleston County. S.C. Code Ann. § 62-1-303 controls the transfer of venue in cases such as this one where the action is governed by the Probate Code but was removed from Probate Court to Circuit Court. See Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992). S.C. Code Ann. § 62-1-303 provides that a court may transfer proceedings to another court in the interest of justice. However, the Court does

¹ The parties consented to the motion being heard by telephone for their convenience as Attorney Cooper was out of town.

² Peter Kouten, Esq. began the practice of law in 2007. He was sworn in as an Associate Probate Judge on June 29, 2017 By Order of the Supreme Court dated July 28, 2017 he was given the authority to preside over the Charleston County Mental Health Court in the absence of Judges Irvin G. Condon and Tamara C. Curry This Court has noted, however, that it is uncontested that he is a fact witness in this case and ethically no reference can be made to his current position in a manner in which to bolster the credibility of his testimony in that capacity due to his involvement as an attorney in this case. Further, there is no indication to this Court that Mr. Kouten has had any involvement in the current case in his official capacity as an Associate Probate Judge

not find that justice would be served by transferring venue of this case from Charleston County three (3) days before trial. Plaintiffs have not met their burden in establishing prejudice as the result of a jury trial in Charleston County. The Court is unpersuaded by Plaintiffs' argument that jurors in Charleston County will be unfairly influenced or biased by the testimony of Peter Kouten in this case. "Normally, a party's popularity, influence, or reputation is not adequate basis, in and of itself, to justify a change of venue." Stevens v. Sun News, 267 S.C. 63, 69, 226 S.E.2d 236, 239 (1976). Further, the Court cannot discern any prejudice to the parties as they will have the full opportunity to observe jury qualification, participate in voir dire and exercise peremptory challenges during the jury selection process. Certainly any potential bias, prejudice or inability to sit as a fair and impartial juror can be determined through the process of jury selection. Moreover, this case was filed in 2009 and was set for a date certain two-week trial in Charleston County pursuant to the request of counsel on January 17, 2017. The Court held a status conference in this matter on February 15, 2017, and subsequently set the case for a two-week term beginning on October 23, 2017. Charleston County has allotted significant time and court resources to hear this case, and it would serve judicial economy for this case to go forward as scheduled in Charleston County. Further, transfer of venue would also impose a significant hardship on the elderly litigants in this case. Lastly, the significant age of this case dictates that it go forward as scheduled in Charleston County on October 23, 2017 as it would be inequitable to delay the trial of this case for an indeterminate amount of time pending transfer. Accordingly, the Court denies Plaintiffs' Motion to Transfer Venue pursuant to S.C. Code Ann. § 62-1-303. This case will proceed as scheduled on Monday, October 23, 2017 in Charleston County.

Plaintiffs asked the Court to stay this case because there is a pending appeal on an unrelated matter before the South Carolina Supreme Court wherein Plaintiffs seek disqualification of the attorneys W. Westbrook Wills, III, Esq. and Jessica Crowley, Esq, who also represent Defendants in the instant case. The parties notified this Court that the gravamen of the appeal before the Supreme Court involves standing. Rule 241 of the Appellate Rules of Procedure governs stays on appeal. This Rule provides that the "notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree, or decision." Rule 241(a), SCACR. Rule 241, does not, however, stay a case when an unrelated matter has been appealed. Plaintiffs thus have no basis in the law to support their request for a stay of this case. Accordingly, the Court denies Plaintiff's Motion to Stay.

Lastly, any pending motions regarding Summary Judgment, Bifurcation or any other matter will not act to delay the date certain trial of this case. Any pending motions may be heard in the discretion of the trial Judge as he may deem necessary.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk :

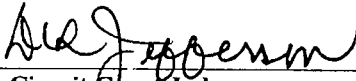
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2128
 Judge Code

10/19/17
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John Hughes Cooper, Esq.

ATTORNEY FOR PLAINTIFFS

W. Westbrook Wills, Esq.

Jessica Crowley, Esq.

Mary Frances Jowers, Esq.

ATTORNEY FOR DEFENDANTS

CLERK OF COURT

COURT REPORTER: RUTH WEESE

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In the Matter of Alice Shaw-Baker,

Betty Fisher and Lisa Fisher

Plaintiffs,

vs.

Bessie Huckabee, Kay Passailague
Slade, Sandra Byrd, Henry McMaster
in his capacity as Attorney General of
South Carolina, State Budget and Control
Board, and South Carolina Retirement
Systems, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-10-03010

**ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION**

Presiding Judge:
Plaintiffs' Attorneys:

Defendants' Attorneys:

Hon. Deadra L. Jefferson
John Hughes Cooper, Esq.
Lisa Fisher, Esq.
W. Westbrook Wills, Esq.
Jessica Crowley, Esq.
Mary Frances Jowers, Esq.

2017 OCT 23 AM 9:01
JULIE S. AINSWORTH
CLERK OF COURT

FILED

THIS MATTER is before the Court on Plaintiffs' Motion for Reconsideration, an unsigned and unfiled copy of which was received by the Court and served upon Opposing Counsel via electronic correspondence on October 20, 2017¹. Plaintiffs move for this Court to Reconsider its Order denying Plaintiffs' Motion to Change Venue, Vacate the Date of Trial, and Stay all

¹ Counsel for Plaintiffs, John Hughes Cooper, Esq., notified the Court that Plaintiffs would tender their Motion for Reconsideration by 3:00 PM on October 20, 2017. However, the Court did not receive a copy of Plaintiffs' Motion for Reconsideration until 4:27 PM on October 20, 2017. Counsel for Plaintiffs advised the Court that they would file their Motion for Reconsideration with the Clerk of Court on Monday, October 23, 2017.

10/23

Proceedings, signed and filed on October 19, 2017. Counsel for Defendants were given the opportunity to respond by the Court and indicated that they stand by the Memoranda submitted in opposition to Plaintiffs' Motion to Change Venue as well as the arguments propounded by Counsel at the October 18, 2017 hearing. Having considered Plaintiffs' Motion, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiffs' Motion for Reconsideration is hereby denied.

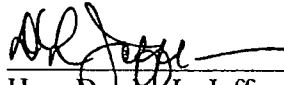
Rule 59(e) of the South Carolina Rules of Civil Procedure states that “(a) motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order.” Rule 59(e), SCRPC. The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to allow the parties liberal opportunity to move for the trial judge to reconsider matters properly encompassed in a decision on the merits, regardless of whether the issues and arguments have been previously presented. “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)). See Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

Plaintiffs have not presented any novel facts, arguments, or theories in support of their Motion for Reconsideration. Nor have Plaintiffs presented any argument or theory that could not have been raised in their original Motion to Vacate, Vacate the Date of Trial, and Stay all

2013
JRY

Proceedings. Moreover, Plaintiffs have not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Plaintiffs' Motion for Reconsideration is hereby DENIED.² This case will proceed to trial before the Honorable Thomas L. Hughston on October 23, 2017 in Charleston County.³

IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

October 20, 2017
Charleston, South Carolina

² This Motion is disposed of without the necessity of a hearing and decided on the record, written motion, and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

³ The Court held a phone conference with the parties on October 20, 2017 at 5:08 PM regarding receipt of the unfiled motion as well as the disposition of the motion. The Court advised the parties that any new matters raised regarding a Motion for Recusal are appropriately addressed by the trial court.

3013

The South Carolina Court of Appeals

In the Matter of Alice Shaw-Baker

Betty Fisher and Lisa Fisher, Appellants,

v.

Bessie Huckabee, Kay Passailaigue Slade, Sandra Byrd,
Henry McMaster in his capacity as Attorney General of
South Carolina, State Budget and Control Board, and
South Carolina Retirement Systems, Inc., Defendants,

Of whom Bessie Huckabee, Kay Passailaigue Slade, and
Sandra Byrd are the Respondents.

Appellate Case No. 2017-002203

ORDER

This appeal is dismissed because the orders denying the motion for a change in venue, the motion to stay, and the motion to disqualify are not immediately appealable pursuant to section 14-3-330 of the South Carolina Code (2017).¹ See *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000) (providing an order granting or refusing a change in venue is not immediately appealable); *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996) (providing the denial of a motion to disqualify a judge is not appealable until final judgment). The remitter will be sent as provided in Rule 221, SCACR.


FOR THE COURT

¹ Because the underlying orders are not immediately appealable, we decline to act on the petition for a writ of supersedeas and for emergency/interim relief.

Columbia, South Carolina

cc:

John Hughes Cooper, Esquire
Jessica Lynn Crowley, Esquire
Lisa Fisher, Esquire
Warren W. Wills, III, Esquire

FILED

October 24, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-3010

Alice Shaw Baker, etc et al

Bessie Huckabee, etc et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: **We, the jury, find that Defendant's Exhibit 3 is the Last Will of Alice Shaw Baker so verdict is for the Defendant. The parties will have 10 days to file any post-trial motions.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

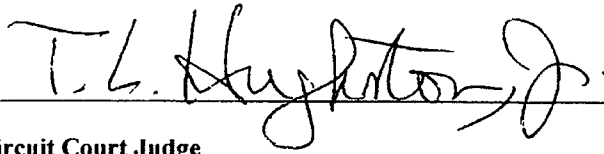
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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Circuit Court Judge

2008
Judge Code

10/26/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows.

John Hughes Cooper

Lisa Fisher

ATTORNEY(S) FOR THE PLAINTIFF(S)

Warren W. Wills

Jessica Crowley

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Denise Lauder

IN THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NUMBER 2009-CP-10-3010

In the Matter of ALICE SHAW-BAKER,
BETTY FISHER, and LISA FISHER

Plaintiffs,

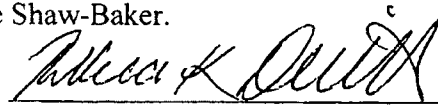
vs.

BESSIE HUCKABEE, KAY PASSAILAGUE
SLADE, SANDRA BYRD, HENRY MCMASTER
In his capacity as Attorney General of South
Carolina, STATE BUDGET AND CONTROL
BOARD, and SOUTH CAROLINA
RETIREMENT SYSTEMS, INC.
Defendants.

VERDICT

2017 OCT 26 PM 3:34
CLERK OF COURT
JUDICIAL CIRCUIT
NINTH JUDICIAL CIRCUIT

We find that Exhibit #3 is the Last Will of Alice Shaw-Baker.


FORELADY

10/26/2017

We find that Exhibit # 3 is not the Last Will of Alice Shaw-Baker since it was revoked by tearing up a copy of it with her intention to thereby revoke it, she died without a Will and therefore, Betty Fisher, and other next of kin, shall inherit her estate.

FORELADY

2009-CP-10-3010

The South Carolina Court of Appeals

In the Matter of Alice Shaw-Baker

Betty Fisher and Lisa Fisher, Appellants,

v.

Bessie Huckabee, Kay Passailaigue Slade, Sandra Byrd,
Henry McMaster in his capacity as Attorney General of
South Carolina, State Budget and Control Board, and
South Carolina Retirement Systems, Inc., Defendants,

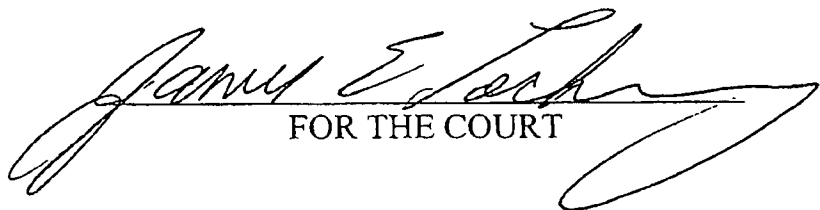
Of whom Bessie Huckabee, Kay Passailaigue Slade, and
Sandra Byrd are the Respondents.

Appellate Case No. 2017-002203

FILED
2017 NOV 16 PM 2:57
JULIE A. BISHOP
CLERK OF COURT

ORDER

This appeal is dismissed because the orders denying the motion for a change in venue, the motion to stay, and the motion to disqualify are not immediately appealable pursuant to section 14-3-330 of the South Carolina Code (2017).¹ See *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000) (providing an order granting or refusing a change in venue is not immediately appealable); *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996) (providing the denial of a motion to disqualify a judge is not appealable until final judgment). The remitter will be sent as provided in Rule 221, SCACR.


FOR THE COURT

¹ Because the underlying orders are not immediately appealable, we decline to act on the petition for a writ of supersedeas and for emergency/interim relief.

Columbia, South Carolina

cc:

John Hughes Cooper, Esquire
Jessica Lynn Crowley, Esquire
Lisa Fisher, Esquire
Warren W. Wills, III, Esquire

FILED

October 24, 2017

Re: Fisher v. Huckabee 2009-CP-10-03010

Hughston, Thomas L.

Thu 1/25/2018 10 23 AM

To shiplaw@jhcooper.com <shiplaw@jhcooper.com>, wwills@wwillslaw.com <wwills@wwillslaw.com>,
jcrowleylawfirm@gmail.com <jcrowleylawfirm@gmail.com>,

ORDER

I have been studying the files to make sure I understand the history of this case from 2009 to now. Since the Complaint raises the issue of attorney's fees and costs, and since the Conservator/Guardian action is closely tied in with this suit involving the Estate, I want to know the status of the accounting that has been done, or should have been done in regard to both the Conservator/Guardian and the Personal Representative. Please furnish me with information regarding the most recent accounting to the Probate Court. I will expand that request to be for all of the accounting that has been done. I want to know what has been spent by who and for what. This information is necessary in order to deal with the issues now before me. Please consider this as my Order for I am filing it both here and in Beaufort.

Thomas L. Hughston, Jr.

1/24/18.

T. L. Hughston, Jr.
Presiding Judge

2018 JAN 25 PM 10:37
BY [signature] 01/25/18

Re: Fisher v. Huckabee Case- Summary Judgment Motion

Hughston, Thomas L.

2009-CP-10-3010

Thu 2/22/2018 2:56 PM

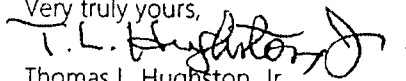
To: W. Westbrook Wills III <wwills@wwillslaw.com> ,

Cc: Jaci <jcrowleylawfirm@gmail.com> , shiplaw@jhcooper.com <shiplaw@jhcooper.com> , lisa fisher <lfisher6736@yahoo.com> , Fulp, Kenneth <kfulp@bcgov.net> ,

Previously, I noted what I assume to be a lack of any discovery in this case and any other cases that may have been filed involving these parties including 2012-CP-10-1332 which I believe is presently before the Supreme Court of South Carolina. If there has been any discovery depositions, interrogatories, requests to produce, or any other discovery relating to any case involving these parties, I am Ordering that to be produced and turned over to me so that I can fully understand all of the issues that I am dealing with. This is relevant!

Thank you for your consideration and attention in this matter and I shall look forward to seeing you in Beaufort

Very truly yours,


Thomas L. Hughston, Jr

From: W. Westbrook Wills III <wwills@wwillslaw.com>
Sent: Thursday, February 15, 2018 12:46 PM
To: Hughston, Thomas L.
Cc: Jaci; shiplaw@jhcooper.com; lisa fisher, Fulp, Kenneth
Subject: Re: Fisher v. Huckabee Case- Summary Judgment Motion

Thank you, Judge Hughston

W. Westbrook Wills III
The Law Office of W. Westbrook Wills III
P.O. Box 822
Folly Beach, SC 29439
Tel (843) 805-6300
Fax (866) 922-8596

2018 FEB 22 PM 3:11
STANDARD
MAIL
100

Confidentiality Note: This e-mail, and any attachment to it, contain privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this e-mail message and any attachment to it is strictly prohibited. We do not waive attorney-client or work product privileges by the transmission of this e-mail. If you have received this message in error, please immediately notify us by return e-mail and/or telephone (843-805-6300) and delete the message in its entirety.

> On Feb 15, 2018, at 12:42 PM, Hughston, Thomas L. <thughstonj@sccourts.org> wrote

Re: PRETRIAL HEARING. CASE # 2009-CP-10-03010

Hughston, Thomas L.

Wed 2/28/2018 1 23 PM

To: W Westbrook Wills III <wwills@wwillslaw.com>;

Cc: Jaci <jcrowleylawfirm@gmail.com>, shiplaw@jhcooper.com <shiplaw@jhcooper.com>, lisa fisher <lfisher6736@yahoo.com>, Fulp, Kenneth <kfulp@bcgov.net>,

2018 FEB 29 PM 2:43
CLEAN
2

This will serve as my Order confirming that we had the Pre-Trial Hearing as scheduled and that about as much was accomplished there by the exchange of the Pre-Trial Briefs as expected. As I indicated to you, I would hope the Defendants can agree to the authenticity of the documents that the Plaintiffs wish to enter in to evidence as exceptions to the Hearsay Rule. This does not mean that the Defendants are waiving any other objections that they may have under the Rule or Rules of Evidence or procedure. As I understand it, it would simply not require the Plaintiffs to bring live witnesses to testify as to their authenticity. Any other agreements that you can reach in advance of the trial, that are practicable, etc, would be appreciated by everyone, I am sure.

One other matter that I want to mention to you is that in some cases, particularly big, complicated cases with many disputed facts and opinions as to how those facts fit into the law, I take the position that it is better use of everyone's time and attention to deny Motions for Summary Judgment and proceed with the factual trial. Also, that may include any Motion for a Directed Verdict. I know that is contrary to some opinions, etc, but I have done it on occasions and so far have not been reversed, or ruled against on this. I give you this advice for several reasons. Further, I am Ordering the Plaintiffs to be prepared to present any evidence that they wish to present at the trial on March 12 concerning what they have called in their Pre-Trial Brief, (3) The Legal Issues Involved, (a) Breach of Fiduciary Duty. Also, of course, the Defendants should be prepared regarding any legal issues and factual matters.

Again, thank you for your consideration, cooperation and attention, and I shall look forward to seeing you



Thomas L. Hughston, Jr.

Attachment
to
E-mail

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Betty Fisher, on behalf of the estate of Alice Shaw-
Baker, Petitioner,

v.

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

Appellate Case No. 2016-000320

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
J. C. Nicholson Jr., Circuit Court Judge

Opinion No. 27765
Heard October 19, 2017 – Filed February 28, 2018

AFFIRMED AS MODIFIED

John Hughes Cooper, of the John Hughes Cooper, P.C., of
Mount Pleasant, Lisa Fisher, of the Law Offices of Lisa
Fisher, of Long Beach, California, *pro hac vice*, both for
Petitioner.

Evan Smith, of the Evan Smith Law Firm, LLC, of
Charleston, and Warren W. Wills III, of the Law Office of
W. Westbrook Wills III, of Folly Beach, both for
Respondents.

JUSTICE FEW: The question we address in this appeal is who may bring a civil
action on behalf of the estate of a deceased person when the personal representative

of the estate is also a potential defendant in the action. The answer is found in section 62-3-614 of our Probate Code, which provides, "A special administrator may be appointed . . . in circumstances where a general personal representative cannot or should not act."

I. Facts and Procedural History

Alice Shaw-Baker lived in Charleston and had no immediate family. She allegedly reached an agreement with Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd that if they would care for her in her final years, she would leave them the assets of her estate. In her last will—executed in 2001—she left her entire estate to Huckabee, Slade, and Byrd, and named Huckabee the personal representative. Shaw-Baker died in February 2009 at the age of seventy-nine.

Betty Fisher is Shaw-Baker's niece and closest living relative. Shortly after Shaw-Baker's death, Fisher filed an action in probate court challenging the 2001 will and the appointment of Huckabee as personal representative. Fisher removed the probate action to circuit court. On May 14, 2009, Fisher filed what she called a "Motion for Temporary Injunction" in the probate action in which she requested to remove Huckabee as the personal representative. Fisher specifically alleged in the motion "Shaw-Baker's estate has a survival action against Huckabee" as one of the reasons Huckabee should be removed. As an alternative to the removal of Huckabee, Fisher requested that attorney Frank Barnwell be appointed special administrator pursuant to section 62-3-614 of the South Carolina Code (Supp. 2017). Fisher made no suggestion, however, that the special administrator might bring a survival action.

On February 24, 2012, purporting to act as Shaw-Baker's "real representative," Fisher brought this action in circuit court against Huckabee, Slade, and Byrd, and against Peter Kouten—a lawyer who represented the first three. Her primary allegation in this action is that Huckabee, Slade, and Byrd breached their duty to take suitable care of Shaw-Baker, causing Shaw-Baker to incur damages during her lifetime. Fisher brought the action under the survival statute—section 15-5-90 of the South Carolina Code (2005).

The defendants moved for summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure, claiming Fisher did not have standing to bring the survival action. The record indicates the Motion for Temporary Injunction Fisher filed almost three years earlier was still pending in the probate action at the time the summary judgment motion was filed. However, Fisher never asked the circuit court—in the probate action or the survival action—to appoint a special

administrator for the purpose of bringing the survival action. The circuit court dismissed the action. The court of appeals affirmed. *Fisher v. Huckabee*, 415 S.C. 171, 781 S.E.2d 156 (Ct. App. 2015). We granted Fisher's petition for a writ of certiorari to review the dismissal of the action.

II. Analysis

The question of who may bring a civil action arises under Rule 17(a) of the South Carolina Rules of Civil Procedure, which provides, "Every action shall be prosecuted in the name of the real party in interest." As the court of appeals has recognized, the real party in interest is "the party who, by the substantive law, has the right sought to be enforced." It is ownership of the right sought to be enforced which qualifies one as a real party in interest." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). The substantive law governing the estates of deceased persons is the South Carolina Probate Code. *See generally* S.C. Code Ann. § 62-1-100(b)(1) (Supp. 2017) (providing "the [Probate] Code applies to any estates of decedents"); § 62-1-301 (Supp. 2017) (providing "this Code applies to (1) the affairs and estates of decedents . . . [and] (4) survivorship").

Under ordinary circumstances, the Probate Code grants the personal representative the exclusive authority to bring civil actions—including a survival action—on behalf of an estate. *See* § 62-3-715(20) (Supp. 2017) (stating a personal representative may "prosecute or defend claims . . . for the protection of the estate"); § 62-3-703(c) (Supp. 2017) (providing "a personal representative . . . has the same standing to sue and be sued . . . as his decedent had immediately prior to death"); § 62-3-715(24) (Supp. 2017) (stating a personal representative may "compromise and settle . . . all claims and actions based on causes of actions surviving, to personal representatives"); *see also Carson v. CSX Transp., Inc.*, 400 S.C. 221, 242, 734 S.E.2d 148, 159 (2012) (explaining "a survival claim may only be filed by the personal representative of the decedent's estate").

However, the Probate Code contemplates there will be "circumstances where a general personal representative cannot or should not act," in which case the Probate Code provides, "A special administrator may be appointed" § 62-3-614. The Reporter's Comment to section 62-3-614 explains, "Appointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest."

The defendants' motion for summary judgment sought dismissal of the survival action on the premise Fisher did not meet the real party in interest requirement of Rule 17(a). The premise of the motion was correct because Fisher was neither the personal representative nor a special administrator. However, Rule 17(a) provides:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

As the Reporter's Note to the rule states, this sentence "is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake." *See also* 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1541 (3d ed. 2010) (this sentence of Rule 17(a) was added "to provide that the failure to join the real party in interest at the commencement of the action does not require dismissal").

Therefore, Rule 17(a) provided Fisher an opportunity to cure her failure to meet the real party in interest requirement. If she had asked, the circuit court would have been required to allow time for "ratification, joinder, or substitution" of the proper party under Rule 17(a) instead of immediately dismissing the action. However, Fisher did not ask for such time, and specifically, she never asked the circuit court to consider whether a special administrator should be appointed under section 62-3-614, nor did she mention her pending motion in the probate action to appoint one. Under this circumstance, Rule 17(a) permitted the dismissal of the action. *Cf. Patton v. Miller*, 420 S.C. 471, 488-89, 804 S.E.2d 252, 261 (2017) (holding "the circuit court . . . erred by dismissing Patton's claims . . . [because] she did specifically ask to take advantage of . . . 'ratification, joinder, [or] substitution'").

This case was litigated in confusion from the beginning. Fisher filed her complaint in what she claimed was her capacity "as Real Representative for Alice Shaw-Baker." The term "real representative" is found in the survival statute, which provides, "Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may

be, of a deceased person" § 15-5-90. The circuit court, and later the court of appeals, analyzed the issue as whether Fisher qualified as Shaw-Baker's real representative. Neither court considered Rule 17(a). Although the result the courts reached was not erroneous, the analysis was misplaced.

The confusion and misplaced analysis arose from the fact that our statutes contain terms that no longer have the same significance under modern law they had when they were originally used. For example, section 15-51-20 of the Wrongful Death Act provides, "Every [wrongful death] action shall be brought by or in the name of the executor or administrator of such person." S.C. Code Ann. § 15-51-20 (2005). Prior to the enactment of our Probate Code, the terms "executor" and "administrator" had specific meaning, and an "action for wrongful death . . . [could] be brought only by the executor or administrator of such deceased person." *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970). Under the Probate Code, however, the terms "executor" and "administrator" do not have separate meaning, but are included within the defined term "personal representative." See S.C. Code Ann. § 62-1-201(33) (Supp. 2017) (defining "Personal representative" as "includes executor, administrator, . . ."). Therefore, wrongful death actions must be brought by the personal representative, despite the language "shall be brought by . . . the executor or administrator" that still appears in section 15-51-20. Cf. *Rutland v. S.C. Dep't of Transp.*, 390 S.C. 78, 81, 700 S.E.2d 451, 453 (Ct. App. 2010) (explaining the personal representative brought the wrongful death action), *aff'd as modified*, 400 S.C. 209, 734 S.E.2d 142 (2012).

Similarly, the term "real representative"—whatever the term meant when the survival statute was enacted in 1892¹—is no longer a meaningful term. Rather, the substantive right to bring a survival action—like a wrongful death action—is determined by the Probate Code. As the court of appeals recognized, "The real representative . . . is mentioned nowhere in the modern Probate Code." 415 S.C. at 179, 781 S.E.2d at 160. Under the Probate Code, the right to bring a survival action belongs initially to the personal representative. *Carson*, 400 S.C. at 242, 734 S.E.2d at 159. However, "in circumstances where a general personal representative cannot or should not act," the right to bring a survival action belongs to a special administrator. § 62-3-614.

The dissent makes a tempting argument that we should reverse the circuit court and remand, so Fisher may now seek appointment as a special administrator for the

¹ See Act No. 15, 1892 S.C. Acts 18.

purpose of bringing this action. Interestingly, Fisher does not make this argument. The argument, however, raises the valid question of who bears the responsibility of determining the identity of the real party in interest. To some extent, all participants in the litigation—including the trial court—share this responsibility. Here, the circuit court engaged Fisher in a discussion over who has the authority to bring the action, and suggested that Fisher turn to the probate court for guidance. Fisher declined. Ultimately, the circuit court is not responsible for doing the plaintiff's work, and the burden of compliance with Rule 17(a) and its real party in interest requirement falls to the plaintiff.

When the defendants' motion challenged whether Fisher complied with this requirement, she responded by continuing to maintain her legally flawed position. In other words, Fisher insisted that the validity of her claimed status be litigated, and she never contemplated changing her status to comply with Rule 17(a). Fisher chose the question for the court, and eventually, the court must rule on the question put before it. Fisher put to the circuit court, the court of appeals, and now this Court, the question of whether there is even such thing as a "real representative" under modern law. The Probate Code provides the answer to her question—"No."

In *Patton*, by contrast, the plaintiff responded to the defendants' motion by "specifically ask[ing]" to change her status through "ratification, joinder, [and] substitution" so she could address the defendants' claim she was not the real party in interest. 420 S.C. at 489, 804 S.E.2d at 261 (quoting Rule 17(a)). When the circuit court in that case refused to permit her to do so, the court committed legal error. 420 S.C. at 488, 804 S.E.2d at 261. Thus, the distinction between *Patton* and this case is that the plaintiff in *Patton* placed before the circuit court the Rule 17(a) question of whether she should be permitted to ratify, join, or substitute, while Fisher held firmly to her flawed position that she was right in the first place.

III. Conclusion

The Probate Code defines who may act on behalf of the estate of a deceased person. The Probate Code, therefore, is the substantive law by which the identity of the "real party in interest" is determined for all civil actions brought on behalf of the estate of a deceased person. When the personal representative of the estate cannot or should not bring the lawsuit, a "special administrator" should be appointed pursuant to section 62-3-614. After the defendants challenged Fisher's status as the real party in interest, she did not ask for "a reasonable time . . . for ratification . . . or joinder or substitution." In that circumstance, Rule 17(a) provides for dismissal, and the circuit court did not err.

We **VACATE** that portion of the court of appeals' opinion discussing "real representative," and **AFFIRM** the court of appeals **AS MODIFIED**.

KITTREDGE and JAMES, JJ., concur. HEARN, J., dissenting in a separate opinion in which BEATTY, C.J., concurs.

JUSTICE HEARN: Respectfully, I dissent as I believe the proper approach is to reverse and remand to the circuit court for consideration of whether a special administrator should be appointed to bring this action. While I agree with the majority's legal analysis of the terms "real representative" and "special administrator," and that Petitioner should have filed a motion to have a special administrator appointed, I part company with the majority's ultimate conclusion that dismissal is warranted because Petitioner failed to specifically request this relief.

The majority rightfully highlights the confusion that has plagued this case from the beginning. The particular posture of the parties and the fact that the term "real representative" still exists throughout our statutory framework contributed to the confusion and may explain, at least in part, why Petitioner failed to bring this action in the name of the real party in interest. However, holding this misapprehension fatal to Petitioner's case is a harsh result that is not required by our rules. Instead, I would hold that Rule 17(a), SCRCP, specifically allows the proper party to assume prosecution of this case. Rule 17(a), SCRCP ("No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed...."); *Patton v. Miller*, 420 S.C. 471, 487, 804 S.E.2d 252, 260 (2017) ("Under the Rules of Civil Procedure, however, it is improper to immediately dismiss a lawsuit simply because it was not brought in the name of the real party in interest."). Moreover, remanding this case to permit Petitioner to seek an appointment of a special administrator is in keeping with our general rules of construction. *See Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) ("Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties."). Although Petitioner did not specifically ask the circuit court to appoint a special administrator, the continued use of the term "real representative" in the survival statute appears to make this request unnecessary. Only today, with this opinion, does this Court clarify that the term "real representative" is no longer legally viable in actions like this.

Furthermore, there can be no question that Petitioner was seeking to pursue a survival action, thus warranting the appointment of a special administrator because the real party in interest—the personal representative—was the defendant. *Patton*, 420 S.C. at 489, 804 S.E.2d at 261 ("[T]he Rules were never intended to trap a party simply for not using the proper words or rule number to describe the applicable legal principal."). Because a remand has no effect on the merits of the underlying claim, any prejudice to the defendants would be minimal. *Id.* at 492, 804 S.E.2d at 263 ("While permitting the amendment would cause the defendants to face the merits of the amended claim, the defendants' opportunity to defend the claim on the merits

was no different than it would have been if [Petitioner] had originally brought the claim in [the proper] capacity.").

I believe that the clear import of Rule 17(a), SCRCP, together with our jurisprudence favoring the resolution of suits on their merits, point to a different result than that reached by the majority. *Id.* at 488, 804 S.E.2d at 261 ("The purpose of [Rule 17(a), SCRCP] is to avoid precisely what occurred here—the unnecessary procedural dismissal of a lawsuit the court should resolve on the merits. As the Reporter's Note to the rule indicates, this sentence 'is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or where there has been an honest mistake.'"). To deny Petitioner the relief she seeks here, where there is no suggestion that her failure to use the correct nomenclature was anything other than an honest mistake, elevates form over substance and unnecessarily deprives her of her right to have this matter heard on its merits. Therefore, I would reverse and remand for the circuit court to consider whether a special administrator should be appointed.

BEATTY, C.J., concurs.

Re: Fisher v. Huckabee 2009-CP-10-3010

Hughston, Thomas L.

Wed 3/14/2018 11:24 AM

o lisa fisher <lfisher6736@gmail.com>,

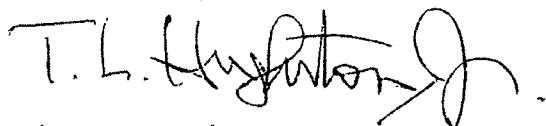
cc Jaci <jcrowleylawfirm@gmail.com>, John Townsend Cooper <jtc@jhcooper.com>, W. Westbrook Wills III
<wwills@wwillslaw.com>; John Hughes Cooper <shiplaw@jhcooper.com>;

2018 MAR 14 AM 11:28
JULIE J. HUGHSTON
CLERK OF COURT

Dear Ms. Fisher:

Following up on my oral Order to you regarding a written statement from you as an officer of the Court telling me your net worth and your net income for 2017 if you have that figure available, and if not, your net income for 2016. I am putting this in writing as an Order. It is relevant to the issues before me. I hope that you will comply with this by Friday, March 16, 2018. Failure to do so will be dealt with as civil contempt of court.

Thank you for your consideration, cooperation and attention to this Order, and I shall look forward to hearing from you.



Thomas L. Hughston, Jr.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 2009-CP-10-3010

BETTY FISHER and LISA FISHER,)

Plaintiffs,)

vs.)

ORDER

BESSIE HUCKABEE, KAY)

PASSAILAGUE SLADE, and)

SANDRA BYRD,)

Defendants.)

In the Matter of the Estate of Alice)

Shaw-Baker. Charleston County)

Probate No.: 2009-ES-10-0378)

FILED
2018 MAR 21 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

"In Hell there will be nothing but law..." (*Grant Gilmore*). "Justice delayed is justice denied." (*William E. Gladstone*). Also, I reference *Dickens'* Bleak House and *Kafka's* The Trial for what Defendants and their attorneys must feel like after nine years of this frivolous litigation.

This case is before me following a jury trial that resulted in a Verdict upholding the Will of Alice Shaw-Baker, and rejecting the claim of the Plaintiffs that she had revoked that Will by her words and acts. I deny Plaintiffs' post-trial motions regarding this, and confirm this Verdict.

Plaintiffs made equitable claims regarding the Estate. I deny all these claims based on my findings as to the credibility of the witnesses, and totality of the evidence. Essentially, I find no reason in believable facts and equity to do any of the acts requested. I make all these decisions by a standard of overwhelmingly clear and convincing evidence considering this case as a whole, and that is the only way one can ever begin to understand this case—as a whole. (See the Appendices, testimony and evidence.)

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T.L.H.J.

The facts of this case began when a concerned neighbor and friends of Alice Shaw-Baker asked for help since they thought she was mentally and physically unable to care for herself, and as part of the process to appoint a conservator, notice of this proceeding was given to Plaintiffs. The actions of Plaintiffs and their attorneys resulted in this nine year legal nightmare for Defendants.

Since I am confident there will be an immediate appeal of my decisions, consistent with the prior acts of the Plaintiffs and their attorneys, I decline to write about the tortuous history and undisputed facts. I leave that to the Justices of the Supreme Court of South Carolina. They can find the facts in this equity case. It is sufficient for me to say and I do find that overwhelming facts, law and equities are against Plaintiffs' claims.

In addition to contesting the Will, Plaintiffs claim that Shaw-Baker's life insurance, S.C. Retirement Account, and Deferred Compensation account should be given to "animal charities," because she was an "animal lover," raised and showed Chihuahua dogs, and had shown a longtime interest in doing something like that. Plaintiffs ignore the fact that though she often talked about doing this, she never signed the documents that would have done so. She was an intelligent, fiercely independent, and resourceful lady who executed many Wills, had many communications with her excellent attorneys and agents for her life insurance and other non-probate assets. She never changed where that money was to go and it will go as she directed and not as Plaintiffs frivolously claim it should go by their deviously concocted suit. The trust involved in this case is the trust between genuine friends established over many years, and not a half-baked scheme by people and their attorneys who had minimum contacts with her or her friends prior to this lady's demented condition.

I trust the same people she trusted to "Do right because it is right." (*W. Clement Stone*).

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T.L.B.J.

Remaining are issues of attorneys fees, sanctions, and other appropriate relief. Any Restraining Order restraining Defendants from acting under the Will is vacated. I deeply regret signing two Orders almost nine years ago that were meant to be temporary for Plaintiffs, except for the bond requirement. That remains. All assets in Plaintiffs possession shall be immediately delivered to the Charleston County Clerk of Court, 100 Broad Street, Suite 106 Charleston, South Carolina 29401-2258, and be held by her until further Order. This is not stayed for any appeal. Also, Plaintiffs are to deliver the keys for the house at 306 Cassina Road, Charleston, South Carolina to the Charleston County Clerk of Court. Non-rent paying occupant shall vacate this house within one week after being notified to do so by Defendants attorney, and shall commit no waste. These actions are not stayed during an appeal under Rule 241, Rule 62, and S.C. Code Section 18-9-150.

Sanctions are governed by S.C. Code Section 15-36-10.

§ 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

- (A) (1) A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State and must include the address and telephone number of the attorney signing the document.
- (2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.
- (3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:
- (a) the person has read the document;
 - (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;
 - (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

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T.L.H.-J.

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B) (1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C) (1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

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T.L.B.J.

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section,

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

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T.L.H. Jr.

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

(I) This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules.

(J) The provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law.

(K) The provisions of this section apply in addition to all other remedies available at law or in equity.

(L) The amount requested for damages in a pleading may not be considered in a determination of a violation of the provisions of this section.

(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives.

Plaintiffs' commencement and continuation of this action is sanctionable under Rule 11. As is set forth herein, it is clear to me that Plaintiffs' claims were entirely frivolous and, for that reason, I find Plaintiffs and their attorneys are subject to sanction under Rule 11, and the South Carolina Frivolous Proceedings Act.

Plaintiffs and their attorneys are subject to sanctions under the Court's inherent authority. As the United States Supreme Court held, Courts have an inherent authority to award attorney's fees where the losing party has "acted in bad faith, vexatiously, or for oppressive reasons." Plaintiffs' conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. Plaintiffs' claims were completely baseless and subject to sanctions based upon the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is, without proper grounds, or for oppressive and improper purposes. It is not their actual intent to harm, but harm is the reasonable foreseeable outcome.

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T.L.H.S.

Some equate the judge's job to that of an umpire to call balls and strikes, and of referees to call offsides and out of bounds—a judge of physical facts. This ignores the elements of judgment and intent. These are part of calling a bean ball in baseball, a technical foul in basketball and unsportsman like conduct in football. A judge, like these officials, must sometimes determine intent. This is at the heart of finding a frivolous suit.

I start with a procedural timeline found in Appendix 1. Plaintiffs have done nothing but delay justice and harass Defendants. As Justice Few recently wrote in a companion case: “This case was litigated in confusion from the beginning.” Appellate case No. 2016-000320, filed February 28, 2018.

The jury trial and non-jury trials are perhaps the best evidence of their frivolous actions. The claim that the Will was revoked should have never been filed. The only testimony on this came from Lisa Fisher. She and only she claims to have seen Ms. Shaw-Baker destroy a copy of her Will. Nothing corroborates this. If it did happen, I am sure Lisa Fisher would have saved every scrap, put these in an envelope, made a contemporary written summary of the events, and presented this at trial. To me, her testimony is not believable and I count it as nothing. The only reason I do not call it perjury is that Alice Shaw-Baker is now deceased and unavailable, and I am aware of the standard for proof in a criminal trial. Even if it did happen as described, this was an act of an incompetent person with no legal effect. Also, Judge Curry's Order said she could not revoke her Will due to her incapacity. These two facts alone should have been enough to tell any reasonably competent lawyer not to file this suit. These were two huge legal stop signs with bright flashing red danger lights and said to any reasonably competent attorney, “Go no further and if you do, you travel at your own peril.”

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I turn to the difficult issue of sanctions. This involves calculations of Defendants' losses for which Plaintiffs and their attorneys should pay, and some amount of money to tell them and persons who learn about this to not engage in similar conduct. Defendants' reasonable attorneys' fees are \$157,539.93. I Order Plaintiffs and their attorneys to pay these reasonable fees. In addition, Defendants have loss of opportunity costs of \$76,533.17 associated with all the assets they should have received almost nine years ago. Attorney's fees plus lost opportunity cost equal \$234,073.10. I Order a Judgment in favor of Defendants and against Plaintiffs and their attorneys, jointly and severally, for \$253,969.31, which includes prejudgment interest. (See Appendix, Court's Summary of Fees).

Sanctions for Lisa Fisher in addition to the foregoing are in the nature of punishment. The several Unfair Trade Practices statutes and the Constitution of the United States of America provide some guidance and limits. This is the worst case of frivolous acts that I have experienced. A deterrent is necessary to warn her and others. Therefore, I award three times actual damages to the Estate from Lisa Fisher being \$229,599.51, and Order a Judgment against her for this. These calculations have had to be made despite repeated efforts to get financial information from Plaintiffs including threats of contempt of court. John Hughes Cooper complied almost immediately. Also, John Hughes Cooper is denied his requested attorney's fees and costs. Additionally, he should repay to the Estate a sum of \$65,151.34 he was paid for work he says he did during the short period of time he was involved with the conservatorship. I cannot imagine what he did to earn this in what should have been a simple matter of filling out forms if anything. Additionally, Lisa Fisher's requested fees for alleged work that she did as conservator/attorney of \$67,814.50 is denied. Also, she should repay any money she received by her involvement in this frivolous case.

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T.M.H.

Summary of monetary sanctions and Judgments: \$253,969.31 against Lisa Fisher, John Hughes Cooper, and Betty Fisher and in favor of Bessie Huckabee, Kay Passailague, and Sandra Byrd; \$229,599.51 against Lisa Fisher and in favor of The Estate of Alice Shaw-Baker; \$65,151.34 against John Hughes Cooper and in favor of the Estate of Alice Shaw Baker.

I turn to additional sanctions. Lisa Fisher and Betty Fisher are enjoined and restrained from spending any money directly or indirectly controlled by them personally or through any corporation of which she is a part, with the exception of what I have Ordered her to immediately pay herein to the Clerk of Court. Of course, an exception is made for reasonable costs associated with their appeal, law practice, and ordinary living expenses.

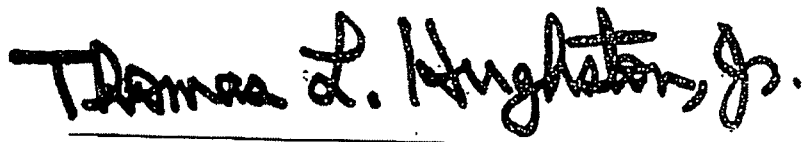
The frivolous actions of the attorneys will be reported to the South Carolina Commission on Lawyer Conduct.

I cannot conclude without mentioning the most egregious waste of Alice Shaw-Baker's money. On February 24, 2009, Lisa Fisher spent \$25,000 of her own money (later reimbursed from the Estate) in an attempt to fly Alice Shaw-Baker to California from the Medical University of South Carolina from her death bed supposedly for a beneficial visit. The real purpose undoubtedly was to have her die in California, ultimately avoid the jurisdiction of South Carolina Courts, control the Estate, defeat the Will, and benefit her mother and herself.

I hope that I have ruled on everything that is before me. I give up everything to the Supreme Court of South Carolina for their greater consideration and ultimate decisions.

IT IS SO ORDERED.

#9
March 21, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

APPENDIX 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2009-CP-10-3010
Betty Fisher, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
	)	
Bessie Huckabee, et al.,	)	COURT'S PROCEDURAL TIMELINE
	)	
Defendants.	)	
	)	
IN THE MATTER OF:	)	
ALICE SHAW-BAKER	)	
	)	
	)	

The following procedural outline for the above captioned case also includes the underlying Probate Case, 2009-ES-10-0378, and the separate but related Guardian and Conservator action in Probate Court, *Elisabeth Spencer v. Alice Shaw-Baker, et al.*, 2008-GC-10-0088.

LEGEND:

Circuit Court Case=No Emphasis
Underlying Probate Case=Underlined
Guardian and Conservator action=*Italics*

L.

2008

July 31, 2008—*Elisabeth Spencer files Petition for Appointment of Conservator and Petition for Appointment of Guardian and Petition for Emergency Appointment of Guardian.*

August 4, 2008—*Order granting petition for emergency appointment of guardian and appointing Walter Kaufman.*

August 18, 2008—*Order appointing Family Services, Inc. as Conservator and Order appointing Walter Kaufman and Jane Orenstein as co-guardians.*

August 19, 2008—*John Hughes Cooper files Petition to Appoint Lisa Fisher as Conservator and Petition to Appoint Lisa Fisher as Guardian.*

August 21, 2008—*Elisabeth Spencer Answers and objects to petition to appoint Lisa Fisher.*

September 8, 2008—*Alice Shaw-Baker and Lisa Fisher file Motion for Temporary Restraining Order to enjoin the removal of Alice Shaw-Baker from her home.*

September 9, 2008—*Lisa Fisher answers petition filed by Elisabeth Spencer.*

September 16, 2008—*Judge Curry grants temporary restraining order preventing the removal of Alice Shaw-Baker from her home and removes Walter Kaufman as guardian and appoints Lisa Fisher as co-guardian with Jane Orenstein. Judge Curry further ordered the guardians to make Alice Shaw-Baker's house habitable, contact the conservator Family Services, Inc., to arrange an inventory of and take possession of Alice's financial records, arrange for a caretaker, and to inform Alice she can no longer smoke cigarettes inside home.*

September 30, 2008—*Judge Curry Orders (1) Peter A. Kouten to visit home of Alice Shaw-Baker to observe conditions and report to the court; (2) Appointment of physician/Examiner L. William Mulbry, M.D., and Rebecca McCrudden; (3) Appointment of Peter A. Kouten as attorney and guardian ad-litem for Alice Shaw-Baker.*

October 8, 2008—*Attorney John Hughes Cooper files Affidavit by physician Shanon Honney, M.D., attesting to her finding that Alice Shaw-Baker is not incapacitated.*

October 9, 2008—*Peter Kouten files visitor report stating, among other things, Ms. Shaw-Baker presented well and the house appeared clean.*

October 13, 2008—*Conservator Family Services, Inc., files inventory and appraisal reflecting total net worth of \$388,055.13.*

October 26, 2008—*Court's designated Medical Examiner, Dr. William Mulbry, files report stating Alice Shaw-Baker is incapacitated and requires appointment of guardian and conservator*

October 29, 2008—*Alice Shaw-Baker and Lisa Fisher file memo in support of appointment of Lisa Fisher as Guardian and Conservator.*

November 10, 2008—*Judge Curry issues several orders awarding fees to: (1) temporary co-guardian Jane Orenstein in the amount of \$2,832.90; (2) temporary co-guardians Orenstein and Kaufmann in the amounts of \$2,571.00 and \$1,747.00; and (3) Attorney C. Mac Gibson for representation of Elisabeth Spencer in the amount of \$7,192.18;*

November 12, 2008—*Judge Curry order granting fees to Court appointed GAL Peter Kouten in the amount of \$3,915.84.*

November 19, 2008—*Judge Curry enters order appointing Lisa Fisher as sole guardian and conservator of Alice Shaw-Baker and Lisa Fisher files \$401,700 bond.*

December 2, 2008—*Peter Kouten files monthly visitor's report.*

December 5, 2008—*Judge Curry awards cost to court appointed GAL Peter Kouten in the amount of \$585.00*

December 18, 2008—*Judge Curry authorizes Family Services, Inc., to withdraw \$1,067.00 to pay Jane Orenstein and Family Services files petition for discharge of conservatorship.*

December 19, 2008—*Family Services, Inc., files final accounting for period from 08/14/2008–12/18/2008 showing receipts of \$247,964.99 and Disbursements of \$247, 964.99.*

December 30, 2008—*Letter from John Hughes Cooper stating that Ms. Orenstein appeared at Alice's residence without being invited or making arrangements.*

2009

January 8, 2009—*Judge Curry Order granting fees to Peter Kouten in the amount of \$690.00 and Lisa Fisher files Neuropsychological Report of L. Randolph Waid, Ph. D.*

January 29, 2009—*Conservator Lisa Fisher files annual report and accounting for period 10/29/08–12/31/08 stating ending balance is \$158,522.01*

February 25, 2009—*Alice Shaw-Baker's date of death.*

February 27, 2009—*Judge Curry order permitting Lisa Fisher to reimburse herself \$44,530.00 in attorney's fees incurred for representation in this action. Attached is John Hughes Cooper's Affidavit of Attorney's Fees totaling \$44,530.00. In addition, Judge Curry issued order granting GAL fees in the amount \$1,320.00 and discharging GAL.*

March 2, 2009—*Bessie Huckabee files a petition for discharge and a motion for order of termination of conservatorship, filing of final accounting, and distribution of estate assets to court-appointed PR.*

March 10, 2009—Application for informal probate of will and appointment filed in probate court.

March 11, 2009—*Judge Condon issues certificate of appointment of Bessie Huckabee as Personal Representative of the Estate of Alice Shaw-Baker.*

March 25, 2009—*Judge Curry order granting fees by court-appointed GAL in the amount of \$735.00.*

April 27, 2009—Betty Fisher and Lisa Fisher file motion for removal to circuit court and a verified complaint in the probate court alleging (1) Constructive trust; (2) Declaratory Judgment; (3) Undue Influence; (4) Fraud; (5) unjust enrichment; (6) promissory estoppel; (7) Removal of Bessie Huckabee as PR; and (8) appointment of Betty Fisher as PR. In addition, Lisa Fisher files motion for approval of attorney's fees in the amount of \$6,607.50, and a memo and affidavit in support.

April 29, 2009—*Lisa Fisher files a memo in opposition to petition for discharge and motion for order of termination of conservatorship and filing of accounting and distribution of estate assets to court-appointed PR, and files a motion for continuance and memo in support.*

May 1, 2009—Plaintiffs file Motion for Restraining Order in Probate Court.

May 7, 2009—*Lisa Fisher files amended motion for approval of attorney's fees in the amount of \$6,090.00 for 32.7 hours worked from November 3, 2008 – February 19, 2009, and a memo and affidavit in support.*

May 9, 2009—Plaintiffs file amended notice of motion and motion for restraining order in probate court.

May 11, 2009—*Judge Curry issues order terminating Lisa Fisher's conservatorship, ordering her to provide an accounting, and to turn over all estate assets in her possession to Personal Representative, Bessie Huckabee.*

May 13, 2009—Judge Curry issues Order of Removal to Circuit Court.

May 14, 2009—*Motion for Temporary Injunction filed by Plaintiff.*

May 19, 2009—*Plaintiff files amended notice of hearing for Motion for Temporary Injunction.*

May 21, 2009—*Lisa Fisher files pro hac vice Application and Defendant SC Deferred Compensation Program files Reply to Temporary Injunction indicating it has no position.*

May 22, 2009—*Defendant ING files Reply to Temporary Injunction indicating it has no position and Judge Hughston's form 4 Order temporarily restraining P.R. from doing anything regarding the estate is filed.*

May 26, 2009—Letter from Supreme Court filed certifying Lisa Fisher paid \$250 *pro hac vice* application fee, and *Lisa Fisher files final conservator accounting in the probate court. In addition, Judge Condon grants Lisa Fisher a 90 day extension to deliver assets to PR.*

May 28, 2009—Defendant Bessie Huckabee filed motion for reconsideration of Judge Hughston's May 22, 2009 Order granting Plaintiff's Temporary Injunction, and Defendant National Life Insurance Company files separate Answer and Counterclaim and Cross-Claim by way of Rule 22 Interpleader for insurance benefits in the amount of \$21,454.67.

May 29, 2009—Plaintiffs file Reply to National Life Insurance Company's counterclaim.

June 4, 2009—Plaintiffs file memo in opposition to Defendant Huckabee's Motion for Modification and Reconsideration of Temporary Injunction.

June 5, 2009—Defendants Bessie Huckabee, Kay Passailaigue, Sandra Byrd file Answer to Plaintiffs' Complaint.

June 8, 2009—Plaintiffs' Reply to ING Institutional Plan Services' Counterclaim.

June 10, 2009—Judge Hughston's Order granting Modification of Temporary Restraining Order is filed. The order mutually restrained both parties from disbursing or distributing assets from the estate pending a trial on the merits on all issues in controversy.

June 12, 2009—SC Deferred Compensation Commission's Answer, Counterclaim and Cross-claim by way of Rule 22 Interpleader for funds in the amount of \$74,002.33

June 15, 2009—Defendant State Budget and Control Board, SC Retirement System's Answer, Counterclaim and Cross-claim by way of Rule 22 Interpleader for funds in the amount of \$6,189.36

June 16, 2009—Judge Condon grants Defendant Bessie Huckabee's motion for 120 day extension to file inventory and appraisal in probate court.

June 18, 2009—Judge Jefferson grants Lisa Fisher's *pro hac vice* admission. Additionally, Plaintiffs appeal Judge Hughston's interlocutory order granting modification of the temporary injunction on the basis that the TRO is "fundamentally flawed." Effective disposition of the case was severely hindered from this point forward.

June 19, 2009—Plaintiff Beatty Fisher files Motion to set aside void order of informal appointment of Bessie Huckabee as Personal Representative and Defendant Bessie Huckabee files a Motion to reconsider *pro hac vice* application of Lisa Fisher.

June 30, 2009—Defendants ING Institutional Plans Services and SC Deferred Compensation Commission file Motion for Interpleader and to Deposit Funds into Court.

July 10, 2009—Defendant National Life Insurance Company files Motion for Interpleader and to Deposit Funds into Court.

June 16, 2009—Judge Condon grants 120 day extension for PR to file inventory and appraisal.

July 21, 2009—*Lisa Fisher files Motion for approval of fees and Expenses in the amount of \$67,814.50 and memo in support in the Probate Court.*

July 27, 2009—*Letter from attorney Kouten stating that the most recent accounting lacks specificity.*

July 30, 2009—Defendant State Budget and Control Board, South Carolina Retirement System's Motion for Interpleader and to Deposit Funds into Court.

August 19, 2009—*Judge Curry grants 90 day extension for Lisa Fisher to turn over assets.*

August 21, 2009—Attorney General Henry Dragan McMaster Answers Plaintiffs' Complaint.

August 28, 2009—Not in any file but according to a memo filed by Plaintiff, Defendant filed a Motion for Appointment of Special Administrator.

September 4, 2009—Lisa Fisher files proof of claim in the amount of \$67,814.50 on the basis of fees and expenses owed for guardian and conservator.

September 21, 2009—Plaintiff Betty Fisher files memo in opposition to Huckabee's Motion for appointment of special administrator.

September 23, 2009—Consent Orders of Interpleader as to ING, S.C. Deferred Compensation, and National Life Insurance Company. Plaintiff also files memo in opposition to Defendants' motion for reconsideration of order granting Lisa Fisher's *pro hac vice* application.

October 12, 2009—Defendants' file Motion to Disqualify Counsel Lisa Fisher and a Consent Order of Interpleader as to State Budget and Control Board is filed.

October 22, 2009—Judge Condon grants 180 day extension for PR to file inventory and appraisal.

October 27, 2009—Plaintiff files objection to Bessie Huckabee's Motion for an extension to file inventory and appraisal.

November 3, 2009—Letter from probate court to Plaintiffs' attorney acknowledging receipt of the objection to Defendant's motion for extension but explaining to Plaintiffs that the extensions are necessary for the court's monthly reporting requirements to court administration despite removal of the case to circuit court.

November 20, 2009—*Judge Curry grants 90 day extension for Lisa Fisher to turn over assets.*

December 1, 2009—Plaintiff files memo in opposition to Defendant's Motion to Disqualify.

December 2, 2009—Defendant files memo in support of motion to disqualify counsel.

December 4, 2009—Defendants' Motion to Disqualify Counsel is Denied with leave granted to re-file if facts change.

December 21, 2009—Letter from Defendant's attorney to clerk requesting that the court correct the caption on the most recent notice of entry of judgment is filed.

December 29, 2009—Letter from Lisa Fisher to clerk objecting to Defendant's request to correct caption and objecting to line in Defendant's letter informing the clerk to contact his office in regard to any questions on the matter as amounting to *ex parte* communication is filed.

2010

May 7, 2010—Judge Condon grants 180 day extension for PR to file inventory and appraisal, and closing documents.

May 12, 2010—*90 day extension to turn over assets granted by Judge Curry.*

May 17, 2010—Plaintiff files objections regarding Bessie Huckabee's Motion for an Extension filed on or about May 5, 2010.

August 10, 2010—*Judge Curry grants 90 day extension for Lisa Fisher to turn over assets.*

November 1, 2010—*Probate Judge grants 90 day extension to turn over assets.*

November 10, 2010—*Judge Condon grants 90 day extension for Lisa Fisher to turn over assets.*

November 16, 2010—Judge Curry grants 120 day extension for PR to file closing documents.

2011

February 24, 2011—*Jude Curry grants 90 day extension for Lisa Fisher to turn over assets.*

March 21, 2011—*Letter from Attorney Kouten alerting court that accountings for the years 2009 or 2010 had not been filed.*

March 31, 2011—*Letter from Judge Curry requesting Lisa Fisher to furnish the probate court with a 2009 and 2010 annual accounting.*

April 7, 2011—Judge Condon grants 180 day extension for PR to file closing documents.

May 20, 2011—*Bessie Huckabee files Motion to Appoint Special Fiduciary for Conservatorship Assets.*

June 1, 2011—*Lisa Fisher files Motion to Strike and Memo in opposition to Bessie Huckabee's Motion to Appoint Special Fiduciary.*

June 2, 2011—Court of Appeals file Order dismissing Plaintiff's appeal of the appointment of Bessie Huckabee as PR of the estate of Alice Shaw-Baker and affirming Judge Hughston's order modifying prior temporary restraining order.

August 12, 2011—*Lisa Fisher files objection to Court's Consideration of Huckabee's Motion to Appoint Special Fiduciary.*

September 21, 2011—*Lisa Fisher files objection to proposed order by Bessie Huckabee.*

September 28, 2011—*Judge Curry issues Order appointing special fiduciary Heyward Harvey and denying Lisa Fisher's Motion to strike and for extension to turn over assets.*

September 29, 2011—*Lisa Fisher files objection to second, duplicate proposed order by Bessie Huckabee.*

October 7, 2011—*Lisa Fisher files Motion for reconsideration of probate court order appointing special fiduciary and denying motion to strike, and Betty Fisher files motion to set aside probate court order appointing special fiduciary and memo in support. Additionally, Lisa Fisher files a renewed motion for approval of fees and expenses of guardian and conservator.*

October 13, 2011— Judge Condon grants 120 day extension for PR to file closing documents.

October 14, 2011—*Judge Curry issues order Denying Lisa Fisher's Motions for reconsideration and renewed motion for approval of expenses of guardian and conservator. In addition, Judge Curry issues orders freezing any and all assets under the name of Alice Shaw-Baker and/or Lisa Fisher or Alice Shaw-Baker individually being held with Edward Jones Investments, Wachovia, Farmers Merchants Bank, or Bank of America until Heyward Harvey takes control as special fiduciary.*

October 20, 2011—*Certificate of appointment is filed certifying Heyward Harvey is the duly qualified special fiduciary and Lisa Fisher files a motion to alter or amend the orders freezing assets and a motion to alter or amend denial of renewed motion for approval of fees and expenses of guardian and conservator.*

October 25, 2011—*Betty Fisher appeals Judge Curry's order appointing a special fiduciary and order denying motion to set aside order and Lisa Fisher appeals order appointing special fiduciary and denying motion to strike and order denying motion for reconsideration of order appointing special fiduciary.*

November 9, 2011—*Judge Curry issued order denying motion to alter or amend denial of renewed motion for approval of fees and expenses on the basis that Lisa Fisher's role as a conservator ended by order dated May 11, 2009, and Ms. Fisher withdrew monies from the conservatorship without having the legal fiduciary authority to do so. Additionally, Judge Curry issues order denying motion to alter or amend the orders freezing assets.*

November 21, 2011—*Lisa Fisher appeals Judge Curry order denying motion to alter or amend orders freezing assets and denial of motion to alter or amend denial of renewed motion for approval of fees and expenses of guardian and conservator.*

2012

February 14, 2012—Judge Condon grants 180 day extension for PR to file closing documents.

May 6, 2012—*Judge Curry informs Bank of America that temporary restraining order freezing accounts is still in effect until further order of the court.*

July 19, 2012—Defendant Bessie Huckabee files a Motion for Hearing on validity of Alice Shaw-Baker's last will and Testament.

July 30, 2012—Supreme Court Order denying certiorari.

August 1, 2012—Plaintiffs file motion to disqualify and remove Defendants counsel and memo in support.

September 5, 2012—Judge Condon grants 180 day extension for PR to file inventory and appraisal, and closing documents.

September 13, 2012—Bessie Huckabee files inventory and appraisal.

September 14, 2012—Defendant Bessie Huckabee files copy of the Inventory and Appraisal that was filed in the probate court.

October 4, 2012—Lisa and Betty Fisher file objections to the Inventory and Appraisal filed by Bessie Huckabee in both circuit and probate case.

October 4, 2012—Betty Fisher also files objection to Inventory and Appraisal filed by Bessie Huckabee.

November 28, 2012—Defendant's attorney files memo in opposition to Plaintiff's motion for disqualification and removal of counsel.

2013

March 12, 2013—Judge Condon grants 180 day extension for PR to file closing documents.

August 6, 2013—W. Westbrook Wills III files notice of appearance.

September 3, 2013—Defendant's Motion for Summary Judgment is granted in case # 2009-CP-10-1332

September 16, 2013—Judge Condon grants 180 day extension for PR to file closing documents.

September 27, 2013—Defendant Bessie Huckabee files Motion to Bifurcate along with Affidavit by Bessie Huckabee.

October 4, 2013—Plaintiffs file objection to Westbrook Wills' Notice of Appearance and file objection to Defendant's motion to bifurcate.

October 14, 2013—Consent order filed substituting Westbrook Wills III in place of Peter Kouten as counsel for Defendants.

2014

February 4, 2014—Judge Nicholson files Order Denying Plaintiff's Motion to Disqualify.

February 6, 2014—Plaintiffs file supplemental memo in opposition to motion to bifurcate.

February 18, 2014—Plaintiffs file motion to reconsider order denying motion to disqualify, memo in support, and affidavit by Lisa Fisher.

March 24, 2014—Judge Condon grants 180 day extension for PR to file closing documents.

May 7, 2014—Judge Nicholson files order denying Plaintiffs' Motion to reconsider denial of motion to disqualify.

June 10, 2014—Plaintiffs file notice of appeal regarding Judge Nicholson's denial of Plaintiffs' Motion to Disqualify.

August 18, 2014—Defendants file Motion for hearing and *Judge Nicholson's order affirming probate court's order appointing special fiduciary, freezing assets, and denying motions to reconsider.*

September 19, 2014—*Betty Fisher files notice of intent to appeal Judge Nicholson's order.*

October 8, 2014—Judge Condon grants 180 day extension for PR to file closing documents.

2015

April 13, 2015—Judge Condon grants 120 day extension for PR to file closing documents.

August 31, 2015—Judge Condon grants 120 day extension for PR to file closing documents and accounting.

2016

January 19, 2016—Judge Condon grants 180 day extension for PR to file closing documents.

June 22, 2016—Remittitur from Supreme Court filed denying Plaintiffs petition for writ of cert.

June 27, 2016—Court of Appeals Order is filed denying plaintiffs' petition for rehearing.

August 19, 2016—Judge Condon grants 180 day extension for PR to file closing documents.

August 22, 2016—Court of Appeals Order is filed granting costs in the amount of \$500 to the Defendants.

December 21, 2016—*Court of Appeals release unpublished opinion Affirming the circuit court's affirmance of the probate court's order appointing a special fiduciary, freezing assets, and denying motions to reconsider, and remanding Lisa Fisher's request for fees to the probate court.*

2017

January 17, 2017—Consent Motion for May 15, 2017, date certain.

February 16, 2017—*Letter from Defendants attorney requesting that Lisa Fisher be required to provide annual accountings of the estate's assets for the years 2011, 2012, 2013, 2014, 2015, and 2016.*

February 24, 2017—*Betty and Lisa Fisher's petition for rehearing in the Court of Appeals is denied.*

March 21, 2017—*Fisher's attorney responds to letter asking for accounting by stating the matter is beyond the jurisdiction of the probate court due to pending appeals.*

March 28, 2017—*Lisa and Betty Fishers' petition for writ of cert regarding the Court of Appeals December 21, 2016 unpublished opinion is filed in the SC Supreme Court.*

April 4, 2017—*Bessie Huckabee files motion for accounting.*

April 25, 2017—Judge Curry signs order substituting Jessica Crowley for Peter A. Kouten and attorney for Bessie Huckabee.

April 26, 2017—Judge Condon grants 90 day extension for PR to file closing documents.

May 12, 2017—*Order from probate court is filed substituting Jessica Crowley as counsel for defendants in place of Peter Kouten.*

May 30, 2017—Supreme Court Order filed denying Defendants motion to strike portions of the petitioner's brief.

August 2, 2017—Defendants file motion for summary judgment.

August 4, 2017—Defendants file amended motion for summary judgment.

August 16, 2017—*Date of Supreme Court Order disqualifying Judge Condon and the Associate Probate Judges of Charleston County, and transferring probate case to Judge Fulp in Beaufort.*

October 2, 2017—Plaintiff's file motion to change venue to Beaufort county, vacate date certain, and for a stay of all hearings pending Supreme Court ruling on petition for cert. Lisa Fisher also files affidavit in support of motion.

October 18, 2017—affidavit by Joann Hadwin and attorney Donald Budman filed attesting to validity of will.

October 19, 2017—Defendants file memo in opposition to plaintiffs' motion to change venue, vacate date certain, and for a stay. Additionally, Judge Jefferson files Order denying motion to change venue, vacate date certain, and for a stay on the following grounds: (1) Date certain trial was set to begin in three days; (2) two weeks had already been allotted for trial; and (3) motion to stay ruling on writ of cert pertaining to another case with the same parties but was unrelated to the present case.

October 23, 2017—Plaintiffs file motion to disqualify Judge Hughston on the grounds that he granted the modified temporary restraining order which was requested by the parties, motion for reconsideration of order denying motion to change venue, vacate date certain, and for stay on all matters. Plaintiffs also file notice of appeal of order denying motion to change venue, vacate date certain, and to stay. In addition, Judge Jefferson files order denying plaintiffs motion for reconsideration.

October 26, 2017—Jury verdict finding Alice Shaw-Baker's Last Will and Testament valid.

November 3, 2017—Plaintiffs file motion for date certain to hear severed trial on other causes of action, for a new trial, and for reconsideration of denial of Plaintiffs motion to amend its complaint to conform to evidence to reform the will as well a memo and affidavit in support.

November 6, 2017—Defendants file post-trial motions for sanctions under SC Frivolous Proceedings Act and Defendants file Motion to Dissolve Temporary Restraining Order.

November 16, 2017—Court of Appeals order dismissing Plaintiffs appeal of Judge Jefferson's order denying motion to change venue, vacate date certain, and to stay, and on denial of plaintiff's motion to disqualify Judge Hughston on the grounds that such matters are not immediately appealable.

December 6, 2017—Plaintiffs file memo in opposition to Defendants' post-trial motions.

December 27, 2017—Order assigning all matters to Judge Hughston.

2018

January 2, 2018—Defendant files renewed motion for summary judgment on remaining causes of action and response to plaintiffs' memo in opposition to Defendants' post-trial motions.

January 25, 2018—Judge Hughston requiring parties to furnish him with all information regarding the most recent accounting to the Probate Court.

January 30, 2018—Judge Hughston order checking on status of updated accounting and scheduling a pre-trial hearing.

February 5, 2018—Letter from Defendants in regard to Judge Hughston's order for an updated accounting.

February 6, 2018—Judge Hughston's order requiring Plaintiffs to furnish any missing information to him at pre-trial hearing and all bank records relative to Conservator accounts.

February 8, 2018—date of letter sent to Judge Hughston from Lisa Fisher objecting to Defendants letter, furnishing requested materials, arguing prejudice, and expressing concerns over imposing on Supreme Court jurisdiction.

February 9, 2018—Judge Hughston's filed reply letter to Lisa Fisher stating that what he has requested is relevant and ordered her to provide accounting in simple form.

February 14, 2018—Accounting by Lisa Fisher is filed.

February 16, 2018—Judge Hughston email changing pretrial hearing to Beaufort for everyone's convenience.

February 22, 2018—Judge Hughston order requiring any discovery done in the present case or any corresponding case be turned over to him.

February 26, 2018—Lisa Fisher files amended accounting with attachments, motion to strike Feb. 2, 2018 letter from Defendants' counsel, affidavit of John Hughes Cooper, memo in opposition to Defendants' renewed motion for summary judgment, pre-trial brief, and an affidavit of Albert Bilbrey.

February 28, 2018—Plaintiffs file reply to Defendants' Response to Plaintiffs' Post-Trial Motions. Additionally, Judge Hughston files order confirming the parties had a pre-trial hearing as scheduled and ordering both parties to be prepared to present evidence they wish to present at Trial on March 12 concerning any legal and factual matters.

March 7, 2018—Correspondence from Defendants' attorney to Judge Hughston is filed that raises the issue of Plaintiffs' standing and cites the South Carolina Supreme Court's decision in a companion case declaring Plaintiffs did in fact lack standing to bring claims on behalf of the estate.

March 14, 2018—Judge Hughston files Order confirming his oral Order requiring Lisa Fisher to produce financial statements showing her net worth and net income for 2017, and informing her that failure to do so may result in civil contempt of court.

APPENDIX 2

Court's Summary of Expenditures and Fees

Initial Value of Estate (Family Service's Inventory and Appraisalment)

Real Estate:	
Investments:	\$ 92,200.00
Anticipated Annual Receipts:	\$ 233,788.01
Life Insurance:	\$ 35,308.82
Annuities:	\$ 9,625.56
TOTAL NET WORTH	<u>\$ 17,133.24</u>
	<u>\$ 388,055.63</u>

Family Services' Conservatorship Final Accounting (Aug. 14, 2008 – Dec. 18, 2008)

Total Receipts:	\$ 247,964.99
Total Expenditures:	\$ 68,341.85
FINAL BALANCE:	<u>\$ 179,623.14</u> (28% of Liquidated Estate)

Lisa Fisher's Conservatorship Accounting (Dec. 18, 2008 – Jan. 10, 2018)

Total Receipts (Liquidated Estate):	\$ 312,046.40
Total Expenditures (credited BOA \$1000 Investment):	\$ 172,033.14
FINAL BALANCE:	<u>\$ 140,013.26</u> (55% of Liquidated Estate) (Assumed Current Balance of Liquidated Estate)

Improper Expenditures From Estate

Monies spent after May 11, 2009 order terminating conservatorship:	\$ 39,549.43
Charitable contributions prior to May 11, 2009, without a court order (§62-5-424(C)(9))	\$ 105.00
Air ambulance day before death (§62-5-424(C)(8)):	\$ 25,000.00
Unapproved legal fees:	\$ 13,941.59
Caregiver expenses more than a month after Alice Shaw Baker death (§62-5-424(C)(8)):	\$ 1,000.00
Charge for "Hair" after date of death (§62-5-424(C)(8)).	\$ 200.00
TOTAL:	<u>\$ 79,796.02</u>

Credits

Lawn Care:	\$ 2,370.00
Taxes and Insurance:	\$ 7,892.85
TOTAL:	<u>\$ 10,262.85</u>
TOTAL IMPROPER EXPENDITURES	<u>\$ 69,533.17</u> (22% of Liquidated Estate)

Sanctions on Improper Expenditures/Loss of Opportunity Costs

Total Improper Expenditures:	\$ 69,533.17
Loss Rent from One year following Date of Death	\$ 7,000.00
TOTAL SANCTIONS ON IMPROPER EXPENDITURES	<u>\$ 76,533.17</u>

Accumulated Attorney's Fees from February 2009 – February 2018

Plaintiffs (not including any fees from Lisa Fisher):	\$157,297.42
Defendants:	\$ 157,539.93
TOTAL:	<u>\$314,837.35</u> (81% of Estate's Initial Net Worth)

Total Sanctions

Improper Expenditures and Loss Opportunity	\$ 76,533.17
Defendants' Attorney's Fees	\$ 157,539.93
TOTAL:	<u>\$ 234,073.10</u>
Prejudgment Interest	8.50%
TOTAL SANCTIONS ON ATTORNEY'S FEES AND IMPROPER EXPENDITURES:	<u>\$ 253,696.31</u>

Other Noteworthy Figures

Outstanding Fee Request

Lisa Fisher Conservator Fees	<u>\$ 67,814.50</u>

Total Fees to Date

Total Accumulated attorney's fees from Feb. 2009 – Feb. 2018	\$ 314,837.35
Lisa Fisher pending request for Conservator Fees:	\$ 67,814.50
Payment to JH Cooper (Lisa Fisher Accounting):	\$ 12,941.59
Payment to JH Cooper (Lisa Fisher Accounting):	\$ 75.00
Payment to JH Cooper (Lisa Fisher Accounting):	\$ 139.75
Payment to JH Cooper (Lisa Fisher Accounting):	\$ 1,000.00
Payment to JH Cooper (Lisa Fisher Accounting):	\$ 375.00
Lisa Fisher Reimbursement for Legal Fees:	\$ 44,530.00
TOTAL:	<u>\$ 6,090.00</u> (Approved by Feb. 27, 2009 Order for fees through Oct. 31, 2008)
	<u>\$447,803.19</u> (115% of Estate's Initial Net Worth)

APPENDIX 3

Alice Shaw-Baker Death:	25-Feb-09
Order Terminating Conservatorship:	11-May-09
Total Expenditures Post Death:	\$ 99,015.29
Total Expenditures from Feb. 25-May 11, 2009:	\$ 59,465.86
Total Expenditures Post May 11, 2009:	\$ 39,549.43

(*Figures do not include funeral expenses*)

Admin expenses		
3/3/2009 Betty Fisher	Postage	\$ 9.36
3/20/2009 Bety Fisher	Postage	\$ 9.36
6/2/2009 Farmers & Merchant	Check Order	\$ 23.35
5/19/2009 Lisa Fisher	Legal	\$ 75.00
5/23/2009 Lisa Fisher	Postage	\$ 210.00
10/14/2009 Bond Services of CA	Bond Fee	\$ 1,465.00
10/7/2010 Bond Services of CA	Bond fee	\$ 1,465.00
1/18/2011 Lisa Fisher	Unknown	\$ 6.59
1/18/2011 Lisa Fisher	DMV	\$ 12.15
1/18/2011 Lisa Fisher	tapa	\$ 12.90
1/24/2011 Betty Fisher	unknown	\$ 26.10
3/15/2011 Deluxe Check	Check order	\$ 20.00
4/8/2011 fee	Bank Charge	\$ 27.50
5/31/2011 Lisa Fisher	Fedex	\$ 39.09
6/6/2011 Lisa Fisher	copies	\$ 22.42
4/28/2015	Bank Charge	\$ 80.00
4/28/2015	Bank Charge	\$ 244.00
Total:		\$ 3,747.82
Before Order:		\$ 3,686.31
After Order:		\$ 61.51

Donations		
3/4/2009 Catholic relief service	Charity	\$ 100.00
3/6/2009 Blessed Sacrament	Charity	\$ 100.00
3/11/2009 Missionary Obiates	Charity	\$ 150.00
3/9/2009 American Antivivesectin	Charity	\$ 150.00
3/9/2009 PCRM	Charity	\$ 150.00
3/6/2009 Chihuahua Rescue	Charity	\$ 150.00
3/11/2009 Charleston Animal	Charity	\$ 150.00
3/13/2009 Friends of Animals	Charity	\$ 150.00
3/18/2009 LCA	Charity	\$ 150.00
3/18/2009 National Antivivisection	Charity	\$ 150.00
3/16/2009 PETA	Charity	\$ 150.00

3/12/2009 Best friends of animals	Charity	\$ 150.00
3/19/2009 Chihuahua Rescue	Charity	\$ 150.00
3/12/2009 Chihuahua Rescue	Charity	\$ 150.00
3/12/2009 ASPCA	Charity	\$ 150.00
3/13/2009 Blessed Sacrament	Charity	\$ 150.00
3/26/2009 No Kill	Charity	\$ 150.00
Total:		\$ 2,450.00
Before Order:		\$ 2,450.00
After Order:		\$ -

Medical Expenses

3/23/2009 ATC Health	Medical	\$ 783.00
3/17/2009 Lifeline	Medical	\$ 76.00
5/18/2009 Lisa Fisher	Maxim Medical	\$ 255.00
5/26/2009 Lisa Fisher	Medication Reimbursement	\$ 512.30
5/23/2009 Lisa Fisher	Medical Evaluation Reimbursement	\$ 5,000.00
Total:		\$ 6,626.30
Before Order:		\$ 859.00
After Order:		\$ 5,767.30

Caregiver

3/3/2009 Mona Dayhoff	Caregiver	\$ 165.00
3/3/2009 Candace Rickborn	Caregiver	\$ 1,840.00
3/5/2009 Candace Rickborn	Caregiver	\$ 100.00
3/3/2009 Candace Rickborn	Caregiver	\$ 250.00
3/11/2009 Candace Rickborn	Caregiver	\$ 1,020.00
3/13/2009 Candace Rickborn	Caregiver	\$ 250.00
3/31/2009 Candace Rickborn	Caregiver	\$ 250.00
4/2/2009 Candace Rickborn	Caregiver	\$ 250.00
4/13/2009 Candace Rickborn	Caregiver	\$ 250.00
4/23/2009 Candace Rickborn	Caregiver	\$ 250.00
4/29/2009 Candace Rickborn	Caregiver	\$ 250.00
5/26/2009 betty fisher	Caregiver/reimbursement	\$ 500.00
5/19/2009 lisa fisher	Caregiver	\$ 165.00
5/7/2009 Candace Rickborn	Caregiver	\$ 250.00
5/12/2009 Candace Rickborn	Caregiver	\$ 250.00
5/18/2009 Candace Rickborn	Caregiver	\$ 250.00
5/19/2009 Lisa Fisher Reimbursement	Caregiver	\$ 895.00
5/18/2009 Candace Rickborn	Caregiver	\$ 250.00
5/23/2009 Candace Rickborn	Caregiver	\$ 250.00

5/23/2009 Lisa Fisher Reimbursement	Caregiver	\$ 65.00
Total:		\$ 7,750.00
Before Order:		\$ 5,125.00
After Order:		\$ 2,625.00

Personal Expenses

3/16/2009 Chase	Unknown	\$ 711.02
3/27/2009 Barbara Ann Thompson	Hair	\$ 200.00
4/30/2009 Post & Courier	Newspaper	\$ 14.25
5/19/2009 Lisa Fisher	Reimburse Purchases	\$ 62.32
5/23/2009 Lisa Fisher	Costs for Alice	\$ 450.00
6/1/2009 Post & Courier	Newspaper	\$ 14.25
6/30/2009 Post & Courier	Newspaper	\$ 14.25
7/30/2009 Post & Courier	Newspaper	\$ 14.25
8/31/2009 Post & Courier	Newspaper	\$ 14.25
9/29/2009 Post & Courier	Newspaper	\$ 14.25
10/29/2009 Post & Courier	Newspaper	\$ 14.25
12/3/2009 Post & Courier	Newspaper	\$ 14.25
12/29/2009 Post & Courier	Newspaper	\$ 14.25
1/29/2009 Post & Courier	Newspaper	\$ 16.25
3/1/2010 Post & Courier	Newspaper	\$ 16.25
Total:		\$ 1,584.09
Before Order:		\$ 925.27
After Order:		\$ 658.82

Insurance and Taxes

5/19/2009 Lisa Fisher	Reimburse State Farm Car Ins	\$ 235.21
7/21/2009 State Farm Ins	Insurance	\$ 22.49
9/19/2009 State Farm Ins	Car Insurance	\$ 244.78
9/19/2009 State Farm Ins	Homeowners	\$ 375.75
11/6/2009 Charleston Co. Treasurer	Tax	\$ 31.43
12/29/2009 State Farm Ins	Homeowners	\$ 375.75
3/23/2010 State Farm Ins	Car Insurance	\$ 250.26
4/1/2010 State Farm Ins	Homeowners	\$ 390.00
4/16/2010 Charleston Co. Treasurer	Tax	\$ 388.62
7/17/2010 State Farm Ins	Homeowners	\$ 390.00
9/21/2010 State Farm Ins	Car Insurance	\$ 270.35
9/24/2010 State Farm Ins	Homeowners	\$ 390.00
11/22/2010 Charleston Co. Treasurer	Tax	\$ 1,381.44

12/31/2010 State Farm Ins	Homeowners	\$ 390.00
3/25/2011 State Farm Ins	Car Insurance	\$ 270.35
5/3/2011 State Farm Ins	Homeowners	\$ 393.99
7/20/2011 Blueprint Ins Group	Insurance	\$ 1,737.34
9/19/2011 State Farm Ins	Insurance	\$ 15.60
10/7/2011 State Farm Ins	Insurance	\$ 339.49
Total:		\$ 7,892.85
Before Order:		\$ -
After Order:		\$ 7,892.85

Home Maintenance

4/9/2009 Village Plumbing	Repair	\$ 380.00
4/27/2009 John Gamble	Security	\$ 350.00
4/30/2009 B Smith	Lawn	\$ 60.00
5/14/2009 Hugh Haines	Lawn	\$ 60.00
5/18/2009 Hugh Haines	Lawn	\$ 60.00
5/23/2009 John Gamble	Security	\$ 200.00
6/19/2009 Hugh Haines	Lawn	\$ 60.00
8/8/2009 Hugh Haines	Lawn	\$ 60.00
9/13/2009 Hugh Haines	Lawn	\$ 75.00
10/13/2009 Hugh Haines	Lawn	\$ 60.00
11/20/2009 John Gamble	Security	\$ 500.00
1/15/2010 Hugh Haines	Lawn	\$ 60.00
1/15/2010 Hugh Haines	Lawn	\$ 60.00
2/2/2010 Village Plumbing	Repair	\$ 125.00
2/28/2010 Candace Rickborn	Carpet	\$ 40.00
3/11/2010 Charles Cooper	Lawn	\$ 60.00
3/11/2010 Village Plumbing	Maintenance	\$ 100.00
4/5/2010 Village Plumbing	Maintenance	\$ 100.00
4/13/2010 Charles Cooper	Lawn	\$ 60.00
5/1/2010 Charles Cooper	Lawn	\$ 60.00
5/21/2010 Charles Cooper	Lawn	\$ 60.00
5/21/2010 Charles Cooper	Lawn	\$ 60.00
5/19/2010 Village Plumbing	Maintenance	\$ 76.00
7/15/2010 Charles Cooper	Lawn	\$ 60.00
7/15/2010 Charles Cooper	Lawn	\$ 60.00
7/16/2010 Charles Cooper	Lawn	\$ 60.00
7/30/2010 Charles Cooper	Lawn	\$ 60.00
8/25/2010 Charles Cooper	Lawn	\$ 60.00
8/30/2010 Charles Cooper	Lawn	\$ 60.00
9/15/2010 Charles Cooper	Lawn	\$ 60.00

9/30/2010 Charles Cooper	Lawn	\$ 60.00
8/12/2010 John Gamble	Security	\$ 900.00
9/14/2010 John Gamble	Security	\$ 100.00
10/15/2010 Charles Cooper	Lawn	\$ 60.00
10/15/2010 Charles Cooper	Lawn	\$ 60.00
11/15/2010 Charles Cooper	Lawn	\$ 60.00
11/1/2010 Charles Cooper	Lawn	\$ 80.00
12/27/2010 Village Plumbing	Repair	\$ 280.00
12/16/2010 John Gamble	Security	\$ 100.00
1/7/2011 John Gamble	Security	\$ 300.00
2/25/2011 John Gamble	Security	\$ 200.00
4/1/2011 Charles Cooper	lawn	\$ 60.00
4/1/2011 Charles Cooper	lawn	\$ 60.00
4/1/2011 Charles Cooper	lawn	\$ 60.00
4/21/2011 Charles Cooper	lawn	\$ 60.00
5/2/2011 Charles Cooper	lawn	\$ 60.00
5/6/2011 John Gamble	Security	\$ 100.00
5/9/2011 Charles Cooper	Lawn	\$ 60.00
5/2/2011 Charles Cooper	Lawn	\$ 60.00
4/21/2011 Charles Cooper	Lawn	\$ 60.00
5/6/2011 John Gamble	Security	\$ 100.00
5/31/2011 Charles Cooper	Lawn	\$ 60.00
6/2/2011 Charles Cooper	Lawn	\$ 60.00
7/1/2011 Charles Cooper	Lawn	\$ 60.00
6/28/2011 Charles Cooper	Lawn	\$ 60.00
7/18/2011 Charles Cooper	Lawn	\$ 60.00
7/26/2011 John Gamble	Security	\$ 100.00
7/12/2011 Charles Cooper	Lawn	\$ 75.00
8/1/2011 Charles Cooper	Lawn	\$ 60.00
8/1/2011 Charles Cooper	Lawn	\$ 100.00
8/17/2011 Charles Cooper	Lawn	\$ 60.00
8/17/2011 John Gamble	Security	\$ 200.00
9/7/2011 Charles Cooper	Lawn	\$ 60.00
9/26/2011 Charles Cooper	Lawn	\$ 60.00
10/6/2011 Charles Cooper	Lawn	\$ 60.00
Total:		\$ 7,101.00
Before Order:		\$ 790.00
After Order:		\$ 6,311.00

Utilities

4/1/2009 AT&T	Utility	\$ 129.77

4/15/2009 SCE&G	Utility	\$ 211.58
4/30/2009 AT&T	Utility	\$ 53.83
4/16/2009 Charleston Water	Utility	\$ 39.22
5/13/2009 SCE&G	Utility	\$ 105.00
5/1/2009 Lisa Fisher Water Reimburse	Utility	\$ 215.88
5/19/2009 Lisa Fisher Comcast Reimburse	Utility	\$ 204.40
5/18/2009 Charleston Water	Utility	\$ 36.30
6/16/2009 SCE&G	Utility	\$ 56.14
6/16/2009 Charleston Water	Utility	\$ 40.69
7/9/2009 AT&T	Utility	\$ 84.27
7/16/2009 SCE&G	Utility	\$ 115.00
7/10/2009 Charleston Water	Utility	\$ 42.52
7/21/2009 Lisa Fisher Comcast Reimburse	Utility	\$ 201.12
8/17/2009 SCE&G	Utility	\$ 115.00
8/25/2009 AT&T	Utility	\$ 42.23
9/3/2009 AT&T	Utility	\$ 124.13
8/11/2009 Charleston Water	Utility	\$ 39.98
8/20/2009 Comcast	Utility	\$ 64.71
10/6/2009 SCE&G	Utility	\$ 115.00
9/10/2009 Charleston Water	Utility	\$ 49.83
9/9/2009 Comcast	Utility	\$ 64.71
10/14/2009 AT&T	Utility	\$ 8.13
10/30/2009 SCE&G	Utility	\$ 115.00
10/16/2009 Charleston Water	Utility	\$ 52.38
11/13/2009 SCE&G	Utility	\$ 115.00
11/10/2009 Comcast	Utility	\$ 64.71
11/6/2009 Charleston Water	Utility	\$ 40.37
11/20/2009 Comcast	Utility	\$ 64.71
12/14/2009 AT&T	Utility	\$ 88.46
12/15/2009 Charleston Water	Utility	\$ 32.95
12/15/2009 AT&T	Utility	\$ 88.46
12/16/2009 SCE&G	Utility	\$ 115.00
12/15/2009 Comcast	Utility	\$ 64.71
2010 SCE&G	Utility	\$ 115.00
2010 Charleston Water	Utility	\$ 36.88
2010 Comcast	Utility	\$ 64.71
2010 AT&T	Utility	\$ 42.40
2010 SCE&G	Utility	\$ 115.00
2010 AT&T	Utility	\$ 66.36
2010 Charleston Water	Utility	\$ 52.00
2010 Comcast	Utility	\$ 68.06

2010 SCE&G	Utility	\$ 115.00
2010 AT&T	Utility	\$ 44.87
2010 Charleston Water	Utility	\$ 44.02
2010 Comcast	Utility	\$ 68.06
2010 SCE&G	Utility	\$ 115.00
2010 Charleston Water	Utility	\$ 62.46
2010 Comcast	Utility	\$ 68.06
2010 SCE&G	Utility	\$ 115.00
2010 AT&T	Utility	\$ 107.73
2010 Charleston Water	Utility	\$ 61.19
2010 Comcast	Utility	\$ 68.08
2010 SCE&G	Utility	\$ 115.00
2010 AT&T	Utility	\$ 55.87
2010 Charleston Water	Utility	\$ 63.03
2010 Comcast	Utility	\$ 68.07
2010 SCE&G	Utility	\$ 152.00
2010 AT&T	Utility	\$ 55.23
2010 Charleston Water	Utility	\$ 50.63
2010 Comcast	Utility	\$ 68.07
2010 SCE&G	Utility	\$ 152.00
2010 Charleston Water	Utility	\$ 44.02
2010 SCE&G	Utility	\$ 152.00
2010 AT&T	Utility	\$ 45.59
2010 Charleston Water	Utility	\$ 45.11
2010 Comcast	Utility	\$ 136.14
2010 SCE&G	Utility	\$ 152.00
2010 AT&T	Utility	\$ 86.65
2010 Comcast	Utility	\$ 68.06
2010 SCE&G	Utility	\$ 152.00
2010 Charleston Water	Utility	\$ 34.87
2010 Charleston Water	Utility	\$ 38.35
2010 Comcast	Utility	\$ 68.06
2010 SCE&G	Utility	\$ 152.00
2010 AT&T	Utility	\$ 42.24
2010 Charleston Water	Utility	\$ 45.49
2010 Comcast	Utility	\$ 68.06
2011 SCE&G	Utility	\$ 152.00
2011 AT&T	Utility	\$ 42.31
2011 Charleston Water	Utility	\$ 44.94
2011 Comcast	Utility	\$ 68.06
2011 SCE&G	Utility	\$ 152.00

2011 AT&T	Utility	\$ 87.86
2011 SCE&G	Utility	\$ 152.00
2011 Charleston Water	Utility	\$ 42.43
2011 Comcast	Utility	\$ 136.69
2011 AT&T	Utility	\$ 44.05
2011 SCE&G	Utility	\$ 152.00
2011 Charleston Water	Utility	\$ 99.52
2011 Comcast	Utility	\$ 71.66
2011 Charleston Water	Utility	\$ 74.27
2011 SCE&G	Utility	\$ 152.00
2011 AT&T	Utility	\$ 88.04
2011 AT&T	Utility	\$ 43.83
2011 Comcast	Utility	\$ 71.67
2011 Comcast	Utility	\$ 71.67
2011 Charleston Water	Utility	\$ 78.01
2011 AT&T	Utility	\$ 105.00
2011 Comcast	Utility	\$ 42.41
2011 Charleston Water	Utility	\$ 71.67
2011 Charleston Water	Utility	\$ 37.96
2011 SCE&G	Utility	\$ 105.00
2011 AT&T	Utility	\$ 43.16
2011 Charleston Water	Utility	\$ 37.96
2011 Comcast	Utility	\$ 71.67
2011 Charleston Water	Utility	\$ 19.38
2011 SCE&G	Utility	\$ 105.00
2011 Charleston Water	Utility	\$ 19.38
2011 AT&T	Utility	\$ 43.09
2011 Comcast	Utility	\$ 71.67
2011 Charleston Water	Utility	\$ 17.35
2015 Charleston Water	Utility	\$ 47.40
2016 Charleston Water	Utility	\$ 55.25
2017 Charleston Water	Utility	\$ 58.26
Total:		\$ 9,318.23
Before Order:		\$ 650.28
After Order:		\$ 8,667.95

Professional Services

3/9/2009 JH Copper	Legal	\$ 44,530.00
4/29/2009 W Triggs	Accountant	\$ 450.00
5/23/2009 Lisa Fisher	Reimburse legal fees	\$ 6,090.00
5/9/2010 William Triggs	Accountant	\$ 940.00

6/16/2011 Triggs & Reese	Accountant	\$ 325.00
8/11/2011 Triggs & Reese	Accountant	\$ 210.00
Total:		\$52,545.00
Before Order:		\$44,980.00
After Order:		\$ 7,565.00

Final thoughts about this case:

“... When a festive occasion our spirit unbends,

We should never forget the profession’s best friends.

So we’ll pass round the wine,

And a light bumper fill,

To the jolly testator who makes his own will.”

~Lord Charles Neaves

Sadly, if Alice Shaw-Baker had spent a little more time with her attorney, she would have accomplished her goal as stated to her friend, Kay Passailague Slade, “I don’t want lawyers involved.” Tragic outcome. No self-respecting lawyer would toast this.

I close with “A Prayer for Lawyers” by Samuel Johnson:

Almighty God, the Giver of wisdom, without whose help resolutions are vain, without whose help study is ineffectual, enable me if it be Thy will to attain such knowledge as may qualify me to direct the doubtful and instruct the ignorant; to prevent wrongs and terminate contentions; and grant that I may use that knowledge which I shall attain to Thy glory and my own salvation for Jesus Christ’s sake. Amen.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiffs,

vs.

BESSIE HUCKABEE, KAY
PASSAILAGUE SLADE, and SANDRA
BYRD,

Defendants.

In the Matter of the Estate of Alice Shaw-
Baker. Charleston County Probate No.:
2009-ES-10-0378

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-10-3010

ORDER

2010 APR -3 PM 2:32

THIS MATTER is before me following a jury trial that resulted in a Verdict upholding the Will of Alice Shaw-Baker, and rejecting the Plaintiffs claim that she had revoked the Will by her words and acts. I denied Plaintiffs' post-trial motions regarding this, and confirmed the Verdict. Plaintiffs also made equitable claims regarding the Estate. I denied all these claims based on my findings as to the credibility of the witnesses, and totality of the evidence. In addition, I imposed sanctions against John Hughes Cooper, Lisa Fisher, and Betty Fisher. I now Order the following:

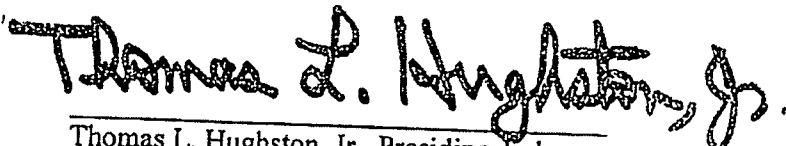
1. The Charleston County Clerk of Court, Julie J. Armstrong, is to deliver all monies being held by her in trust from National Life Insurance Company in the amount of \$22,642.76, S.C. Budget and Control Board in the amount of \$2,189.36 and \$4,000.00, and South Carolina Deferred Compensation Program in the amount of \$75,246.24, including interest in the amount of \$935.86, totaling \$105,014.22 to Defendant Kay Passailaiguc Slade.

#1
T.L.H. Jr.

2. Farmers and Merchants Bank of Long Beach California is to make payable all monies held in a savings account and a checking account, both in the name of Alice Shaw-Baker Conservatorship, Lisa Fisher Conservator, to Bessie Huckabee, Personal Representative of the Estate of Alice Shaw-Baker. Additionally, Edward Jones on 1124 Sam Rittenberg Boulevard in Charleston, SC, is to make payable all monies held in the name of Alice Shaw-Baker, Lisa Fisher Conservator, to Bessie Huckabee, Personal Representative of the Estate of Alice Shaw-Baker. The monies shall be delivered to Bessie Huckabee's attorney, W. Westbrook Wills, III at P.O. Box 822, Folly Beach, SC 29439.
3. Ejectment of the occupant of the house located at 306 Cassina Road, Parkwood Estates, Charleston, South Carolina, within seven (7) days of the date of service of this Order. The occupant must turn the keys over to the Charleston County sheriff's deputy, or deliver them to the attorney for the Defendants, W. Westbrook Wills, III.
4. I grant the Motion of John Hughes Cooper, his partner John Townsend Cooper, and his law firm John Hughes Cooper, P.C. to withdrawal as counsel for Plaintiffs. Plaintiffs are granted reasonable time to seek another South Carolina attorney, but nothing herein enlarges the time for Plaintiffs to file an appeal.
5. As Additional sanctions for Plaintiffs and their attorneys, they are enjoined and restrained from filing any motions in the Circuit Court. Any future filings in this case must be filed with the Supreme Court of South Carolina.

#2
AND IT IS SO ORDERED.

April 3, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

Re: Fisher v. Huckabee 2009-CP-10-3010, also Appellate Case
2018-000604

Hughston, Thomas L.

Mon 4/9/2018 1 49 PM

To: Shearouse, Daniel <DShearouse@sccourts.org>;

Cc: lisa fisher <lfisher6736@gmail.com>, John Cooper <shiplaw@jhcooper.com>, Fulp, Kenneth <kfulp@bcgov.net>, Jaci
<jcrowleylawfirm@gmail.com>, W Westbrook Wills III <wwills@wwillslaw.com>.

Dear Mr. Shearouse:

In response to the Affidavit of Lisa Fisher and Betty Fisher of April 7, 2018 which I received today, I state that my first Post Trial Order was on April 3, 2018, more than 10 days after my Order was filed with the Clerk of Court on March 21, 2018 and I believe would have been available online by March 22, 2018. Therefore, I thought my Order of April 3 was beyond the 10 days allowed for Post Trial Motions. If I am mistaken in regard to this sequence of events and conclusions, I will be glad to consider any Post Trial Motions on directions to do so by the Supreme Court of South Carolina, or if appropriate, the Court of Appeals.

I await your instructions.

Respectfully submitted,

Thomas L. Hughston, Jr.

From: Hughston, Thomas L.

Sent: Thursday, March 29, 2018 9:47 AM

To: W. Westbrook Wills III; Jessica Crowley

Cc: lisa fisher; John Townsend Cooper; John Cooper

Subject: Re: Fisher v. Huckabee 2009-CP-10-3010

Dear Attorneys:

I received the Plaintiffs' Motion to Vacate Order Compelling Financial Disclosure. I have considered it and deny this Motion. You have until April 1, 2018 to comply or face contempt of court and other sanctions.

Thomas L. Hughston, Jr.

ORDER - FILE THIS.

T.L. Hughston, Jr.
4/9/18.

2018 APR -9 PM 1:59
FILED
CLERK OF COURT
SOUTH CAROLINA

The Supreme Court of South Carolina

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.

Appellate Case No. 2018-000566
Lower Court Case No. 2009CP1003010

ORDER

FILED
2018 APR 16 PM 4:22
CLERK OF COURT

This appeal is currently pending before the South Carolina Court of Appeals. Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by this Court.¹

With the consent of his clients, counsel for appellants moves to be relieved as counsel. The motion is granted. Further, since South Carolina counsel is no longer associated with her, the *pro hac vice* admission of Lisa Fisher, Esquire, is hereby withdrawn.

The records of this Court now reflect that appellants are proceeding without counsel in this appeal. If appellants desire to retain counsel for this appeal, that attorney will need to notify this Court that he or she has been retained within ten (10) days of the date of this order.

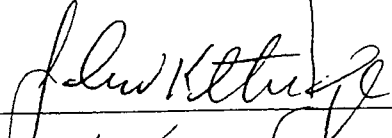
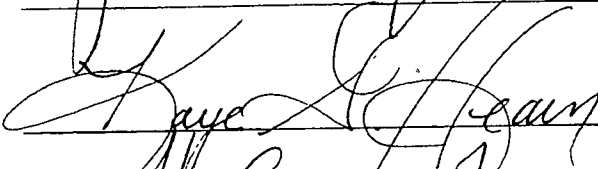
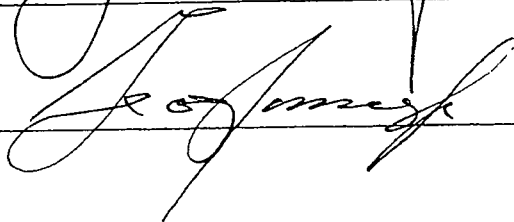
Any necessary transcript(s) must be ordered in the manner specified by Rule 207, SCACR, no later than ten (10) days of the date of this order.

¹ Earlier, the Court of Appeals consolidated Appellate Court Case Number 2018-000604 into this case and ended Appellate Case Number 2018-000604.

Appellant Lisa Fisher has filed a petition for a writ of supersedeas and other relief. Appellant Betty Fisher has joined this petition. Since appellants have not sought supersedeas or a stay from the lower court, we deny this petition without prejudice and direct the appellants to first seek a stay or supersedeas from the circuit court judge. Rule 241(d)(1), SCACR.

Finally, in the petition for a writ of supersedeas and other relief, the appellants assert that they were preparing a motion under Rule 59 of the South Carolina Rules of Civil Procedure when the order of April 3, 2018, was issued by the circuit court. Since the April 3, 2018 order, "enjoined and restrained [appellants and their counsel] from filing any motions in the Circuit Court," appellants assert that they did not file a Rule 59 motion.

If appellants desire to file a Rule 59 motion with the circuit court, it shall be filed with the circuit court clerk and a copy provided to the circuit court judge within fifteen (15) days of the date of this order. Any appeal from the order ruling on the Rule 59 motion shall be combined with this appeal.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
April 10, 2018

cc: John Hughes Cooper, Esquire
Warren W. Wills, III, Esquire

Jessica Lynn Crowley, Esquire
Mary Frances G. Jowers, Esquire
Ms. Betty Fisher
Lisa Fisher, Esquire
The Honorable Thomas L. Hughston, Jr.
The Honorable Julie J. Armstrong
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-3010

BETTY FISHER and LISA FISHER,)
As Conservator for ALICE SHAW-)
BAKER,)

Plaintiffs,)

vs.)

BESSIE HUCKABEE, et al.)

Defendants.)
_____)

ORDER

2019 MAY 29 PM 2:48
CLERK OF COURT

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available on-line on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record pertaining to this dispute beginning with the filing for a Conservatory/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

#9
T.L.H.

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorneys fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day according to her. It is important to read the Order of Judge Curry of November 19, 2008, for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court." No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a

#2
T.H.H.

mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

“The one who first states a case seems right, until the other comes and cross-examines.” Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p. 113, “A man’s story seems right, until you look into it.”

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker’s deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to “go to animal welfare and rescue projects only.” It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue “to be hers in fee simple absolute, to include the care of my dogs....” It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various “animal welfare” organizations by Will and/or by contract. However, it is finally established clearly by the memorandum of a call from her to her insurance company: “I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I

#3
P.L. 11/10

will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue—Governed by Will." Also, a prior form of 7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed "animal welfare" organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker's own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine years old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, "We are just doing what Alice Shaw-Baker wanted us to do." Intent and result are shown by their acts, not their words.

This should have been a simple guardian/conservator/personal representative case. Instead it has by Plaintiffs' frivolous acts gone on for nine years and counting. This is unconscionable and an abuse of the court system. Every avenue available to delay has been used and abused by Plaintiffs for no good reason.

I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees.

T.L.B.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services' inventory and appraisal, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate's initial value was \$353,746.81. According to Lisa Fisher's own accounting, \$39,549.43 was spent following Judge Curry's May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker's death, after being told by a medical doctor that she would not survive the trip, and violated § 62-5-424(C)(9) by making twenty unauthorized charitable donations in the amount of \$2,555, and of this \$105 came before the termination of the conservatorship.

The Probate Court has approved fees amounting to \$67,185.92. An additional \$20,621.34 was spent on unapproved fees, \$13,941.59 coming before the termination of the conservatorship, totaling \$87,807.26 in paid fees, which amounts to 25% of the Estate's value. However, there remains pending requests for approval of fees totaling \$74,422.00. Assuming those requests are approved, the total fees paid would amount to \$162,229.26 or 46% of the Estate. As it currently stands, a total of \$173,148.66 from the Estate has been spent, which represents 49% of the Estate. Approval of the outstanding fee request would almost completely deprive the Estate of its value. That comes without any consideration of the amount of attorney's fees accumulated from Feb. 2009–Feb. 2018 which totals \$314, 837.35 or 89.25% of the Estate. After totaling all the paid, unpaid, requested, and accumulated fees, the total amounts to \$564,873.87, which represents 160% of the Estate.

#5
T.D.H. J.

Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanctions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$13,941.59 for unapproved fees prior to termination of conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the order terminating the conservatorship. I have also decided to award the Defendants their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. After careful consideration of these factors, I find Defendants' attorney's fees in the amount of \$157,539.93 are, unfortunately, justified under that analysis. As a result, I am imposing judgment against Plaintiffs for a total of \$236,135.95, jointly and severally, in favor of Defendants and their attorneys.

#6
T.L.H. Jr.
Again, I reference Bleak House. Jarndyce vs. Jarndyce ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in"

...sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

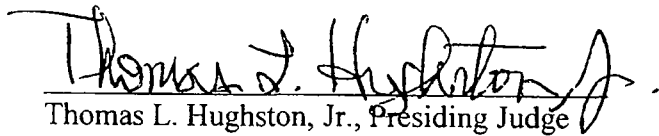
I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt of Court. I stay this during the Plaintiffs' appeal.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

#7
IT IS SO ORDERED.

May 29, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)
As Conservator for ALICE SHAW-)
BAKER,)

Plaintiffs,)

vs.)

BESSIE HUCKABEE, et al.)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-3010

ORDER

2018-JUN-29 AM 11:12
CLERK OF COURT

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available online on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record pertaining to this dispute beginning with the filing for a Conservator/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

#1
7/1/18

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorney's fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

I have also considered the equitable principles that relate to a constructive trust and find by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust. *See* Cases from S.C., re: constructive trust. Alice Shaw-Baker's property will go exactly as she intended for it to go, both by her Will and by contract.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day, according to her. It is important to read Judge Curry's November 19, 2008 Order for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on

#2
T.L.H. 9

her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court." No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

"The one who first states a case seems right, until the other comes and cross-examines." Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p. 113, "A man's story seems right, until you look into it."

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker's deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to "go to animal welfare and rescue projects only." It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue "to be hers in fee simple absolute, to include the care of my dogs...." It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various "animal welfare" organizations by Will and/or by contract.

#3
T.L.H.

However, it is finally established clearly by the memorandum of a call from her to her insurance company: "I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue—Governed by Will." Also, a prior form of 7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed "animal welfare" organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker's own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine year old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, "We are just doing what Alice Shaw-Baker wanted us to do." Intent and result are shown by their acts, not their words.

Frivolous determinations are governed by a reasonable attorney standard. Here, two questions arise. One, would a reasonable attorney bring and maintain a suit now in its ninth year claiming that an undoubtedly incompetent person had revoked her otherwise valid will by tearing it on January 1, 2009, following Judge Curry's Order of November 19, 2008, when only that attorney supposedly witnessed the tearing and no proof of such an act exist other than that attorneys say so, and that attorney's mother is an heir if the Will was revoked along with some other heirs who are not parties,

#4
T.L.H.A.

or notified of this suit, and whose existence was just revealed? The answer is an unqualified "No". Two, would a reasonable attorney bring and maintain a suit now in its ninth year claiming an equitable constructive trust over the entire Estate given all the clear facts and circumstances in the record contrary to such a claim? Again, the answer is an unqualified "No".

This should have been a simple guardian/conservator/personal representative case. Instead it has by Plaintiffs' frivolous acts gone on for nine years and counting. This is unconscionable and an abuse of the court system. Every avenue available to delay has been used and abused by Plaintiffs for no good reason.

I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees. It should be noted that Plaintiffs' first appeal was from what was essentially a mutual restraining Order. Imagine that! As I have previously written, I deeply regret signing that Order.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services' inventory and appraisal, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate's initial value was \$353,746.81. According to Lisa Fisher's own accounting, \$39,549.43 was spent following Judge Curry's May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker's death, after being told by a medical doctor

#5
T.V. (f)

that she would not survive the trip. She does, however, claim that she obtained a partial refund but such a refund is not reflected by her accounting.

Pursuant to § 62-5-424(C)(9), a conservator must obtain court approval prior to making charitable donations from the Estate. Lisa Fisher failed to observe this statute by making twenty unauthorized charitable donations in the amount of \$2,555—\$105 coming before the termination of the conservatorship—to various animal charities

The Probate Court has approved fees amounting to \$67,185.92. An additional \$20,621.34 was spent on unapproved fees, \$13,941.59 coming before the termination of the conservatorship, totaling \$87,807.26 in paid fees, which amounts to 25% of the Estate's value. However, there remains pending requests for approval of fees totaling \$74,422.00. If those requests are approved, the total fees paid would amount to \$162,229.26 or 46% of the Estate. As it currently stands, a total of \$173,148.66 from the Estate has been spent, which represents 49% of the Estate. Approval of the outstanding fee request would almost completely deprive the Estate of its value. That comes without any consideration of the amount of attorney's fees accumulated from Feb. 2009–Feb. 2018 which totals \$314,837.35 or 89.25% of the Estate. After totaling all the paid, unpaid, requested, and accumulated fees, the total amounts to \$564,873.87, which represents 160% of the Estate.

Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanctions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes

#6
T.V.B.

from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the Order terminating the conservatorship for a total of \$78,596.02. I impose this as a judgment against Betty and Lisa Fisher, jointly and severally, in favor of Defendants.

I have also decided to award the Defendants' attorneys their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained.

According the Defendants' three attorneys' affidavits, they are requesting fees in the amount of \$173,493.68 for services performed through May 30, 2018. Lisa Fisher has objected to this amount on the basis that some of the fees pertain to hours worked for the separate, but related, actions. I have subtracted the amount I believe is attributed to those actions. As for attorney Peter A. Kouten, he has requested \$78,872.43 for services rendered from February 2009–October 2017. I have deducted those fees accumulated after the October 14, 2013 Order for Substitution of Counsel in addition to fees for services performed in relation to actions required for probating the Estate, the Conservatorship (GC) action, and the related circuit court actions. I therefore find his reasonable attorney's fees to be \$35,315.00. As for attorney W. Westbrook Will, III, he has requested \$59,289.50 in attorney's fees. I find this amount to be reasonable. As for attorney Jessica L. Crowley, she has requested \$35,331.75 in attorney's fees. After subtracting those fees related to the ejectment

#7
T.L.H.

action and conservatorship action, I find her reasonable attorney's fees to be \$25,512.50. Thus, after careful consideration of the factors set forth above for assessing attorney's fees, I find Defendants' total attorneys' fees in the amount of \$120,117.00 are, unfortunately, justified under that analysis. I impose this as a judgment against Lisa Fisher and John Hughes Cooper, jointly and severally, in favor of Defendants' attorneys—\$35,315.00 in favor of attorney Peter A. Kouten, \$59,289.50 in favor of attorney W. Westbrook Wills, III, and \$25,512.50 in favor of attorney Jessica L. Crowley.

Again, I reference Bleak House. Jarndyce vs. Jarndyce ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in" . . . sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt of Court. I stay this during the Plaintiffs' appeal.

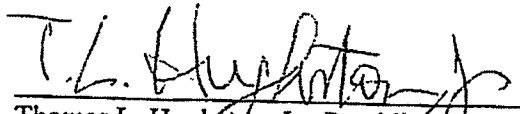
#3
T.L.H.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

IT IS SO ORDERED.

#9

June 29, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-3010

Betty Fisher, et al.
PLAINTIFF(S)

Bessie Huckabee, et al.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Estate of Alice-Shaw Baker	Betty Fisher and Lisa Fisher	\$78,596.02
Peter A. Kouten	Lisa Fisher and John Hughes Cooper	\$35,315.00
W. Westbrook Wills, III	Lisa Fisher and John Hughes Cooper	\$59,289.50
Jessica L. Crowley	Lisa Fisher and John Hughes Cooper	\$25,512.50
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

SCRPC Form 4C (02/2017)

Page 1 of 4

LATEST I HOPE MY LAST ORDER IN
THIS CASE. I HOPE YOU DO IT ALL FROM
NOW ON. BEST WISHES, TERRY HUGHES

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

T.L. Huchster
Circuit Court Judge

2008
Judge Code

6/29/18
Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-3010

BETTY FISHER and LISA FISHER,)
As Conservator for ALICE SHAW-)
BAKER,)

Plaintiffs,)

vs.)

BESSIE HUCKABEE, et al.)

Defendants.)

ORDER

2018 JUL 29 AM 11:12
CLERK OF COURT
SOUTH CAROLINA

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available on-line on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record pertaining to this dispute beginning with the filing for a Conservator/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

#4
P.L.H.

2018 JUL -6 AM 11:30
CLERK OF COURT
SOUTH CAROLINA

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorney's fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

I have also considered the equitable principles that relate to a constructive trust and find by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust. *See Cases from S.C., re: constructive trust.* Alice Shaw-Baker's property will go exactly as she intended for it to go, both by her Will and by contract.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day, according to her. It is important to read Judge Curry's November 19, 2008 Order for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on

#2
T.L.H.

her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court.” No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

“The one who first states a case seems right, until the other comes and cross-examines.” Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p. 113, “A man’s story seems right, until you look into it.”

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker’s deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to “go to animal welfare and rescue projects only.” It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue “to be hers in fee simple absolute, to include the care of my dogs....” It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various “animal welfare” organizations by Will and/or by contract.

#3
T.L.B.

However, it is finally established clearly by the memorandum of a call from her to her insurance company: "I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue—Governed by Will." Also, a prior form of 7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed "animal welfare" organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker's own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine year old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, "We are just doing what Alice Shaw-Baker wanted us to do." Intent and result are shown by their acts, not their words.

Frivolous determinations are governed by a reasonable attorney standard. Here, two questions arise. One, would a reasonable attorney bring and maintain a suit now in its ninth year claiming that an undoubtedly incompetent person had revoked her otherwise valid will by tearing it on January 1, 2009, following Judge Curry's Order of November 19, 2008, when only that attorney supposedly witnessed the tearing and no proof of such an act exist other than that attorneys say so, and that attorney's mother is an heir if the Will was revoked along with some other heirs who are not parties,

#4
T.L.H.

or notified of this suit, and whose existence was just revealed? The answer is an unqualified "No".

Two, would a reasonable attorney bring and maintain a suit now in its ninth year claiming an equitable constructive trust over the entire Estate given all the clear facts and circumstances in the record contrary to such a claim? Again, the answer is an unqualified "No".

This should have been a simple guardian/conservator/personal representative case. Instead it has by Plaintiffs' frivolous acts gone on for nine years and counting. This is unconscionable and an abuse of the court system. Every avenue available to delay has been used and abused by Plaintiffs for no good reason.

I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees. It should be noted that Plaintiffs' first appeal was from what was essentially a mutual restraining Order. Imagine that! As I have previously written, I deeply regret signing that Order.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services' inventory and appraisal, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate's initial value was \$353,746.81. According to Lisa Fisher's own accounting, \$39,549.43 was spent following Judge Curry's May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker's death, after being told by a medical doctor

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T.L. (f)

that she would not survive the trip. She does, however, claim that she obtained a partial refund but such a refund is not reflected by her accounting.

Pursuant to § 62-5-424(C)(9), a conservator must obtain court approval prior to making charitable donations from the Estate. Lisa Fisher failed to observe this statute by making twenty unauthorized charitable donations in the amount of \$2,555—\$105 coming before the termination of the conservatorship—to various animal charities

The Probate Court has approved fees amounting to \$67,185.92. An additional \$20,621.34 was spent on unapproved fees, \$13,941.59 coming before the termination of the conservatorship, totaling \$87,807.26 in paid fees, which amounts to 25% of the Estate's value. However, there remains pending requests for approval of fees totaling \$74,422.00. If those requests are approved, the total fees paid would amount to \$162,229.26 or 46% of the Estate. As it currently stands, a total of \$173,148.66 from the Estate has been spent, which represents 49% of the Estate. Approval of the outstanding fee request would almost completely deprive the Estate of its value. That comes without any consideration of the amount of attorney's fees accumulated from Feb. 2009–Feb. 2018 which totals \$314,837.35 or 89.25% of the Estate. After totaling all the paid, unpaid, requested, and accumulated fees, the total amounts to \$564,873.87, which represents 160% of the Estate.

Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanctions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes

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T.L.F.

from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the Order terminating the conservatorship for a total of \$78,596.02. I impose this as a judgment against Betty and Lisa Fisher, jointly and severally, in favor of Defendants.

I have also decided to award the Defendants' attorneys their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained.

According to the Defendants' three attorneys' affidavits, they are requesting fees in the amount of \$173,493.68 for services performed through May 30, 2018. Lisa Fisher has objected to this amount on the basis that some of the fees pertain to hours worked for the separate, but related, actions. I have subtracted the amount I believe is attributed to those actions. As for attorney Peter A. Kouten, he has requested \$78,872.43 for services rendered from February 2009–October 2017. I have deducted those fees accumulated after the October 14, 2013 Order for Substitution of Counsel in addition to fees for services performed in relation to actions required for probating the Estate, the Conservatorship (GC) action, and the related circuit court actions. I therefore find his reasonable attorney's fees to be \$35,315.00. As for attorney W. Westbrook Will, III, he has requested \$59,289.50 in attorney's fees. I find this amount to be reasonable. As for attorney Jessica L. Crowley, she has requested \$35,331.75 in attorney's fees. After subtracting those fees related to the ejectment

#7
T.L.H.

action and conservatorship action, I find her reasonable attorney's fees to be \$25,512.50. Thus, after careful consideration of the factors set forth above for assessing attorney's fees, I find Defendants' total attorneys' fees in the amount of \$120,117.00 are, unfortunately, justified under that analysis. I impose this as a judgment against Lisa Fisher and John Hughes Cooper, jointly and severally, in favor of Defendants' attorneys—\$35,315.00 in favor of attorney Peter A. Kouten, \$59,289.50 in favor of attorney W. Westbrook Wills, III, and \$25,512.50 in favor of attorney Jessica L. Crowley.

Again, I reference Bleak House. Jarndyce vs. Jarndyce ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in" . . . sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

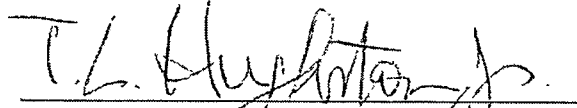
Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt of Court. I stay this during the Plaintiffs' appeal.

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T.L.H.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

IT IS SO ORDERED.

#9
June 29, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)
As Conservator for ALICE SHAW-)
BAKER,)

Plaintiffs,)

vs.)

BESSIE HUCKABEE, et al.)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-3010

ORDER

FILED
2018 JUL -9 PM 11:33
JULIE J. ARNOLD
CLERK OF COURT

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available on-line on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record pertaining to this dispute beginning with the filing for a Conservator/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

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T.L.H.

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorney's fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

I have also considered the equitable principles that relate to a constructive trust and find by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust. *See* Cases from S.C., re: constructive trust. Alice Shaw-Baker's property will go exactly as she intended for it to go, both by her Will and by contract.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day, according to her. It is important to read Judge Curry's November 19, 2008 Order for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on

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P.L.H.

her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court.” No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

“The one who first states a case seems right, until the other comes and cross-examines.” Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p. 113, “A man’s story seems right, until you look into it.”

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker’s deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to “go to animal welfare and rescue projects only.” It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue “to be hers in fee simple absolute, to include the care of my dogs....” It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various “animal welfare” organizations by Will and/or by contract.

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T.L.A. 8

However, it is finally established clearly by the memorandum of a call from her to her insurance company: "I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue—Governed by Will." Also, a prior form of 7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed "animal welfare" organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker's own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine year old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, "We are just doing what Alice Shaw-Baker wanted us to do." Intent and result are shown by their acts, not their words.

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or notified of this suit, and whose existence was just revealed? The answer is an unqualified "No". Two, would a reasonable attorney bring and maintain a suit now in its ninth year claiming an equitable constructive trust over the entire Estate given all the clear facts and circumstances in the record contrary to such a claim? Again, the answer is an unqualified "No".

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I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees. It should be noted that Plaintiffs' first appeal was from what was essentially a mutual restraining Order. Imagine that! As I have previously written, I deeply regret signing that Order.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services' inventory and appraisal, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate's initial value was \$353,746.81. According to Lisa Fisher's own accounting, \$39,549.43 was spent following Judge Curry's May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker's death, after being told by a medical doctor

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T.L.H.

that she would not survive the trip. She does, however, claim that she obtained a partial refund but such a refund is not reflected by her accounting.

Pursuant to § 62-5-424(C)(9), a conservator must obtain court approval prior to making charitable donations from the Estate. Lisa Fisher failed to observe this statute by making twenty unauthorized charitable donations in the amount of \$2,555—\$105 coming before the termination of the conservatorship—to various animal charities

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Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanctions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes

#6
TLB

from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the Order terminating the conservatorship for a total of \$78,596.02. I impose this as a judgment against Betty and Lisa Fisher, jointly and severally, in favor of Defendants.

I have also decided to award the Defendants' attorneys their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained.

According to the Defendants' three attorneys' affidavits, they are requesting fees in the amount of \$173,493.68 for services performed through May 30, 2018. Lisa Fisher has objected to this amount on the basis that some of the fees pertain to hours worked for the separate, but related, actions. I have subtracted the amount I believe is attributed to those actions. As for attorney Peter A. Kouten, he has requested \$78,872.43 for services rendered from February 2009–October 2017. I have deducted those fees accumulated after the October 14, 2013 Order for Substitution of Counsel in addition to fees for services performed in relation to actions required for probating the Estate, the Conservatorship (GC) action, and the related circuit court actions. I therefore find his reasonable attorney's fees to be \$35,315.00. As for attorney W. Westbrook Will, III, he has requested \$59,289.50 in attorney's fees. I find this amount to be reasonable. As for attorney Jessica L. Crowley, she has requested \$35,331.75 in attorney's fees. After subtracting those fees related to the ejectment

#7
T.L.F.

action and conservatorship action, I find her reasonable attorney's fees to be \$25,512.50. Thus, after careful consideration of the factors set forth above for assessing attorney's fees, I find Defendants' total attorneys' fees in the amount of \$120,117.00 are, unfortunately, justified under that analysis. I impose this as a judgment against Lisa Fisher, Betty Fisher, and John Hughes Cooper, jointly and severally, in favor of Defendants' attorneys—\$35,315.00 in favor of attorney Peter A. Kouten, \$59,289.50 in favor of attorney W. Westbrook Wills, III, and \$25,512.50 in favor of attorney Jessica L. Crowley.

Again, I reference Bleak House. Jarndyce vs. Jarndyce ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in" . . . sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt

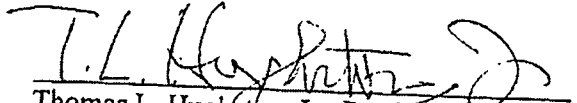
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T.L.B.

of Court. I stay this during the Plaintiffs' appeal.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

IT IS SO ORDERED.

#9
July 9, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiffs,

vs.

BESSIE HUCKABEE, KAY
PASSAILAGUE SLADE, and SANDRA
BYRD,

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-3010

ORDER

2018 JUL 23 AM 11:09

FILED

Relevant Procedural History

THIS MATTER is currently before me on both parties' post-trial motions. I previously ruled on these motions and imposed Judgments against Plaintiffs and their attorneys by Order filed March 21, 2018. Thereafter, both parties filed motions to reconsider and Plaintiffs filed for a writ of supersedeas. I ruled on those motions and amended the Judgments against Plaintiffs and their attorneys by Order filed May 29, 2018. Then on May 31, 2018, Defendants' counsel filed a motion to reconsider the Judgments requesting a combined additional \$15,953.75 for services performed after the March 21, 2018 Order. Plaintiffs filed an objection to the current and any additional award of attorney's fees. However, unbeknownst to me, the day before my May 29th Order the Supreme Court issued a temporary stay on all Orders pending its ruling on Plaintiffs' writ of supersedeas. On June 13, 2018, the Supreme Court denied Plaintiffs' writ and vacated my May 29, 2018 Order. As a result, I revisited the parties' motions to reconsider and issued my Order on June 29, 2018. I then discovered a scrivener's error—Betty Fisher was omitted from the judgments I imposed—and corrected that in my July 9, 2018 Order. Subsequently, Defendants filed a Motion to

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T. L. 100

Reconsider the issue of attorney's fees and counsel for attorney John Hughes Cooper requested clarification as to the judgments against him. I now clarify the judgments below and, for the reasons stated herein, Grant Defendants' motion.

Defendants' Motion to Reconsider Award of Attorney's Fees

I initially awarded Defendants their attorneys' fees in the amount of \$157,539.93. After consideration of Plaintiffs' objections and further review of Defendants' attorneys' affidavits, I subtracted amounts that appeared to be attributable to other related actions. After review of Defendants' motion to reconsider and upon further consideration of this issue, I realize that I incorrectly evaluated Defendants' affidavits. I was under the impression that Attorney Wills substituted attorney Kouten as counsel for both the Estate and the individual Defendants. As it turns out, attorney Kouten maintained his representation of the Personal Representative until his appointment to Probate Judge in 2017. As for the reduction of attorney Crowley's fees, I incorrectly reduced her fees for actions regarding the ejectment of the tenant at Alice Shaw-Baker's home. The actions reflected in her affidavit were in furtherance of my April 3, 2018 Order requiring the unauthorized occupant to vacate the home. The motion also maintains that she segregates and itemizes her hours related to other actions in a separate invoice and her affidavit reduces her totals fees for misattributed hours.

For these reasons, I Grant Defendants' motion and amend my award of attorney's fees for attorneys Peter Kouten and Jessica Crowley. I award attorney Peter Kouten his reasonable attorney's fees in the amount of \$78,872.43 and attorney Jessica Crowley her reasonable attorney's fees in the amount of \$32,461.75.

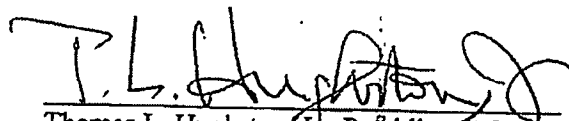
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T.L.H.

Clarification of Judgments

As it currently stands, the record of judgments on the Public Index page reflects two Judgments against John Hughes Cooper—\$253,969.31 and \$65,151.34. However, I intended to amend my Judgment against attorney Cooper to reflect only those Judgments listed in my July 9, 2018 Order. To clarify this, I now vacate the Judgments listed in my March 21, 2018, Order. The remainder of that Order remains effective. Likewise, my July 9, 2018 Order is also affirmed except as modified herein. To add further clarity and avoid ambiguities, the following is a current summary of the Judgments imposed by me: \$78,596.02 against Betty Fisher and Lisa Fisher, jointly and severally, in favor of The Estate of Alice Shaw-Baker; \$78,872.43 against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of Peter A. Kouten; \$59,289.50 against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of W. Westbrook Wills, III; and \$32,461.75 against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of Jessica L. Crowley. This brings the total Judgment for improper expenditures to \$78,596.02 and the total Judgment for attorney's fees to \$170,623.68, which combines for a total Judgment of \$249,219.70.

#3
AND IT IS SO ORDERED.

July 23, 2018
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2009-ES-10-0378
	)	(On motion for Removal
Betty Fisher, and	)	to the Circuit Court)
Lisa Fisher,	)	ADDENDUM TO PETITION FOR
as Conservator for	)	FORMAL TESTACY AND APPOINTMENT
Alice Shaw-Baker,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>VERIFIED COMPLAINT</u>
	)	
Bessie Huckabee,	)	(JURY TRIAL DEMANDED)
Kay Passailaigue Slade,	)	
Sandra Byrd,	)	
Henry McMaster,	)	
in his capacity as	)	
Attorney General	)	
of South Carolina,	)	
State Budget and	)	
Control Board, South	)	
Carolina Retirement	)	
System, ING, South	)	
Carolina Deferred	)	
Compensation Program,	)	
and National Life	)	
Insurance Company,	)	
	)	
Defendants.	)	(Jury Trial Demanded)
	)	
IN THE MATTER OF:	)	
ALICE SHAW-BAKER	)	
	)	

COME NOW Betty Fisher and Lisa Fisher, as Conservator for Alice Shaw-Baker, Plaintiffs in the above-captioned action, and complaining of Defendants, show this honorable Court as follows:

Parties

1. This matter regards Alice Shaw-Baker ("Ms. Shaw-Baker"), who died February 25, 2009, in Charleston County, South

- Carolina. At her death, Ms. Shaw-Baker was a citizen of South Carolina and a resident of Charleston County.
2. Plaintiff Betty Fisher is Ms. Shaw-Baker's niece, her next-of-kin, an heir at law, and is petitioning for appointment as Personal Representative of Ms. Shaw-Baker's estate. Betty Fisher is a California resident.
 3. Plaintiff Lisa Fisher is Ms. Shaw-Baker's great-niece and was appointed by the Probate Court on November 19, 2008 as Ms. Shaw-Baker's Conservator and Guardian. Lisa Fisher is not an heir at law of Ms. Shaw-Baker. Lisa Fisher is Plaintiff in this action in her current capacity as Conservator of the Estate of Alice Shaw-Baker, requesting declaratory relief as to proper disposition of Estate assets. Lisa Fisher is a California resident.
 4. Bessie Huckabee ("Huckabee") is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will and, pursuant to it, on or about March 10, 2009, was appointed Personal Representative of Ms. Shaw-Baker's Estate in informal probate without bond. On information and belief, she is a resident of Charleston County, South Carolina.
 5. Kay Passailaigue Slade ("Slade") is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will, and is the contested sole beneficiary of Ms. Shaw-Baker's South Carolina Retirement System pension plan, the contested sole

beneficiary of Ms. Shaw-Baker's South Carolina Deferred Compensation plan, and the contested sole beneficiary of Ms. Shaw-Baker's National Life Insurance Company life insurance policy. On information and belief, Slade is a resident of Charleston County, South Carolina.

6. Sandra Byrd is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will. On information and belief, she is a resident of Berkeley County, South Carolina.
7. Henry McMaster, in his capacity as the Attorney General of South Carolina, is the appropriate representative to protect the interests of a charitable organization, the John Ancrum Society for the Prevention of Cruelty to Animals, a devisee under Ms. Shaw-Baker's April 5, 1996 will.
8. On information and belief at all time material the State Budget and Control Board and the South Carolina Retirement System administer one or more retirement plans to which Ms. Shaw-Baker contributed in the name "Alice E Shaw Baker" and from which pension benefits are now payable to the estate of Ms. Shaw Baker. Although said benefits are also claimed by contested sole beneficiary Kay Passailaigue Slade, the said pension benefits are properly a probate asset.
9. On information and belief at all times material ING and the South Carolina Deferred Compensation Program administer one

or more 457 Plans to which Ms. Shaw-Baker contributed in the name "Alice E. Shaw-Baker" and from which deferred compensation benefits are now payable to the estate of Ms. Shaw-Baker. Although said benefits are also claimed by contested sole beneficiary Kay Passailaigue Slade, the said deferred compensation benefits are properly a probate asset.

10. The National Life Insurance Company is the issuer of Ms. Shaw-Baker's life insurance policy, number 1424341, with contested sole beneficiary Kay Passailaigue Slade. The proceeds of said policy are properly a probate asset.

Jurisdiction and Venue

11. This Court has jurisdiction and venue to hear and determine this matter which relates to the Estate of a decedent who died a resident of Charleston County, South Carolina, who left property in Charleston County, South Carolina, and whose Estate is being administered under the jurisdiction of the Probate Court for Charleston County, South Carolina. Plaintiffs file herewith a Motion for Removal of this matter to the Circuit Court.

Background

12. Ms. Shaw-Baker was born August 14, 1929 in San Francisco, California.

13. Ms. Shaw-Baker's most closely related family member is her niece, Plaintiff Betty Fisher, a resident of Long Beach, California.
14. Twice, Ms. Shaw-Baker married briefly then divorced.
15. Ms. Shaw-Baker had no children.
16. Ms. Shaw-Baker was enlisted in the United States Navy for four years and, during her enlistment, stationed in Charleston, South Carolina.
17. After her Navy enlistment, Ms. Shaw-Baker did accounting-related work in Charleston, SC, for various employers.
18. Ms. Shaw-Baker did accounting-related work for Charleston Memorial Hospital for approximately twenty years until her retirement.
19. While working at Charleston Memorial Hospital, Ms. Shaw-Baker contributed to a pension plan as set forth above ("pension").
20. While working at Charleston Memorial Hospital, Ms. Shaw-Baker contributed to a 457 deferred compensation plan as set forth above ("deferred compensation").
21. Ms. Shaw-Baker obtained a life insurance policy through National Life, policy number 1424341 ("life insurance").
22. Ms. Shaw-Baker owned at least three Chihuahuas, which were show dogs. She cared for, trained, and loved them for many

years prior to their deaths within the last few years of her life.

23. Ms. Shaw-Baker's home was decorated with collectibles, figurines, stuffed animals, clocks, furnishings, and art of extraordinary variety, all featuring Chihuahua themes.
24. Ms. Shaw-Baker was involved with animal rescue projects, animal welfare, and other activities for the protection of animals.
25. During her years working at Charleston Memorial Hospital, Ms. Shaw-Baker began to place considerable trust and confidence in two co-workers, Bessie Huckabee ("Huckabee") and Kay Passailaigue Slade ("Slade").
26. Slade was involved with various animal protection and rescue charities.
27. Huckabee and Slade developed relationships with Ms. Shaw-Baker in which she placed trust and confidence in them.
28. On January 7, 1993, Ms. Shaw-Baker executed a will leaving the majority of her estate to Pet Helpers, Inc., or, if it no longer existed, the John Ancrum Chapter of the Society for Prevention of Cruelty to Animals ("1993 Will").
29. Ms. Shaw-Baker's 1993 Will made certain bequests of her personal property and left \$8,000 to Huckabee, \$12,000 to Slade conditioned on Slade's caring for Ms. Shaw-Baker's dogs, \$1 devises to her ex-husband and each of her

siblings, and the remainder of her estate to Pet Helpers, Inc., or, if it no longer existed, to the John Ancrum Chapter of the Society for Prevention of Cruelty to Animals ("John Ancrum SPCA").

30. On April 5, 1996, Ms. Shaw-Baker executed another will leaving the majority of her estate to the John Ancrum SPCA ("1996 Will").
31. Ms. Shaw-Baker's 1996 Will made certain bequests of personal property and left \$12,000 to Slade for the care of Ms. Shaw-Baker's pets, but, if Ms. Shaw-Baker no longer had pets, then \$12,000 to Slade regardless, \$8,000 to Huckabee, a life estate in her residence to Slade and her husband, and the remainder interest in her residence and the remainder of her estate to the John Ancrum SPCA.
32. Ms. Shaw-Baker originally made the John Ancrum SPCA the beneficiary of her deferred compensation and pension plans.
33. Ms. Shaw-Baker originally made the John Ancrum SPCA the beneficiary of her life insurance.
34. Ms. Shaw-Baker was concerned about what would happen to her as she aged and in the event that she was unable to take care of herself.
35. On April 5, 1996, the same day she executed her 1996 will, Ms. Shaw-Baker executed a General Durable Power of Attorney making Huckabee her attorney-in-fact.

36. Ms. Shaw-Baker's 1996 Durable Power of Attorney expressly created a fiduciary relationship between herself and Huckabee and prohibited Huckabee from using its powers to benefit herself.
37. Also on April 5, 1996, Ms. Shaw-Baker executed a Health Care Power of Attorney making Huckabee her health care attorney-in-fact with Slade as the alternate.
38. Among other provisions, the Health Care Power of Attorney authorized hiring and firing of medical, social service, and other support personnel for Ms. Shaw-Baker's care.
39. Huckabee and Slade, having developed relationships with Ms. Shaw-Baker in which Ms. Shaw-Baker placed trust and confidence in them, exerted undue influence on her to change her will, and her deferred compensation, pension, and life insurance beneficiary designations to remove the animal charities and make Huckabee and Slade the primary beneficiaries.
40. To induce Ms. Shaw-Baker to change her will and her deferred compensation, pension, and life insurance beneficiary designations, Huckabee and Slade represented to Ms. Shaw-Baker that, as Ms. Shaw-Baker aged, if she became unable to provide care for herself, they would provide care for her and help Ms. Shaw-Baker stay in her home and avoid placement in an assisted living facility.

41. However, at the time Huckabee and Slade made said representations, they had no intention of performing them.
42. As further inducement, Slade further represented to Ms. Shaw-Baker that, if Ms. Shaw-Baker willed money to her and left money to her from her deferred compensation, pension, and life insurance, Slade would ensure that her monies went directly to animal welfare and rescue projects only.
43. However, at the time Slade made said representation, she had no intention of performing them.
44. In reliance on the aforesaid false representations of Huckabee and Slade, and under the undue influence of them, Ms. Shaw-Baker executed a will on May 21, 2001 making Huckabee and Slade, other than a \$4,000 devise to Sandra Byrd, her sole beneficiaries.
45. Huckabee and Slade substituted their own wishes for Ms. Shaw-Baker's in her May 21, 2001 will.
46. In further reliance on the aforesaid false representations, and under the undue influence of Huckabee and Slade, Ms. Shaw-Baker purportedly made Slade the sole beneficiary of her deferred compensation and pension plans.
47. In further reliance on the aforesaid false representations and under the undue influence of Huckabee and Slade, Ms. Shaw-Baker purportedly made Slade the sole beneficiary of her life insurance.

48. By late 2007, Ms. Shaw-Baker's residence had become cluttered, she was hoarding junk mail and small items associated with Chihuahua dogs, and she likely was not maintaining adequate hygiene or nutrition.
49. Despite their representations on which Ms. Shaw-Baker relied in executing her contested May 21, 2001 Will, and in changing her beneficiary designations for her deferred compensation, pension, and life insurance, Huckabee and Slade did not provide care for Ms. Shaw-Baker to ensure that she had a livable home, adequate food, or proper hygiene.
50. On information and belief, in 2007, Ms. Shaw-Baker requested beneficiary designation forms for her deferred compensation and pension in an attempt to remove Slade as her beneficiary.
51. On July 31, 2008, a representative of the Charleston Police Department's Elder Support Line, Elisabeth Spencer, filed a Petition for a Finding of Incapacity and for Appointment of a Guardian and Conservator for Ms. Shaw-Baker.
52. On August 4, 2008, the Probate Court appointed as Temporary Guardian Walter R. Kaufman, Esquire.
53. On August 18, 2008, the Probate Court appointed Walter R. Kaufman, Esquire, and Jane Orenstein as Temporary Co-Guardians.

54. Temporary Co-Guardian Orenstein stated her intention to remove Ms. Shaw-Baker from her home and place her in an assisted living facility.
55. Despite the representations Huckabee and Slade made to induce Ms. Shaw-Baker to execute her contested May 21, 2001 Will and to change the beneficiary designations for her deferred compensation, pension, and life insurance, they refused to provide assistance to ensure that that Ms. Shaw-Baker received adequate care when she became incapacitated and they refused to assist her with staying in her home and with avoiding placement in an assisted-living facility.
56. Ms. Shaw-Baker's niece, Plaintiff Betty Fisher, and her great-niece, Plaintiff Lisa Fisher, traveled to Charleston, South Carolina, from California on several occasions to assist Ms. Shaw-Baker.
57. Ms. Shaw-Baker's family members requested that Huckabee and Slade assist Ms. Shaw-Baker, but they refused.
58. On information and belief, during this period, Huckabee and Slade refused to visit Ms. Shaw-Baker.
59. Both Huckabee and Slade had failed to disclose Ms. Shaw-Baker's condition to her family or authorities prior to the intervention of the Charleston Police Department's Elder Support office.

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60. On September 8, 2008, Plaintiff Lisa Fisher filed a Motion for Injunctive Relief to prevent Ms. Shaw-Baker from being removed from her home.
 61. On September 16, 2008, Lisa Fisher was appointed Ms. Shaw-Baker's Temporary Co-Guardian.
 62. While Temporary Co-Guardian, Lisa Fisher, with the assistance of Temporary Co-Guardian Orenstein, fulfilled the Probate Court's directives to have Ms. Shaw-Baker's house cleaned, organized, and renovated and to make arrangements for caretakers to supervise Ms. Shaw-Baker's daily meals, hygiene, and medical needs.
 63. On information and belief, despite their aforesaid representations, Huckabee and Slade promoted Ms. Shaw-Baker's placement in an assisted living facility and took no efforts to help her stay in her home.
 64. On October 29, 2008, Lisa Fisher was appointed Ms. Shaw-Baker's Guardian and Conservator.
 65. Among other determinations, in its November 19, 2008 Order, the Probate Court found that Ms. Shaw-Baker had capacity to nominate Lisa Fisher as her Guardian and Conservator, to consent to conservatorship, to make purchases up to \$50, and to vote.
 66. Among other provisions, in its November 19, 2008 Order, the Probate Court ordered that a Court Order would be required

- for Ms. Shaw-Baker or someone on her behalf to revoke her will.
67. On information and belief, Ms. Shaw-Baker executed a will subsequent to the May 21, 2001 will revoking the May 21, 2001 will ("Subsequent Will").
 68. The location of the Subsequent Will was and is not known to Plaintiffs.
 69. Ms. Shaw-Baker instructed Lisa Fisher, as her Guardian and Conservator, to revoke Ms. Shaw-Baker's May 21, 2001 Will.
 70. Ms. Shaw-Baker became hospitalized while suffering from cancer and related medical problems.
 71. On February 25, 2009, Ms. Shaw-Baker died.
 72. Within minutes of Ms. Shaw-Baker's death, Huckabee sent her representatives to Ms. Shaw-Baker's house and obtained the keys to Ms. Shaw-Baker's house by falsely representing to the caretaker that Huckabee was entitled to the keys. This occurred before arrangements had been made for the proper care of Ms. Shaw-Baker's remains.
 73. On information and belief, shortly after Ms. Shaw-Baker's death, Huckabee entered Ms. Shaw-Baker's house.
 74. On information and belief, Huckabee sought to locate the Subsequent Will.
 75. Huckabee and Slade had a motive and an opportunity to remove or destroy the Subsequent Will.

76. After Ms. Shaw-Baker's death, on information and belief, a partially-preserved digital draft of will was found on a computer at the same law firm that drafted Ms. Shaw-Baker's contested May 21, 2001 will. Based on information from a law firm employee, it was saved in 2001, and it named beneficiaries other than Huckabee and Slade, including family members such as Plaintiff Betty Fisher.

FOR A FIRST CAUSE OF ACTION

(Constructive Trust)

77. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
78. Plaintiff Lisa Fisher is the Court-appointed Conservator for Ms. Shaw-Baker to whom the assets of Ms. Shaw-Baker's estate are currently entrusted.
79. Plaintiffs challenge Ms. Shaw-Baker's May 21, 2001 Will.
80. Plaintiff Betty Fisher petitions herein for appointment as the Personal Representative of Ms. Shaw-Baker's estate.
81. Plaintiffs seek a Constructive Trust over the assets of Ms. Shaw-Baker's estate and the proceeds of her deferred compensation, pension, and life insurance pending a determination of the validity of her various wills and pending resolution of Betty Fisher's Petition to be appointed as Personal Representative.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment Regarding Revocation)

82. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
83. Ms. Shaw-Baker instructed her Conservator and Guardian, Lisa Fisher, to revoke Ms. Shaw-Baker's May 21, 2001 Will.
84. Plaintiffs seek a Declaratory Judgment that Ms. Shaw-Baker's said instruction revoked her May 21, 2001 Will.
85. Because Ms. Shaw-Baker's May 21, 2001 Will had revoked her April 5, 1996 Will, and it, in turn, had revoked her January 7, 1993 Will, Ms. Shaw-Baker died intestate.
86. Plaintiffs seek a declaratory judgment that Ms. Shaw-Baker revoked her May 21, 2001 Will and died intestate.

FOR A THIRD CAUSE OF ACTION

(Undue Influence)

87. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
88. At all material times, Huckabee and Slade had formed fiduciary relationships with Ms. Shaw-Baker in which she placed trust and confidence in them, and they had fiduciary duties to her.
89. At all material times, Huckabee had an express fiduciary relationship to Ms. Shaw-Baker per Ms. Shaw-Baker's April 5, 1996 General Durable Power of Attorney.

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90. At all material times, Slade had a confidential relationship with Ms. Shaw-Baker.
 91. Huckabee and Slade coerced Ms. Shaw-Baker by undue influence to execute her May 21, 2001 Will, substituting their wishes for hers.
 92. Due to Huckabee and Slade's said coercion and undue influence, Ms. Shaw-Baker's May 21, 2001 Will was void *ab initio*.
 93. Plaintiff Lisa Fisher, Ms. Shaw-Baker's Conservator, to whom the assets of Ms. Shaw-Baker's estate are currently entrusted, seeks a Declaratory Judgment regarding the validity of the May 21, 2001 Will.
 94. Plaintiffs further seek to set aside the latest beneficiary designations of Ms. Shaw-Baker's deferred compensation, pension, and life insurance based on Undue Influence.
 95. Plaintiffs seek a declaration that the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

96. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
97. Huckabee and Slade induced Ms. Shaw-Baker to execute the May 21, 2001 will making them, except for a \$4,000.00 devise to Sandra Byrd, the sole beneficiaries.

98. At all material times, Huckabee and Slade had fiduciary relationships with Ms. Shaw-Baker arising from the trust and confidence she had placed in them.
99. At all material times, Huckabee had an express fiduciary relationship with Ms. Shaw-Baker per Ms. Shaw-Baker's April 5, 1996 General Durable Power of Attorney.
100. Huckabee and Slade represented to Ms. Shaw-Baker that if she changed her will to make them the primary beneficiaries and if she changed the beneficiary designations for her deferred compensation, pension, and life insurance to make Slade the sole beneficiary, they would take care of her if she became unable to take care for herself and that they would assist her with staying in her home and avoiding placement in an assisted living facility.
101. At the time Huckabee and Slade made said representations, they had no intention of performing them.
102. Slade further represented to Ms. Shaw-Baker that if Ms. Shaw-Baker changed her will and the beneficiary designations for her deferred compensation, pension, and life insurance, then Slade would insure that the money left to her under Ms. Shaw-Baker's will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

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103. At the time Slade made said representations, she had no intention of performing them.
104. Huckabee and Slade's said representations were false.
105. Huckabee and Slade's said representations were material to Ms. Shaw-Baker's execution of her May 21, 2001 Will and to her making Slade sole beneficiary of her deferred compensation, pension, and life insurance.
106. Huckabee and Slade knew that their said representations were false and disregarded that falsity.
107. Huckabee and Slade intended that Ms. Shaw-Baker act upon their said false representations by changing her will to make them the primary beneficiaries and by changing her deferred compensation, pension, and life insurance to make Slade the sole beneficiary.
108. Ms. Shaw-Baker was ignorant as to the falsity of Huckabee and Slade's said representations.
109. Ms. Shaw-Baker reasonably relied on Huckabee and Slade's said representations in changing her will to make them the primary beneficiaries and in changing her deferred compensation, pension, and life insurance to make Slade sole beneficiary.
110. As a direct and proximate result of Huckabee and Slade's said fraud, Ms. Shaw-Baker was injured by suffering lack of assistance from Huckabee and Slade as she became unable to

care for herself and she suffered the circumvention of her intent to benefit animal charities with her estate.

111. While Ms. Shaw-Baker suffered, Huckabee and Slade intentionally concealed Ms. Shaw-Baker's condition to avoid exposure of their fraud, neglect, and undue influence.
112. Due to Huckabee and Slade's said fraud, Ms. Shaw-Baker's May 21, 2001 Will and her beneficiary designations of Slade for her deferred compensation, pension, and life insurance were *void ab initio*.
113. Plaintiffs seek a declaration that the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets.

FOR A FIFTH CAUSE OF ACTION

(Declaratory Judgment Regarding Improper Execution)

114. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
115. Ms. Shaw-Baker's May 21, 2001 will was improperly executed.
116. There is no evidence that the persons who signed as witnesses to her May 21, 2001 Will observed Ms. Shaw-Baker execute it or observed her acknowledge her signature.
117. Plaintiffs seek a Declaratory Judgment that Ms. Shaw-Baker's May 21, 2001 will was invalid.

FOR A SIXTH CAUSE OF ACTION

(Declaratory Judgment Regarding Subsequent Will)

118. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.

119. Ms. Shaw-Baker revoked her May 21, 2001 will with the Subsequent Will.

120. Plaintiffs seek a declaratory judgment that Ms. Shaw-Baker's Subsequent Will revoked her May 21, 2001 will.

FOR A SEVENTH CAUSE OF ACTION

(Unjust Enrichment)

121. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.

122. Huckabee and Slade induced Ms. Shaw-Baker to change her will to make them the primary beneficiaries and to change her beneficiary designations to make Slade the sole beneficiary of her deferred compensation, pension, and life insurance based on their representations that they would care for her if she became unable to care for herself and in reliance on Slade's representation that she would ensure that the money left to her under the Will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

123. At the time Huckabee and Slade made said representations, they had no intention of performing them.

124. Ms. Shaw-Baker conferred the benefit on Huckabee and Slade of making them her primary beneficiary under her contested May 21, 2001 Will, and she made Slade the sole beneficiary under the contested beneficiary designations of her deferred compensation, pension, and life insurance.
125. Huckabee and Slade stand to be unjustly enriched by distribution to them under the contested May 21, 2001 will, and Slade stands to be unjustly enriched by distribution under contested deferred compensation, pension, and life insurance beneficiary designations.
126. It would be inequitable to allow Huckabee and Slade to obtain disbursements from Ms. Shaw-Baker's Estate and to allow Slade to obtain disbursements from Ms. Shaw-Baker's deferred compensation, pension, and life insurance not having performed the representations for which Ms. Shaw-Baker made them beneficiaries.
127. Plaintiffs seek equitable relief restoring any devises to Huckabee or Slade to Ms. Shaw-Baker's Estate.

FOR AN EIGHTH CAUSE OF ACTION

(Promissory Estoppel)

128. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
129. Slade made an unambiguous representation to Ms. Shaw-Baker that she would ensure that the money left to her under the

Will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

130. Ms. Shaw-Baker reasonably relied on Slade's said representations in executing her contested May 21, 2001 will and in making the contested beneficiary designations with Slade as sole beneficiary of her deferred compensation, pension, and life insurance.
131. Ms. Shaw-Baker's reliance on Slade's said representations was foreseeable and intended by Slade.
132. On information and belief, Slade does not intend to perform said representations and Ms. Shaw-Baker's estate has been harmed by Ms. Slade's circumvention of her wishes that her estate and the proceeds of her deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.
133. As alternative relief, specific performance should be awarded and Slade enjoined to use the money left to her under Ms. Shaw-Baker's May 21, 2001 will, and the proceeds left to her from Ms. Shaw-Baker's deferred compensation, pension, and life insurance directly for animal welfare and rescue projects only.

FOR A NINTH CAUSE OF ACTION
(Petition for Removal of Huckabee as Personal Representative)

134. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
135. Huckabee and Slade undertook to care for Ms. Shaw-Baker when she became unable to care for herself by representing to Ms. Shaw-Baker that they would provide or arrange for such care, but, at the time of said representations, they had no intention of fulfilling them.
136. When Ms. Shaw-Baker became unable to care for herself, Huckabee and Slade failed to ensure that she had adequate daily care, nutrition, hygiene, a suitable living environment, or health care.
137. Ms. Shaw-Baker relied on Huckabee and Slade for care in the event she became unable to care for herself, and, based on their representations, did not make alternative arrangements.
138. Ms. Shaw-Baker's estate has a survival action against Huckabee and Slade for neglect of Ms. Shaw-Baker as a vulnerable adult.
139. Ms. Shaw-Baker's estate has a survival action against Huckabee for breach of her express fiduciary duties as attorney-in-fact for Ms. Shaw-Baker to hire medical, social service, and other support personnel for Ms. Shaw-Baker's care during the time Ms. Shaw-Baker was mentally incompetent.

140. Ms. Huckabee cannot equitably both serve as Personal Representative of Ms. Shaw-Baker's estate and adequately prosecute the Estate's survival action against herself.
141. Plaintiffs seek removal of Huckabee as Personal Representative of Ms. Shaw-Baker's Estate.

FOR A TENTH CAUSE OF ACTION
(Petition for Appointment of Betty Fisher as
Personal Representative)

142. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
143. Plaintiff Betty Fisher is Ms. Shaw-Baker's next-of-kin.
144. Betty Fisher seeks appointment as the Personal Representative of Ms. Shaw-Baker's estate.

FOR AN ELEVENTH CAUSE OF ACTION
(Attorneys' Fees and Costs)

145. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
146. Plaintiffs brought this action on behalf of Ms. Shaw-Baker's estate and all costs of this action, including reasonable attorneys' fees, are properly paid therefrom, and should be approved.

Prayer for Relief

WHEREFORE, Plaintiffs pray that the Court inquire into this matter and issue the following:

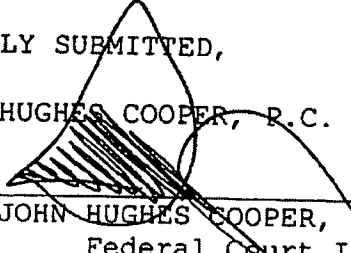
1. a Constructive Trust over the assets of Ms. Shaw-Baker's estate and the proceeds of her deferred compensation, her pension, and her life insurance pending determination of the validity of Ms. Shaw-Baker's various wills and pending resolution of Betty Fisher's Petition for Appointment as Personal Representative;
2. a Declaratory Judgment that Ms. Shaw-Baker revoked her May 21, 2001 Will and died intestate;
3. Alternatively or additionally, an Order setting aside Ms. Shaw-Baker's May 21, 2001 will and her designations of Slade as beneficiary of her deferred compensation, pension, and life insurance based on Undue Influence and Fraud;
4. an order declaring the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets;
5. a Declaratory Judgment that Ms. Shaw-Baker's May 21, 2001 will was invalid for improper execution;
6. In the alternative or additionally, a Constructive Trust over any devises to Huckabee and Slade for the benefit of Ms. Shaw-Baker's Estate;
7. In the alternative or additionally, Specific Performance requiring Slade to use the money left to her under Ms. Shaw-Baker's May 21, 2001 will, her deferred compensation, her pension, and her life insurance for animal charities;

8. Removal of Huckabee as Personal Representative of Ms. Shaw-Baker's Estate;
9. Appointment of Betty Fisher as Personal Representative of Ms. Shaw-Baker's Estate;
10. An Order awarding costs of this action, including reasonable attorneys fees to Plaintiffs, who brought this action for the benefit of Ms. Shaw-Baker's Estate;
11. Such other or further relief as justice may require.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:


JOHN HUGHES COOPER, ESQUIRE
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State Bar of Georgia 185986
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and

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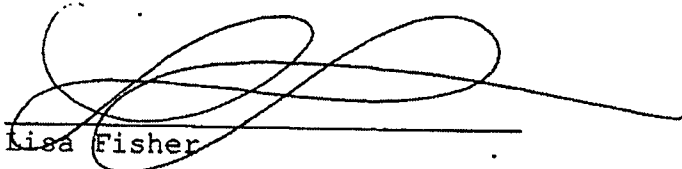
ATTORNEYS FOR PLAINTIFFS,
BETTY FISHER AND
LISA FISHER, AS CONSERVATOR FOR
ALICE SHAW-BAKER

Sullivan's Island, South Carolina
April 21, 2009

VERIFICATION

COMES NOW Lisa Fisher who deposes and says:

1. My name is Lisa Fisher.
2. I am a citizen of the United States, over 18 years of age, and of sound mind.
3. I have read the foregoing VERIFIED COMPLAINT and know the contents of thereof and the same are true to the best of my knowledge, except as to the matters therein stated to be on information and belief; and as to those matters I believe them to be true.
4. The sources of my information and the grounds of my belief are my personal knowledge and documents in my possession.
5. Further affiant sayeth naught.



Lisa Fisher

Long Beach California
April 21, 2009

[See Attached Notarization]

ACKNOWLEDGMENT

State of California
County of Los Angeles

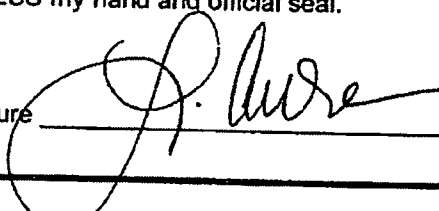
On April 21, 2009 before me, Leena M. Aure, Notary Public
(insert name and title of the officer)

personally appeared Lisa Fisher
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

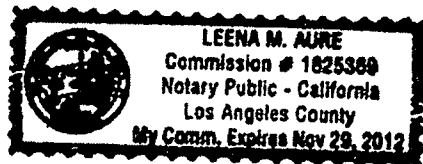
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

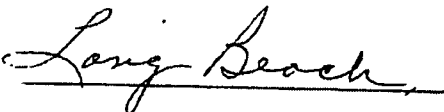


V E R I F I C A T I O N

COMES NOW Betty Fisher who deposes and says:

1. My name is Betty Fisher.
2. I am a citizen of the United States, over 18 years of age, and of sound mind.
3. I have read the foregoing VERIFIED COMPLAINT and know the contents of thereof and the same are true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters I believe them to be true.
4. The sources of my information and the grounds of my belief are my personal knowledge and documents in my possession.
5. Further affiant sayeth naught.


Betty Fisher

, California

April 21, 2009

[See Attached Notarization]

ACKNOWLEDGMENT

State of California
County of Los Angeles

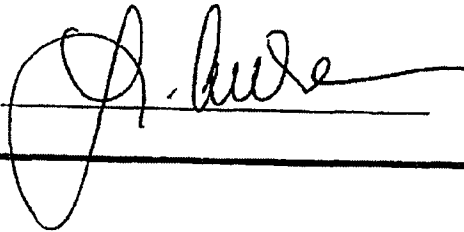
On April 21, 2009 before me, Leena M. Aure, Notary Public
(insert name and title of the officer)

personally appeared Betty Fisher
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

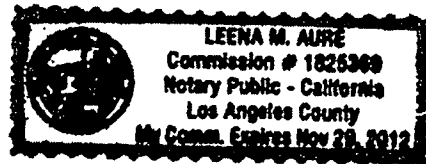
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010**

BESSIE HUCKABEE, etal.,
Defendants.

**ANSWER OF DEFENDANTS
BESSIE HUCKABEE, KAY PASSAILAIGUE
AND SANDRA BYRD
(Jury Trial Demanded)**

FOR A FIRST DEFENSE (General Denial)

1. Defendants admit the allegations of Paragraph 1.
2. Defendants admit the allegations of Paragraph 2 upon information and belief.
3. Defendants admit the allegations of Paragraph 3 upon information and belief excepting the allegation that Lisa Fisher is currently the Conservator of Alice Shaw-Baker.
4. Defendants admit the allegations of Paragraph 4.
5. Defendants admit the allegations of Paragraph 5 to the extent that Kay Passailaigue ("Kay") is a devisee under the May 21, 2001 submitted to the Probate Court by attorney for Plaintiff and that she is the sole beneficiary of the National Life Insurance policy and that she is a resident of Charleston County.

Defendants lack sufficient information to affirm or deny the remaining allegations of Paragraph 5.

6. Defendants admit the allegations of Paragraph 6.
7. Defendants deny the allegations in Paragraph 7.
8. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 8 regarding the State Budget and Control Board and the South Carolina Retirement System and therefore deny those allegations and demand strict proof thereof.
9. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 9 regarding ING and the South Carolina Deferred Compensation Program and therefore deny those allegations and demand strict proof thereof.
10. Defendants admit the allegations of Paragraph 10 to the extent that Kay is the sole beneficiary of the National Life Insurance policy and deny the remaining allegations of Paragraph 10 and demand strict proof thereof.
11. Defendants admit the allegations of Paragraph 11.
12. Defendants admit the allegations of Paragraph 12.
13. Defendants admit the allegations of Paragraph 13.
14. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 14.
15. Defendants admit the allegations of Paragraph 15.
16. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 16.

17. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 17.
18. Defendants admit the allegations of Paragraph 18.
19. Defendants admit the allegations of Paragraph 19.
20. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 20.
21. Defendants admit the allegations of Paragraph 21.
22. Defendants admit the allegations of Paragraph 22 to the extent that Alice Shaw-Baker ("Alice") owned at least three Chihuahuas that she cared for and loved and deny the remaining allegations of Paragraph 22 and demand strict proof thereof.
23. Defendants deny that all of Alice's home decor "featured" Chihuahua themes.
24. Defendants deny the allegations of Paragraph 24 and demand strict proof thereof.
25. Defendants admit the allegations of Paragraph 25.
26. Defendants admit the allegations of Paragraph 26.
27. Defendants admit the allegations of Paragraph 27.
28. Defendants admit the allegations of Paragraph 28.
29. Defendants admit the allegations of Paragraph 29.
30. Defendants admit the allegations of Paragraph 30.
31. Defendants admit the allegations of Paragraph 31.
32. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 32 and therefore deny the allegations and demand strict proof thereof.

33. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 33 and therefore deny the allegations and demand strict proof thereof.
34. Defendants admit the allegations of Paragraph 34.
35. Defendants admit the allegations of Paragraph 35.
36. Defendants admit the allegations of Paragraph 36 to the extent that Alice executed the Durable Power of Attorney but deny knowledge of the existence of said document and therefore deny the existence of a fiduciary relationship as would exist had Bessie known and accepted the powers and duties of a Durable Power of Attorney.
37. Defendants admit the allegations of Paragraph 37.
38. Defendants admit the allegations of Paragraph 38, to the extent that the Health Care Power of Attorney provided for such in the event that Alice was incapable of acting for herself, an eventuality that never occurred prior to the Court's revocation of said Health Care Power of Attorney.
39. Defendants admit that Alice placed trust and confidence in Bessie and Kay as friends and deny the remaining allegations of Paragraph 39 and demand strict proof thereof.
40. Defendants deny the allegations of Paragraph 40 and demand strict proof thereof.
41. Defendants deny the allegations of Paragraph 41 and demand strict proof thereof.
42. Defendants deny the allegations of Paragraph 42 and demand strict proof thereof.
43. Defendants deny the allegations of Paragraph 43 and demand strict proof thereof.
44. Defendants deny the allegations of Paragraph 44 and demand strict proof thereof.

45. Defendants deny the allegations of Paragraph 45 and demand strict proof thereof.
46. Defendants deny the allegations of Paragraph 46 and demand strict proof thereof.
47. Although Kay is the sole beneficiary of Alice's life insurance, Defendants deny the allegations of Paragraph 47 and demand strict proof thereof.
48. Defendants deny the allegations of Paragraph 48 and demand strict proof thereof.
49. Defendants deny the allegations of Paragraph 49 and demand strict proof thereof.
50. Defendants deny the allegations of Paragraph 50 and demand strict proof thereof.
51. Defendants admit the allegations of Paragraph 51 and that the Petition was resultant from repeated telephone calls regarding Alice, including calls and conversations with Bessie and Kay.
52. Defendants admit the allegations of Paragraph 52.
53. Defendants admit the allegations of Paragraph 53.
54. Upon information and belief, Defendants admit the allegations of Paragraph 54.
55. Defendants deny the allegations of Paragraph 55 that representations were made to induce Alice and that Alice was incapacitated at the timeframe referenced and demand strict proof thereof.
56. Defendants deny the allegations of Paragraph 5 that Plaintiffs Betty Fisher and Lisa Fisher assisted Alice and demand strict proof thereof.
57. Defendants deny the allegations of Paragraph 57 and demand strict proof thereof.
58. Defendants deny the allegations of Paragraph 58 and demand strict proof thereof.
59. Defendants deny the allegations of Paragraph 59 and demand strict proof thereof.
60. Defendants admit the allegations of Paragraph 60.
61. Defendants admit the allegations of Paragraph 61.

62. Defendants admit the allegations of Paragraph 62 to the extent the Lisa Fisher did her duties, for the most part, through agents while she was in California and that attorney John Cooper assisted in the performance of the allegations aforementioned.
63. Defendants deny the allegations of Paragraph 63 and demand strict proof thereof.
64. Defendants admit the allegations of Paragraph 64.
65. Defendants admit the allegations of Paragraph 65.
66. Defendants deny the allegations of Paragraph 66 to the extent that the Court Order states that "Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will" unless specifically ordered by the Court.
67. Defendants deny the allegations of Paragraph 67 and demand strict proof thereof.
68. Defendants deny the allegations of Paragraph 68 and demand strict proof of the existence of a subsequent will.
69. Defendants deny the allegations of Paragraph 69 and demand strict proof thereof.
70. Defendants admit the allegations of Paragraph 70.
71. Defendants admit the allegations of Paragraph 71.
72. Defendants deny the allegations of Paragraph 72 and demand strict proof thereof.
73. Defendants deny the allegations of Paragraph 73 and demand strict proof thereof.
74. Defendants deny the allegations of Paragraph 74 and demand strict proof thereof.
75. Defendants deny the allegations of Paragraph 75 and demand strict proof thereof.
76. Defendants deny the allegations of Paragraph 76 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIRST CAUSE OF ACTION
(Constructive Trust)
(Denial)**

77. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
78. Defendants admit the allegations of Paragraph 78 to the extent the Lisa Fisher holds the estate assets. She has been removed as Conservator of Alice's estate by Court Order.
79. Defendants admit the allegations of Paragraph 79.
80. Defendants admit the allegations of Paragraph 80.
81. Defendants deny the allegations of Paragraph 81 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SECOND CAUSE OF ACTION
(Declaratory Judgment Regarding Revocation)
(Denial)**

82. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
83. Answering Paragraphs 83, 84, 85, and 86 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S THIRD CAUSE OF ACTION
(Undue Influence)
(Denial)**

84. Answering Paragraph 87, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
85. Answering Paragraphs 88, 89, 90, 91, 92, 93, 94 and 95 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FOURTH CAUSE OF ACTION
(Fraud)
(Denial)**

86. Answering Paragraph 96, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
87. Answering Paragraphs 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIFTH CAUSE OF ACTION
(Declaratory Judgment Regarding Improper Execution)
(Denial)**

88. Answering Paragraph 114, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
89. Answering Paragraphs 115, 116, and 117, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SIXTH CAUSE OF ACTION
(Declaratory Judgment Regarding Subsequent Will)
(Denial)**

90. Answering Paragraph 118, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
91. Answering Paragraphs 119, and 120, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Unjust Enrichment)
(Denial)**

92. Answering Paragraph 121, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
93. Answering Paragraphs 122, 123, 124, 125, 126 and 127, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Promissory Estoppel)
(Denial)**

94. Answering Paragraph 128, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
95. Answering Paragraphs 129, 130, 131, 132, and 133, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S NINTH CAUSE OF ACTION
(Petition for Removal of Bessie as Personal Representative)
(Denial)**

96. Answering Paragraph 134, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
97. Answering Paragraphs 135, 136, 137, 138, 139, 140, and 141, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S TENTH CAUSE OF ACTION
(Petition for Appointment of Betty Fisher as Personal Representative)**

(Denial)

98. Answering Paragraph 142, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

99. Defendants admit the allegations of Paragraph 143.

100. Answering Paragraph 144, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Attorneys' Fees and Costs)
(Denial)**

101. Answering Paragraph 145, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

102. Answering Paragraph 146, Defendant's deny and demand strict proof thereof.

**FOR A SECOND DEFENSE TO
ALL CAUSES OF ACTION**

103. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

104. Plaintiff's Complaint should be dismissed for failure to state claims with sufficient facts to constitute causes of actions against Defendants pursuant to Rule 12(B)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants Bessie Huckabee, Kay Passailaigue and Sandra Byrd pray that

- a. the Complaint of the Plaintiffs be dismissed with costs;

- b. that the Defendants seek a jury trial in the event the actions are not dismissed; and
- c. any such other relief as the Court may deem just and proper.



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Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
843-767-5284

Attorney for Defendants
Bessie Huckabee, Kay Passailaigue
And Sandra Byrd

May 25, 2009
Charleston, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2009-CP-10-3010

Betty Fisher et al)
)
Plaintiffs,) MOTION FOR TEMPORARY INJUNCTION
)
vs.) TO TERMINATE IMPROPER INFORMAL APPOINTMENT
) FOR ORDER RESTRAINING PERSONAL REPRESENTATIVE
Bessie Huckabee et al) FOR APPOINTMENT OF SUCCESSOR OR SPECIAL ADMINISTRATOR
)
Defendants,) (Hearing Requested within 10 Days Per \$ 629-662)
)
In the Matter of)
Alice Shaw-Baker.)
_____)

COMES NOW Plaintiff Betty Fisher, the decedent's niece, and moves for a Temporary Injunction (1) to terminate the improper informal appointment of Bessie Huckabee as Personal Representative, (2) for a temporary order restraining Bessie Huckabee from exercising any powers or duties as Personal Representative, (3) to enjoin appointment of Kay Slade as Personal Representative, and (4) for appointment of Betty Fisher as Successor Personal Representative or for appointment of Frank Barnwell, Esquire, as Special Administrator.

The bases of this Motion are that (1) Bessie Huckabee and Kay Slade are disqualified to serve as Personal Representative due to the estate's survival claims against them for neglect of the decedent as a vulnerable adult, (2) Huckabee and Slade are disqualified by the claims against them for fraud against the estate, (3) and Huckabee's informal appointment as Personal Representative is void for procedural and notice defects.

Facts

Huckabee and Slade's Fraud and Undue Influence

1. This is a formal testacy proceeding.
2. Bessie Huckabee ("Huckabee") and Kay Passailaigue Slade ("Slade") undertook to care for the decedent, Alice Shaw-Baker ("Shaw-Baker"), representing to her that, as she aged, in the event she could not care for herself, they would provide or arrange care for her. (Ex. A, Lisa Fisher Affidavit, ¶ 5; Verified Complaint, ¶¶ 40, 135).
3. However, at the time they made said representations, they had no intention of fulfilling them. (Ex. A, Lisa Fisher Affidavit, ¶ 6; Verified Complaint, ¶¶ 41, 135).
4. On April 5, 1996, Shaw-Baker executed a General Durable Power of Attorney making Huckabee her attorney-in-fact, expressly creating a fiduciary relationship between Huckabee and herself and prohibiting Huckabee from using her powers for her own benefit. (Ex. A, Lisa Fisher Affidavit, ¶ 7; Verified Complaint, ¶¶ 35 - 36).
5. Also on April 5, 1996, Shaw-Baker executed a Health Care Power of Attorney making Huckabee her health care attorney-in-fact with Slade as the alternate, which, among other provisions, authorized hiring and firing medical, social services, and other support personnel for Shaw-Baker's care. (Ex. A, Lisa Fisher Affidavit, ¶ 8; Verified Complaint, ¶¶ 37 - 38).
6. Through fraud and undue influence, Huckabee and Slade induced Shaw-Baker to draft a will, dated May 21, 2001, making them, except for a \$4,000 devise, sole beneficiaries. (Ex. A, Lisa Fisher Affidavit, ¶ 9; Verified Complaint, ¶¶ 39, 44).

7. However, that will was improperly executed. There is no evidence that the persons who signed as witnesses observed Shaw-Baker execute it or observed her acknowledge her signature. (Ex. A, Lisa Fisher Affidavit, ¶ 10; Verified Complaint ¶¶ 115 - 116).
8. Also through fraud and undue influence, Huckabee and Slade further induced Shaw-Baker to make Slade the purported sole beneficiary of Shaw-Baker's deferred compensation plan and the purported sole beneficiary of Shaw-Baker's life insurance policy. (Ex. A, Lisa Fisher Affidavit, ¶ 11; Verified Complaint, ¶¶ 40, 46, 47).

Neglect of Shaw-Baker as a Vulnerable Adult

9. By late 2007, Shaw-Baker was suffering from dementia. (Ex. A, Lisa Fisher Affidavit, ¶ 12).
10. By that time, her home was cluttered and not livable, and she likely lacked adequate food and proper hygiene. (Ex. A, Lisa Fisher Affidavit, ¶ 13; Verified Complaint, ¶ 48).
11. Despite the representations on which Shaw-Baker had relied, Huckabee and Slade did not provide care for Shaw-Baker or ensure that she had a livable home, adequate food, or proper hygiene. (Ex. A, Lisa Fisher Affidavit, ¶ 14; Verified Complaint, ¶¶ 48, 55, 135).
12. Huckabee and Slade failed to disclose Shaw-Baker's condition to her family or authorities prior to the intervention of the Charleston, South Carolina, Police Department. (Ex. A, Lisa Fisher Affidavit, ¶ 15; Verified Complaint, ¶ 59).
13. On July 31, 2008, a representative of the Charleston Police Department's Elder Support Line filed a Petition for a Finding of

Incapacity and for Appointment of Guardian and Conservator for Shaw-Baker. (Ex. A, Lisa Fisher Affidavit, ¶ 16; Verified Complaint, ¶ 51).

14. Thereafter, Shaw-Baker's niece, Betty Fisher, and her great-niece, Lisa Fisher, traveled to Charleston, South Carolina from California on several occasions to assist Shaw-Baker. (Ex. A, Lisa Fisher Affidavit, ¶ 17; Verified Complaint, ¶ 56).
15. When Shaw-Baker's family members requested that Huckabee and Slade assist Shaw-Baker, they refused. (Ex. A, Lisa Fisher Affidavit, ¶ 18; Verified Complaint, ¶¶ 57 - 58).
16. At first, Temporary Co-Guardians and a Conservator were appointed for Shaw-Baker. (Ex. A, Lisa Fisher Affidavit, ¶ 19; Verified Complaint, ¶¶ 52 - 53).
17. Pursuant to an Order of the Probate Court, Shaw-Baker's house was cleaned, organized, and renovated. (Ex. A, Lisa Fisher Affidavit, ¶ 20; Verified Complaint, ¶¶ 62).
18. Caregivers were hired to supervise Shaw-Baker's daily meals, hygiene, and medical needs. (Ex. A, Lisa Fisher Affidavit, ¶ 21; Verified Complaint, ¶ 62).
19. On October 29, 2008, Shaw-Baker's great-niece, Lisa Fisher, was appointed as her permanent Guardian and Conservator. (Ex. A, Lisa Fisher Affidavit, ¶ 22; Verified Complaint, ¶ 64).
20. On February 25, 2009, Shaw-Baker died. (Ex. A, Lisa Fisher Affidavit, ¶ 23; Verified Complaint, ¶ 71).

Huckabee's Attempt to Seize Assets

21. Within minutes of Shaw-Baker's death, Huckabee sent her representatives to Shaw-Baker's house and obtained keys to her house by falsely representing to the caretaker that Huckabee was entitled to the keys. This occurred before arrangements had been made for the proper care of Shaw-Baker's remains. (Ex. A, Lisa Fisher Affidavit, ¶ 24; Verified Complaint, ¶ 73).
22. At the time, Shaw-Baker's Conservator had not been discharged and was still charged with responsibility for her assets. (Ex. A, Lisa Fisher Affidavit, ¶ 25).
23. On information and belief, Huckabee trespassed into Shaw-Baker's house and removed items from it. (Ex. A, Lisa Fisher Affidavit, ¶ 26).

Procedural and Notice Defects in Huckabee's Appointment

24. On March 11, 2009, the Charleston County Probate Court issued an Order of Informal Probate regarding the contested May 21, 2001, will, but it contained no declaration that the will was valid. (Ex. A, Lisa Fisher Affidavit, ¶ 27; Ex. B, Betty Fisher Affidavit, ¶ 8).
25. Independently, Huckabee applied for informal probate without giving the required notice to Betty Fisher or other heirs. (Ex. A, Lisa Fisher Affidavit, ¶ 28; Ex. B, Betty Fisher Affidavit, ¶ 12).
26. However, as shown on Huckabee's Petition for Appointment, she knew that Betty Fisher was Shaw-Baker's niece. (Ex. A, Lisa Fisher Affidavit, ¶ 29; Betty Fisher Affidavit, ¶ 6).

Law / Analysis

Huckabee and Slade's Conflicts of Interest

1. Shaw-Baker's Estate has a survival action against Huckabee and Slade for neglect of her as a vulnerable adult. (Verified Complaint, ¶¶ 138, 139).
2. The survival action is an asset of the Estate.
3. A cause of action for personal injury survives to the personal representative of the deceased person. S.C. Code Ann. § 15-5-90 (1976).
4. Only a duly appointed personal representative has the authority to settle a survival action. S.C. Code Ann. § 15-51-42 (1976).
5. Neither Huckabee, the contested Personal Representative, nor Slade, the alternate personal representative designee in the contested May 21, 2001 Will, can serve as Personal Representative and also adequately prosecute a survival action against herself.
6. Thus, Huckabee and Slade have conflicts of interest with the Estate.
7. Failing to prosecute the survival action will waste that asset of the estate.
8. Cause for removal of one appointed as personal representative exists when removal would be in the best interests of the estate. S.C. Code Ann. § 62-3-611 (1976).
9. One adversely interested against the estate ought not to be appointed administrator. *In re Tolbert's Estate*, 206 S.C. 300, 34 S.E.2d 49 (1945); *Rowell v. Adams*, 83 S.C. 124, 65 S.E. 207 (1909).

10. A conflict of interest with the estate necessitates revocation of a preferred party's appointment as administrator of an estate. See 84 A.L.R. 3d 707 (1978).

Lack of Declaration that the Will is Valid

11. The March 11, 2009 Order appointing Huckabee as Personal Representative was based on her nomination in the contested May 21, 2001 will.
12. However, to be effective to nominate an executor, except for collection of personal property by affidavit under S.C. Code Ann. § 62-3-1201, a will "must be declared to be valid" by an order of informal probate by the court or an adjudication of probate by the court. S.C. Code Ann. § 62-3-102 (1976).
13. However, to date, the Probate Court has issued no order declaring the May 21, 2001 will valid.

Failure to Provide Notice as Required by § 62-3-310(2)

14. Independently, the March 11, 2009 Order appointing Huckabee as Personal Representative is void because Huckabee failed to provide Betty Fisher notice of her application for informal probate as required by S.C. Code Ann. 62-3-310(2) (1976) and the South Carolina and United States Constitutions.
15. When Huckabee applied for informal probate, the Probate Court had issued no orders. Thus, there was no order to declare the May 21, 2001 will valid.
16. Without such an order, per § 62-3-102, the May 21, 2001 will was ineffective to nominate Huckabee as Personal Representative, and

Betty Fisher, Shaw-Baker's niece, had higher priority for appointment.

17. However, Huckabee failed to provide notice of her application for informal probate to Betty Fisher as required by S.C. Code Ann. 62-3-310(2).
18. Separately, the fundamental requirements of due process under the South Carolina and United States Constitutions include notice and an opportunity to be heard. U.S. Const. amends. V and XIV, § 1; S.C. Const. art. 1, § 22.
19. Lack of notice and an opportunity to be heard to Betty Fisher deprived the Probate Court of jurisdiction to issue the March 11, 2009 Order and rendered it void.
20. For these reasons, the order appointing Huckabee was void, and Betty Fisher moves to set it aside pursuant to Rule 60(b)(4), SCRPC.

Removal of Improperly Appointed Personal Representative

21. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under § 62-3-303, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under § 62-3-611. S.C. Code Ann. § 62-3-414(b) (1976).

22. A person interested in the estate may petition for removal of a personal representative for cause at any time. S.C. Code Ann. § 62-3-611 (1976) (a).
23. Cause for removal exists when removal would be in the best interests of the estate. S.C. Code Ann. § 62-3-611(b) (1976).
24. Here, it is in the best interest of the estate to pursue its survival action against Huckabee and Slade, which necessitates their removal.
25. Cause for removal exists when the personal representative has become incapable of discharging the duties of his office. S.C. Code Ann. § 62-3-611(b) (1976).
26. Here, Huckabee is incapable of adequately pursuing a survival action for the estate against herself and is unable to fulfill the duty of the personal representative to recover estate property.
27. Cause for removal exists when the personal representative intentionally misrepresented material facts in the proceeding leading to his appointment. S.C. Code Ann. § 62-3-611(b) (1976).
28. Here, Huckabee, in her Petition for Appointment, despite the fact that the May 21, 2001 will nominating her had not been declared valid, in response to a direct request to list the names of any persons having prior or equal right of appointment, represented to the Probate Court: "None."
29. Cause for removal exists when the personal representative has disregarded an order of the court. S.C. Code Ann. § 62-3-611(b).
30. Here, Huckabee disregarded the Probate Court Order appointing a Conservator for Shaw-Baker, by attempting, within minutes of

Shaw-Baker's death, to take possession of her assets before the Conservator had been discharged, and, on information and belief, trespassing on the property and removing items from it.

31. The claims against Huckabee and Slade include actions for fraud and undue influence which presumptively negate Shaw-Baker's intent and void their stated nominations.
32. The claims against Huckabee and Slade presumptively make them incapable of discharging their duties or performing their duties as required by South Carolina law, which mandates Huckabee's removal and precludes Slade's appointment.

Appointment of Successor Personal Representative

33. After appointment and qualification, a successor personal representative may be substituted in all actions and procedures to which a former personal representative was a party. S.C. Code Ann. § 62-2-613 (1976).

Priority Among Persons Seeking Appointment as Personal Representative

34. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order: (1) the person with priority as determined by **probated** will including a person nominated by a power conferred in a will (emphasis added); . . . (5) other heirs of the decedent regardless of whether the decedent died intestate as determined as if the decedent died intestate . . . (emphasis added). S.C. Code Ann. § 62-3-203 (1976).

35. Because the contested May 21, 2001 will has not been declared valid, it is not effective to nominate Bessie Huckabee. S.C. Code Ann. § 62-3-102 (1976).
36. As an intestate heir, Betty Fisher has priority for appointment as personal representative.

Standard for Order Restraining Personal Representative

37. A restraining order is proper when formal testacy proceedings are commenced under Section 62-3-401. A petitioner has the right to "request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator.
38. If it appears that the Personal Representative may take some action which would jeopardize unreasonably the interests of the interests of the applicant or some other interested person, the court by temporary order may restrain a personal representative from exercise of any powers or discharge of any duties of his office. S.C. Code Ann. § 62-3-607 (1976).

Appointment of Special Administrator

39. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. S.C. Code Ann. § 62-3-614 (1976).

Alternatively, Temporary Injunction Standard

40. It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except so far as they may enable the court to determine whether a prima facie showing has been made. *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969).
41. When a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. *Id.*

Request for Appointment of Successor or Special Administrator

42. Betty Fisher is Shaw-Baker's niece.
43. She hereby seeks appointment as Successor Personal Representative.
44. In the alternative, Betty Fisher seeks appointment of Frank Barnwell, Esquire, as Special Administrator.
45. Frank Barnwell is Charleston, South Carolina, attorney willing to serve as Special Administrator.

Motion

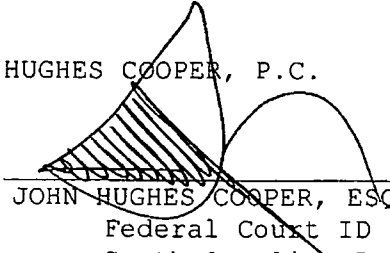
Plaintiff Betty Fisher moves (1) to terminate the improper informal appointment of Bessie Huckabee as Personal Representative, (2) for a temporary order restraining Bessie Huckabee from exercising any powers or duties as Personal Representative, (3) to enjoin appointment of Kay Slade as Personal Representative, and (4) for appointment of Betty Fisher as Successor Personal Representative or for appointment of Frank Barnwell, Esquire, as Special Administrator.

Plaintiff Betty Fisher further moves to set aside the March 11, 2009 Order appointing Bessie Huckabee as Personal Representative pursuant to Rule 60(b) on the basis that (1) there was no declaration that the May 21, 2001 will was valid as required by S.C. Code Ann. § 62-3-102 for it to nominate Bessie Huckabee as Personal Representative and (2) Betty Fisher was not provided notice of Bessie Huckabee's application for informal probate as required by S.C. Code Ann. § 62-3-310(2) and the South Carolina and United States Constitutions. U.S. Const. amends. V and XIV, § 1; S.C. Const. art. 1, § 22.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:



JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
1808 Middle Street
Post Office Box 395
Sullivan's Island, SC 29482
shiplaw@jhcooper.com
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and

CAIN DENNY, ESQUIRE
Federal ID 7383
South Carolina Bar 13590
CAIN DENNY, P.A.
P.O. Box 1205
Charleston, S.C. 29402
cain@intercoastproperties.com
843-965-5400; fax 843-883-9335

ATTORNEYS FOR PLAINTIFFS

Sullivan's Island, South Carolina

May 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2009 the foregoing Motion for Temporary Injunction was served on the following by U.S. mail with sufficient postage affixed:

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
pkouten@gmail.com
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Bessie Huckabee

Hon. David K. Avant
Managing Legal Counsel
State Budget and Control Board
P.O. Box 11960
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davant@retirement.sc.gov
Attorney for
State Budget and Control Board
South Carolina Retirement
Systems

Sandra Byrd
254 Jean Wells Drive
Goose Creek, SC 29445

Kay Passailaigue Slade
4446 Paramount Drive
North Charleston, SC 29405

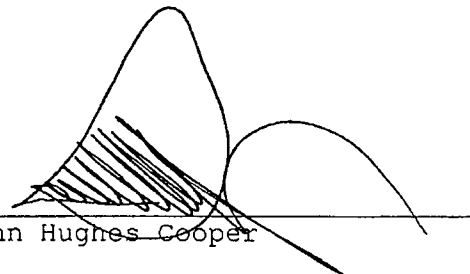
B. Allen Bullard, Esquire
Montgomery Willard, LLC
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bullard@montgomerywillard.com
Attorney for ING

South Carolina Deferred
Compensation Program
P.O. Box 5182
Boston, MA 02206

National Life Insurance Company
One National Life Drive
Montpelier, VT 05604

Hon. Henry McMaster
Attorney General
P.O. Box 11549
Columbia, SC 29211

FILED
2009 MAY 14 PM 5:00
CLERK OF COURT
JULIE J. ARISTARCH
BY


John Hughes Cooper

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher et al

Plaintiffs,

vs.

AFFIDAVIT OF LISA FISHER

Bessie Huckabee et al

Defendants,

In the Matter of
Alice Shaw-Baker

PERSONALLY APPEARED, Lisa Fisher, who, first being duly sworn,
deposes and says:

1. My name is Lisa Fisher.
2. I am a citizen of the United States, over 18 years of age, and of sound mind.
3. The sources of my information and the grounds for my beliefs herein are my personal knowledge and the documents in my possession.
4. I am a licensed attorney in good standing in the State of California.
5. Bessie Huckabee ("Huckabee") and Kay Passailaigue Slade ("Slade") undertook to care for my Great-Aunt, Alice Shaw-Baker, representing to her that, as she aged, in the event she could not care for herself, they would provide or arrange care for her.
6. However, at the time they made said representations, they had no intention of fulfilling them.



7. On AprilS, 1996, Alice Shaw-Baker executed a General Durable Power of Attorney making Huckabee her attorney-in-fact, expressly creating a fiduciary relationship between Huckabee and herself and prohibiting Huckabee from using her powers for her own benefit.
8. Also on AprilS, 1996, Alice Shaw-Baker executed a Health Care Power of Attorney making Huckabee her health care attorney-in-fact with Slade as the alternate, which, among other provisions, authorized hiring and firing medical, social services, and other support personnel for Alice Shaw-Baker's care.
9. Through fraud and undue influence, Huckabee and Slade induced Alice Shaw-Baker to draft a will, dated May 21, 2001, making them, except for a \$4,000 devise, sole beneficiaries.
10. However, there is no evidence that the persons who signed as witnesses observed Alice Shaw-Baker execute it or observed her acknowledge her signature.
11. Also through fraud and undue influence, Huckabee and Slade further induced Alice Shaw-Baker to make Slade the purported sole beneficiary of Alice Shaw-Baker's deferred compensation plan and the purported sole beneficiary of Alice Shaw-Baker's life insurance policy.

Neglect of Alice Shaw-Baker as a Vulnerable Adult

12. By late 2007, Alice Shaw-Baker was suffering from dementia.
13. By that time, her home was cluttered and not livable, and she likely lacked adequate food and proper hygiene.

14. Despite the representations on which Alice Shaw-Baker had relied, Huckabee and Slade did not provide care for her or ensure that she had a livable home, adequate food, or proper hygiene.
15. Huckabee and Slade failed to disclose Alice Shaw-Baker's condition to me, other of Alice Shaw-Baker's family members, or authorities prior to the intervention of the Charleston, South Carolina, Police Department.
16. On July 31, 2008, a representative of the Charleston Police Department's Elder Support Line filed a Petition for a Finding of Incapacity and for Appointment of Guardian and Conservator for Alice Shaw-Baker.
17. Thereafter, my mother, Betty Fisher, and I traveled to Charleston, South Carolina from California on several occasions to assist Alice Shaw-Baker.
18. When my mother and I requested that Huckabee and Slade assist Alice Shaw-Baker, they refused.
19. At first, Temporary Co-Guardians and a Temporary Conservator were appointed for Alice Shaw-Baker, and, during that time, I served as one of the Temporary Co-Guardians.
20. Pursuant to an Order of the Probate Court, Alice Shaw-Baker's house was cleaned, organized, and renovated.
21. Caregivers were hired to supervise Alice Shaw-Baker's daily meals, hygiene, and medical needs.
22. On October 29, 2008, I was appointed as her permanent Guardian and Conservator.
23. On February 25, 2009, Alice Shaw-Baker died.

Huckabee's Attempt to Seize Assets

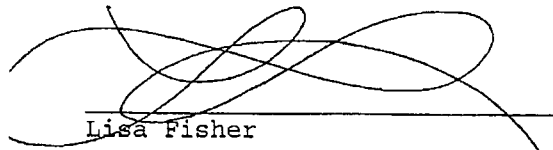
24. Within minutes of Alice Shaw-Baker's death, Huckabee sent her representatives to Shaw-Baker's house and obtained keys to her house by falsely representing to the caretaker that Huckabee was entitled to the keys. This occurred before arrangements had been made for the proper care of Alice Shaw-Baker's remains.
25. At the time, I had not been discharged as Alice Shaw-Baker's Conservator and was still charged with responsibility for her assets.
26. On information and belief, Huckabee trespassed into Shaw-Baker's house and removed items from it.

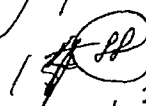
Procedural and Notice Defects in Huckabee's Appointment

27. On March 11, 2009, the Charleston County Probate Court issued an Order of Informal Probate regarding the contested May 21, 2001, will, but it contained no declaration that the will was valid.
28. Huckabee applied for informal probate without giving the required notice to my mother, Betty Fisher, or other heirs.
29. However, as shown in Huckabee's Petition for Appointment itself, she knew that Betty Fisher was Alice Shaw-Baker's niece.

Successor Personal Representative or Special Administrator

30. My mother, Betty Fisher, is Alice Shaw-Baker's niece.
31. Frank Barnwell is Charleston, South Carolina, attorney willing to serve as Special Administrator.
32. Further affiant sayeth naught.


Lisa Fisher

Long Beach

May 14, 2009

[Sec Attached Notarization]

JURAT

STATE OF CALIFORNIA

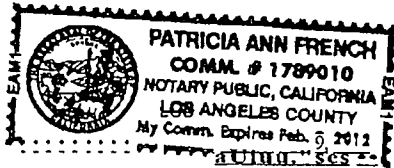
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 14th day of May, 2009

by Lisa Fisher

proved to me on the basis of satisfactory evidence to be the person(s) who
appeared before me.



(seal)

Signature Pat French

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 2009-CP-10-3010

Betty Fisher et al

Plaintiffs,

vs.

AFFIDAVIT OF BETTY FISHER

Bessie Huckabce et al

Defendants,

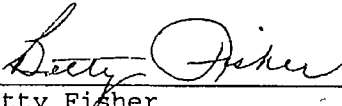
In the Matter of
Alice Shaw-Baker.

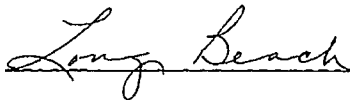
PERSONALLY APPEARED, Betty Fisher, who, first being duly sworn,
deposes and says:

1. My name is Betty Fisher.
- 2 I am a citizen of the United States, over 18 years of age, and of sound mind
3. The sources of my information and the grounds for my beliefs herein are my personal knowledge and the documents in my possession.
4. I am the niece of the decedent, Alice Shaw-Baker.
5. On March 10, 2009, Bessie Huckabce filed a Petition for Appointment as Personal Representative of the estate of Alice Shaw-Baker ("Petition for Appointment")
- 6 Huckabee's Petition for Appointment correctly listed me as Alice Shaw-Baker's niece.
7. Huckabec's Petition claims nomination for appointment as personal representative by Alice Shaw-Baker's contested May 21, 2001, will.



- 8 When Huckabee filed her Petition for Appointment, no court order had declared the May 21, 2001 will valid.
9. To date, no court order has declared the May 21, 2001 will valid.
10. Absent the nomination in the contested May 21, 2001 will, Huckabee has no statutory priority claim for appointment as personal representative.
11. I have a statutory priority claim to appointment as personal representative as an intestate heir of Alice Shaw-Baker.
12. However, Bessie Huckabee failed to serve me with her Petition or other notice of her application for appointment as personal representative.
- 13 Bessie Huckabee's counsel filed a Proof of Delivery notarized March 12, 2009 ("Proof of Delivery") .
14. Bessie Huckabee's counsel failed to serve the Proof of Delivery on me.
15. The Proof of Delivery does not list me as one of the persons to whom it was mailed or delivered.
16. Further affiant sayeth naught.


Betty Fisher



May 14th, 2009

[See Attached Notarization]

JURAT

STATE OF CALIFORNIA

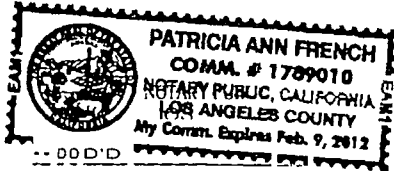
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 14th day of May, 20 09

by Betty Fisher — — — — —

proved to me on the basis of satisfactory evidence to be the who
appeared before me.



(seal)

Signature Patricia French

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

Case No. 2009-CP-10-3010

3010
FILED
2009 JUN 18 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Betty Fisher and
Lisa Fisher.....Appellants

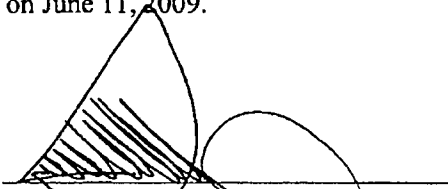
v.

Bessie Huckabee.....Respondent

NOTICE OF APPEAL

Betty Fisher and Lisa Fisher appeal the interlocutory order of the Honorable Thomas L. Hughston, Jr. modifying an injunction, signed June 9, 2009 and filed June 10, 2009. Appellants received written notice of entry of this Order on June 11, 2009.

June 18, 2009



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Attorney for Appellant

Cain Denny, Esquire
Cain Denny, P.A.
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Other Counsel of Record:

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Attorney for
Bessie Huckabee,
Kay Passailaigue Slade and
Sandra Byrd

Honorable David K. Avant
Managing Legal Counsel
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ING Institutional Plan Services, LLC
South Carolina Deferred Compensation Program and
National Life Insurance Company

The Honorable Henry McMaster
Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER et al)
)
Plaintiffs,)

v.)
BESSIE HUCKABEE et al)
)
Defendants,)

In the Matter of)
Alice Shaw-Baker.)
_____)

MOTION BY PLAINTIFFS BETTY
FISHER AND LISA FISHER TO
DISQUALIFY AND REMOVE
OPPOSING COUNSEL PETER KOUTEN
DUE TO NON-WAIVABLE CONFLICT
OF INTEREST;
MEMORANDUM OF LAW;
AFFIDAVIT OF LISA FISHER

FILED
2012 AUG -1 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

COME NOW Plaintiffs Betty Fisher and Lisa Fisher and move this court to disqualify and remove Defendants Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd's attorney of record, Peter Kouten ("Attorney Kouten").

The basis of this motion is Attorney Kouten's prior representation of the decedent in this will contest, Alice Shaw Baker ("Ms. Shaw Baker). Said representation is in violation of S.C. Rules of Professional Conduct, including but not limited to: Rule 407, Rules § § 1.7, 1.9, et seq. and the legal authority set forth in Townsend v. Townsend, 323 S.C. 309, 474 S.E. 2d 424 (1996).

I.

INTRODUCTION

The principles guiding disqualification of an attorney are based on the accepted premise that an attorney may not use information or do anything which will injuriously

affect his or her former client.¹ Attorney Peter Kouten violated these venerable principles, and the Rules of Professional Conduct when he began representing Defendants prior to and after his former client's death. This motion is brought to end his continued representation in violation of Ms. Shaw Baker's rights, and contrary to the S.C. Rules of Professional Conduct.

A. Statement of Facts

On February 25, 2009, Alice Shaw Baker ("Ms. Shaw Baker") died.

Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") are the niece and great-niece of Ms. Shaw Baker.

Plaintiffs allege that during Ms. Shaw Baker's life, Defendants Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd ("Defendants") deceived her, and exerted undue influence to obtain her property. Ms. Shaw Baker intended to leave all her estate and monies to animal charities. Defendants knew her intentions, and thereafter colluded to deceive her and pretended ownership in an animal rescue to gain her trust and confidence.

In or about September, 2008, Defendants reported Ms. Shaw Baker to initiate Guardianship proceedings through the Charleston City Police. Thereafter, Elizabeth Spencer of City of Charleston Elder Supportline filed a guardianship/conservatorship petition with the Probate Court.

¹ "Disqualification, where appropriate, ensures that the case is well presented in court, that confidential information of present or former clients is not misused, and that a client's substantial interest ...is protected." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. 1 (2000).

Immediately upon learning of her troubles, Plaintiffs Betty Fisher and Lisa Fisher rushed to her side and sought to assist Ms. Shaw Baker. Despite Ms. Shaw Baker's efforts and desire to live independently, the Probate Court went forward with the petitions and the investigation required under S.C. Code Ann. § 62-5-303.

As part of that investigation, and pursuant to mandatory requirement in the Code, Judge Tamara Curry of the Probate Court appointed Attorney Peter Kouten as visitor, guardian ad litem, and attorney for Alice Shaw Baker. On October 20, 2008, he filed a visitor's report. (Attached hereto is a true and correct copy of said report marked as Exhibit A) He was appointed to represent Ms. Shaw Baker at the trial in opposition to the conservatorship. At the conclusion of the trial, the court ordered him to continue as Ms. Shaw Baker's visitor, visiting her every week until her death.

He submitted numerous bills and reports to the court as Attorney, Visitor, and Guardian ad litem. For example, On December 23, 2008, Attorney Kouten submitted his monthly visitor's report to the Probate Court. (Attached hereto is a true and correct copy of said report marked as Exhibit B) Accompanying that report was a bill for services rendered to Alice Shaw Baker, directed to Lisa Fisher, requesting payment in the amount of \$4,500.84. (Attached hereto is a true and correct copy of said bill marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84)

He also e-mailed Lisa Fisher wherein he informed her that he (and his sons) were removing (and interfering) with Alice Shaw Baker's property without the conservator's

consent. (See attached hereto is a true and correct copy of said e-mail marked as Exhibit D, emphasis added.)²

Attorney Kouten's action in analyzing Ms. Shaw Baker's property, without prior authorization from plaintiff Lisa Fisher creates additional problems necessitating his removal as counsel. He has information about Ms. Shaw Baker's estate property.

There can be no doubt that Attorney Kouten gained confidential information which impacts these proceedings. On December 18, 2008, Attorney Kouten e-mailed Plaintiff Lisa Fisher and told her in part:

"I have been checking on Alice and she has been in good spirits. I will continue to visit until the court relieves me. Please call me if you need me to do anything for Alice . I have yet to see any report from doctors. I will keep you posted."

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit E)

His actions were so imposing that they interfered with the powers of the Guardian/Conservator, Lisa Fisher, because he was acting as the investigating arm of the court. Plaintiff Lisa Fisher had no knowledge about any relationship of Attorney Kouten with Defendants, and that information provided to him would be transmitted to defendants in their scheme to gain control of the assets. Plaintiff Lisa Fisher maintained

² Attorney Kouten undermined Lisa Fisher's authority. Plaintiff Lisa Fisher had already specifically told Alice Shaw Baker's caregivers that they were not to interfere with or rummage through Ms. Shaw Baker's property. All of this was contrary to the best interest of Ms. Shaw Baker. These same caregivers acted in concert with Attorney Kouten's clients, Defendants herein, to try and gain control and custody of the real property and monies for Defendants' sake. These were the same caregivers, who Attorney Kouten, used to seek information about the whereabouts of the revoked will and to deceive Lisa Fisher.

contact with him to ensure compliance with the probate court's order. In Attorney Kouten's e-mail to her, the communications concerning the doctor and the court's orders, included his statement: "Be assured that I will help check on Alice as long as you like. Peter"³ (Attached hereto is a true and correct copy of said e-mail marked as Exhibit F)

In another e-mail, on January 2, 2009, Attorney Kouten disclosed, not only that he had "ex parte" communications with the court about Ms. Shaw Baker, but that he wanted to interfere with Plaintiff Lisa Fisher's function, as guardian :

"I spoke with the court on Wednesday and they suggested mailing her [Former temporary guardian Jane Orenstein] a confirmation of our discussion after we speak.

I will make sure she knows:

1. She is no longer appointed in any capacity as it applies to Alice.
2. any contact re: Alice should come through me or John or Lisa"

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit G,

emphasis added)⁴

³ Plaintiff Lisa Fisher (as outlined in her affidavit) was not, nor did she ever request, help from Attorney Kouten. She was required to maintain contact with him in compliance with the court order, and required to communicate with him about the desires and needs of Alice Shaw Baker, and ensure that he had correct information that he was providing to the court. Nor did she request Attorney Kouten "check" on Alice Shaw Baker.

⁴ At the time, Plaintiff did not realize the import of the communications between the Court and Attorney Kouten. However, She became alarmed, once she realized neither she nor her counsel, were present at the time of these communications in violation of rules governing ex parte communication.

This pattern of ex parte communication and lack of notice continued after Ms. Shaw Baker's death, Attorney Kouten has now admitted to submitting an ex parte proposed order in June 2009 in the Will Contest action, where he did not copy opposing counsel. He also did Not give notice to family with regard to the informal probate. He engaged in ex parte communication on other occasions.

On January 5, 2009, Attorney Kouten communicated directly with the former temporary co-guardian, Jane Orenstein, stating emphatically:

" The important outcome is that you are noticed that I am continuing in my duties as Court-Appointed Visitor."

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit H, emphasis added)

Plaintiff sent Attorney Kouten gift certificates for work that his children did on Alice Shaw Baker's behalf, which he acknowledged. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit I). Neither plaintiff, nor Lisa Fisher as conservator, had requested him to do any work on the decedent's behalf.

With said e-mail, he attached his weekly report demonstrating that he was continuing to report to the court on Ms. Shaw Baker's care. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit J).

Said e-mail included an invoice requesting payment of fees in the amount of \$1,275.00. (Attached hereto is a true and correct copy of said invoice marked as Exhibit K).

At the same time, he included an order regarding his fees. (Attached hereto is a true and correct copy of said proposed order marked as Exhibit L).

On January 14, 2009, Attorney Kouten e-mailed Lisa Fisher regarding the care and doctor's reports for Ms. Shaw Baker:

"Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in

satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Waid sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted."

(Attached hereto is a true and correct copy of said email dated January 14, 2009 marked as Exhibit M, emphasis added).

In said e-mail, he forwarded a letter that he directed to Elizabeth Sykes of the Probate Court re: the report from Dr. Waid. This report outlined the cognitive and neuropsychological condition of Ms. Shaw Baker. (Attached hereto is a true and correct copy of said letter marked as Exhibit N).

Within less than a month, Alice Shaw Baker was hospitalized in an attempt to regulate her medication, when the caretakers claimed she would not take her medicine. As outlined by Lisa Fisher in her affidavit, Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's heartwrenching death on February 25, 2009—he admitted having an appointment with Defendants Huckabee and Slade to open the probate.⁵ On March 2,

⁵ It was at this same time that Defendants sent the caretakers to wrongfully get the keys to Alice Shaw Baker's home and removed property and papers. As court appointed counsel/guardian ad litem, this action was in violation of U.S. Const. Amend. IV(["The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."])

Plaintiff Lisa Fisher contends this action was at the direction of Attorney Kouten. After/at her death, Attorney Kouten asked one caregiver to get him a copy of the Will, and not inform Ms. Shaw Baker's conservator/guardian, Lisa Fisher.

2009, he filed a Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee, and failed to give notice to Plaintiff Betty Fisher. (Attached hereto is a true and correct copy of Petition for Informal Probate marked as Exhibit O, emphasis added).

Thereafter, Plaintiffs Betty Fisher and Lisa Fisher filed this Will Contest in April 27, 2009, Attorney Kouten filed on behalf of Defendants an answer. (Attached hereto is a true and correct copy of said answer marked as Exhibit P).

Plaintiffs have diligently sought to prosecute the case, have been forced to appeal prior decisions, and demanded that Attorney Kouten withdraw as counsel for Defendants.⁶ He refuses. He does so with the knowledge that he is violating the rules of Professional conduct. (See S.C. Rules Prof. Conduct, rule 1.16 (a lawyer shall not represent a client under certain circumstances and should those circumstances come to light after an attorney-client relationship has been established, a lawyer must withdraw from representation in an appropriate manner [emphasis added])).

Further, Attorney Kouten, on behalf of his clients, obtained a significant portion of Ms. Shaw Baker's estate assets, in excess of \$16,000.00, without filing an inventory in the underlying probate or obtaining a bond pursuant to the statutory requirement (S.C. Code Ann. § 62-3-605) to do so and the court order requiring a bond.

⁶ Plaintiffs moved before the Court of Appeals to remove Attorney Kouten. While the court denied the Motion, it stated:

"This decision, however, is limited to the proceeding in this court and is without prejudice to Appellants to raise their concerns and move for relief under appropriate circumstances in either the probate court or the circuit court." (Court of Appeals March 4, 2011 Order, p. 2, emphasis added).

In this case, Plaintiffs have been subjected to the knowledge that Attorney Kouten took Ms. Shaw Baker's money to represent her pursuant to court order; gained the trust and confidence of not only Ms. Shaw Baker, but of plaintiffs; interfered with her daily care, her medical treatment, and those around her—Attorney Kouten violated all of his fiduciary duties, all of his ethical duties, and all of his statutory duties. These violations mandate the grant of this motion for his disqualification as more fully set forth herein:

II.

PURSUANT TO THE STATUTORY SCHEME FOR THE PROTECTION OF THE ELDERLY, VULNERABLE, AND DISABLED. ATTORNEY KOUTEN WAS APPOINTED TO REPRESENT ALICE SHAW BAKER.

THE RULES FOR ATTORNEY CONFLICT OF INTEREST APPLIED TO ALICE SHAW BAKER AND MANDATE ATTORNEY KOUTEN'S DISQUALIFICATION AS COUNSEL FOR DEFENDANTS.

A. Kouten's Prior Representation

In the guardianship/conservatorship proceedings, Attorney Kouten was appointed visitor, guardian ad litem, and attorney on behalf of Alice Shaw Baker. The laws governing these appointments are fully set forth in South Carolina Code Ann. § 62-5-101 et seq.

Alice Shaw Baker was determined to be an "Incapacitated person" for purposes of these hearings. The definition of an "incapacitated person" is "any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent

that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.” (S.C. Code Ann. § 62-5-101(a)(1).)

Under subsection (5) of South Carolina Code Ann. § 62-5-101 (a) , A "guardianship proceeding" is a "formal proceeding under the provisions of Part 3 of Article 5 (Section 62-5-301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person." Attorney Kouten was appointed to represent Ms. Shaw Baker at these proceedings.

The procedure for the determination of an incapacitated person is set forth in South Carolina Code Ann. § 62-5-303. This includes a statutory requirement that "... the court shall send a visitor to the place where the allegedly incapacitated person resides to observe conditions and report in writing to the court." (Emphasis added)

Further, the court "...shall appoint an attorney to represent him in the proceedings and that attorney shall have the powers and duties of a guardian ad litem. (see also Stefan v. Stefan, 320 S.C. 419, 465 S.E.2d 734 (Ct. App. 1995) (stating a guardian ad litem represents and protects the interests of a party during the litigation). A guardian ad litem is a representative of the court, appointed to assist it in properly protecting the interests of an incompetent person. (Shainwald v. Shainwald, 302 S.C. 453, 395 S.E.2d 441 (Ct. App. 1990), emphasis added.)

Attorney Kouten, as guardian ad litem, had a duty of advocating the best interests of his ward. Under laws governing a guardian ad litem, he should not have, in future proceedings, represented any parties with interests opposed to the best interests

of his former ward. (Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996), emphasis added.)

As evidenced in Exhibits A through N, Attorney Kouten was appointed Alice Shaw Baker's attorney, visitor and guardian ad litem. He continued to report to the court until February 2009. Under any and all of these roles, disqualification of Attorney Kouten as counsel for the defendants is mandated. It is well settled that although a ward is usually not considered a "client" of a guardian ad litem, the ward will be considered a client for purposes of the rules relating to attorney conflicts of interest. (See Townsend v. Townsend , 323 S.C. 309, 474 S.E. 2d 424 (1996), emphasis added). Here, there can be no doubt that rules relating to attorney conflicts of interest apply. He represented Alice Shaw Baker at her trial. All of the information, he obtained and provided to defendants was obtained as confidential communications.⁷

As set forth below, the laws governing attorney conflicts of interest require removal of Attorney Kouten as counsel for defendants.

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⁷ Pursuant to S.C. Ethical opinions, Opinion 12-10, a lawyer must not release confidential information to an adverse executor of the estate without obtaining an order from the probate court or as specifically authorized by the deceased client.

III.

UNDER THE PRINCIPLES SET FORTH IN TOWNSEND V. TOWNSEND AND THE RULES OF PROF. CONDUCT, THE COURT HAS A DUTY TO DISQUALIFY ATTORNEY KOUTEN

Under S.C. Rules Prof. Conduct, Rule 1.9, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. (Emphasis added)⁸

The decedent, Alice Shaw Baker can not (and would not) give her informed consent allowing Attorney Kouten to represent defendants.⁹

⁸ See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 132 (2000) ("[A] lawyer who has represented a client in a matter may not thereafter represent another client in the same or a substantially related matter in which the interests of the former client are materially adverse.");

See also ABA MODEL RULES OF PROF. CONDUCT § 1.9(a) (1996). Further, pursuant to the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 122 (2000)

"Informed consent requires that the client or former client have reasonably adequate information about the material risks of such representation to that client or former client."

⁹ See United States Supreme Court decision regarding application of the attorney client privilege after death. (See *Swidler & Berlin v. United States*, 524 U.S. 399, 405 (1998); see also *Glover v. Patten*, 165 U.S. 394, 406-408 (1897).)

It is well settled that under the rules relating to attorney conflicts of interest, a lawyer owes a duty of loyalty to former clients. (In re Johnson, 386 S.C. 550, 689 S.E.2d 623 (2010), Rule 407, SCACR, Rule 1.9, emphasis added)¹⁰

Concurrent conflicts of interest can arise from a lawyer's responsibilities to a former client. See Rule 407, SCACR, Rule 1.7, Comment 1.

In evaluating a lawyer guardian ad litem's potential conflict of interest in subsequent relations, matters are "substantially related" when the guardian ad litem reasonably could have gained information in the first matter that would be relevant to the second matter. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

Here, as Decedent's Guardian ad Litem, Kouten, conducted an investigation pursuant to S.C. Code Ann. § 62-5-303 and represented Decedent as her Guardian ad Litem pursuant to S.C. Code Ann. § 62-5-407(b). As evidenced by Exhibits A through N, Kouten regularly visited with Decedent from October 2008 through February 2009, and

¹⁰ Moreover, South Carolina Ethical Opinion 94-14 (1994) explains the relationship in cases of "conflict of interest" in conservatorship and estate proceedings. In said case, the attorney represented the grandmother as personal representative of the estate of her son and as conservator of her grandson. A conflict of interest arose with regard to life insurance proceeds. The conflict of interest between the grandmother and grandson required the attorney to withdraw from representation of the grandmother and also would prohibit the attorney from assuming representation of the grandson without the grandmother's consent.

Other jurisdictions have also discussed the significance of former representation, See *In re Hostetter*, 238 P. 3d 13 (2010), where the Oregon Supreme Court found an attorney is prohibited from engaging in a former-client conflict of interest even when the former client is deceased.

irrefutably obtained confidential communications and information that is relevant to this Will Contest.¹¹

Attorney Kouten has a duty of advocating Ms. Shaw Baker's true interests regarding the disposition of her estate. The positions of Kouten's former ward, Ms. Shaw Baker, and those of his current clients, Defendants ("the Contested Beneficiaries"), have evolved to become adverse. Moreover, Attorney Kouten's clients, the Contested Beneficiaries, will not inherit if the contested will is found invalid or revoked. Additionally, Plaintiffs have filed on behalf of Ms. Shaw Baker's estate an Action against Attorney Kouten and Defendants for their abuse and neglect of Ms. Shaw Baker as a vulnerable adult. (See *Betty Fisher, as Real Representative for Alice Shaw Baker v. Bessie Huckabee, et al.*, Circuit Court Case no. 2012-CP-10-1332)

It is not for Attorney Kouten to determine the veracity of the conflicting allegations regarding the validity of Decedent's May 21, 2001 will, nor the veracity of the conflicting allegations regarding the Contested Beneficiaries' neglect of Decedent as a vulnerable adult. Instead, he has a duty to withdraw. A lawyer shall not represent a client if representation is adverse to another client's interests unless both clients consent. (See *In re Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010); Rule 407, SCACR, Rule 1.7, emphasis

¹¹ One of the issues at trial is Ms. Shaw Baker's revocation of the alleged "Will" probated by Defendants. Attorney Kouten has confidential information which mandate his withdrawal (or in this case disqualification/removal). (S.C. Rules Prof. Conduct, rule 3.7 [A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...]; see also S.C. Bar Eth. Adv. Op. 91-26 [where an attorney was both guardian ad litem and advocate in a potential involuntary commitment proceeding, that attorney may not act as witness and advocate (citing Rule 3.7 of the Rules of Professional Conduct)]; and see Rule 1.6.390 [confidential communications])

added.) If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer obtains consent from both clients.

Attorney Kouten has purposefully and blatantly continued to represent clients (Defendants herein) who have an adverse interest to the true intentions of Alice Shaw Baker—his former client. He has done so with knowledge that Ms. Shaw Baker was devoted to animal rights, intended that all of her property and monies go to these animal charities, and that Defendants falsely claimed to Alice Shaw Baker that they owned an animal charity! He has done so with the knowledge that he obtained confidential information from Ms. Shaw Baker. (See Exhibits A through N) Finally, he is charged with knowing that Ms. Shaw Baker, due to her untimely and suspicious death,¹² can not consent or waive the conflict.

IV. PRAYER

The Court has ample authority, and, in fact, a duty to remove Kouten from representation of the Defendants. Attorney Kouten has placed himself in a position of divided loyalties where he attempts to represent Defendants when they are adverse to his former client.

This is in direct conflict of interest and a ground for disqualification. The paramount concern to preserve public trust in the scrupulous administration of justice, the

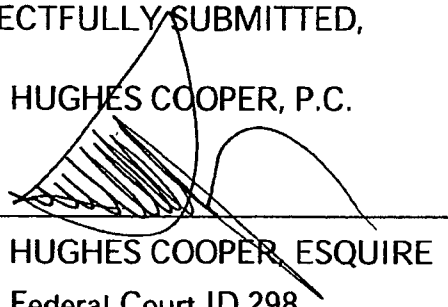
¹² Despite specific orders by Plaintiff Lisa Fisher that all medical efforts were to be made for Alice Shaw Baker's medical condition, Plaintiff Lisa Fisher discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital.

ethical considerations that affect the fundamental principles of the judicial process and the integrity of the bar mandate his withdrawal. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

WHEREFORE, Plaintiffs respectfully move to disqualify and remove Peter A. Kouten from representation of any party in this matter due to his conflict of interest.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 
JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

CAIN DENNY, ESQUIRE

Federal ID 7383

South Carolina Bar 13590

CAIN DENNY, P.A.

P.O. Box 1205

Charleston, S.C. 29402

cain.denny@gmail.com

843-965-5400; fax 843-883-9335

ATTORNEYS FOR PLAINTIFFS

July 30, 2012

will

AFFIDAVIT OF LISA FISHER

PERSONALLY APPEARED before me LISA FISHER, who being first duly sworn, stated as follows:

1. My name is Lisa Fisher, and I am over the eighteen and of sound mind.
2. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I could and would competently do so. I am an attorney in good standing in the State of California.
3. I am one of the plaintiffs in this matter. Alice Shaw Baker was my great aunt. I was the guardian and conservator of Alice Shaw Baker during her life.
4. I have reviewed the Motion and Statement of Facts in this Motion for Disqualification/ Removal of Peter A. Kouten due to his Conflict of Interest.
5. As set forth in the motion, Peter Kouten was appointed to represent the decedent, Alice Shaw Baker at trial. On October 20, 2008, he filed a visitor's report. (Attached hereto is a true and correct copy of said report marked as Exhibit A) He was appointed to represent Ms. Shaw Baker at the trial in opposition to the conservatorship. At the conclusion of the trial, the court ordered him to continue as Ms. Shaw Baker's visitor, visiting her every week until her death.
6. He submitted numerous bills and reports to the court as Attorney, Visitor,

and Guardian ad litem. For example, On December 23, 2008, Attorney Kouten submitted his monthly visitor's report to the Probate Court. (Attached hereto is a true and correct copy of said report marked as Exhibit B)

7. Accompanying that report was a bill for services rendered to Alice Shaw Baker, directed to me, requesting payment in the amount of \$4,500.84. (Attached hereto is a true and correct copy of said bill marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84).

8. He also emailed me on or about December 23, 2008 wherein he informed me that he (and his sons) were removing (and interfering) with Alice Shaw Baker's property without my consent. (See attached hereto is a true and correct copy of said e-mail marked as Exhibit D, emphasis added.)

9. On December 18, 2008, Attorney Kouten e-mailed Plaintiff Lisa Fisher. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit E)

10. I had no knowledge about any relationship of Attorney Kouten with Defendants, and that information provided to him would be transmitted to defendants in their scheme to gain control of the assets.

11. I maintained contact with Attorney Kouten to ensure compliance with the probate court's order. **I did not request** help from Attorney Kouten. I did not ask Attorney Kouten **"check"** on Alice Shaw Baker. (Attached hereto is a true and correct copy of an e-mail from Peter Kouten dated January 16, 2009 marked as Exhibit F)

12. Attached hereto is a true and correct copy of an e-mail from Attorney Kouten dated on January 2, 2009 marked as Exhibit G. Attorney Kouten admitted to ex parte communications both in the probate court and in the circuit court, prior to and after Alice Shaw Baker's death.

13. On January 5, 2009, Attorney Kouten communicated directly with the former temporary co-guardian, Jane Orenstein. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit H)

14. Attached hereto is a true and correct copy of an email from Attorney Kouten acknowledging gift certificates for work that his children did on Alice Shaw Baker's behalf. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit I).

15. With said e-mail, he attached his weekly report demonstrating that he was continuing to report to the court on Ms. Shaw Baker's care.(Attached hereto is a true and correct copy of said e-mail marked as Exhibit J).

16. Said e-mail included an invoice requesting payment of fees in the amount of \$1,275.00. (Attached hereto is a true and correct copy of said invoice marked as Exhibit K).

17. At the same time, he included an order regarding his fees. (Attached hereto is a true and correct copy of said proposed order marked as Exhibit L).

18. On January 14, 2009, Attorney Kouten e-mailed me regarding the care and doctor's reports for Ms. Shaw Baker. (Attached hereto is a true and correct copy of said

email dated January 14, 2009 marked as Exhibit M, emphasis added).

19. In said e-mail, he forwarded a letter that he directed to Elizabeth Sykes of the Probate Court re: the report from Dr. Waid. This report outlined the cognitive and neuropsychological condition of Ms. Shaw Baker. (Attached hereto is a true and correct copy of said letter marked as Exhibit N).

20. Within less than a month, Alice Shaw Baker was hospitalized in an attempt to regulate her medication, when the caretakers claimed she would not take her medicine. Despite my specific orders that all medical efforts were to be made for Alice Shaw Baker's medical condition, I discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital. Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's heartwrenching death on February 25, 2009—he admitted having an appointment with Defendants Huckabee and Slade to open the probate.

21. On March 2, 2009, he filed a Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee, and failed to give notice to Plaintiff Betty Fisher. (Attached hereto is a true and correct copy of Petition for Informal Probate marked as Exhibit O, emphasis added).

22. Thereafter, Plaintiffs Betty Fisher and Lisa Fisher filed this Will Contest in April 27, 2009, Attorney Kouten filed on behalf of Defendants an answer. (Attached hereto is a true and correct copy of said answer marked as Exhibit P)

//

23. My great aunt was greatly loved and respected by her family, and her untimely death was devastating. I respectfully request that the court grant this motion to disqualify and/or remove Attorney Kouten.

24. FURTHER, AFFIANT SAYENT NAUGHT.

By

Lisa Fisher

Subscribed and sworn to before me

This _____ day of July, 2012

(SEAL)

Notary Public

My Commission Expires: _____

see attached

JURAT

State of California

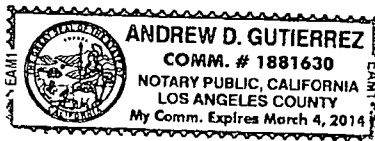
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 31st day of July, 2012,

by Lisa Fisher

~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature

Re: Affidavit of Lisa Fisher

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: ALICE SHAW-BAKER

2008 OCT 20 PM 1:23

FILED

IN THE PROBATE COURT

VISITOR'S REPORT

CASE NUMBER: 2008-GC-10-088

The undersigned court-appointed visitor in this guardianship proceeding submits the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the South Carolina Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following.

REPORT ON THE INCAPACITATED PERSON

1. Date and place of interview: October 8, 2008
308 Cassina Drive, Charleston, SC 29407
2. Oriented as to the time and place? ☒ YES ☐ NO
3. Physical Appearance: Ms. Shaw-Baker presented well. She was well-groomed and properly dressed.
4. Who are his/her closest family members? Ms. Shaw-Baker has family in Long Beach, CA
5. Does he/she have a doctor? ☐ NO ☒ YES If yes, please list the doctor's name, address, and phone number.

Dr. McGuire, Jr., M.D. 615 Wesley Dr., Ste 300 Charleston, S.C. 29407 (843) 266-4400

6. Does he/she have an attorney? ☐ NO ☒ YES If yes, please list the attorney's name, address, and phone number.

John Hughes Cooper, Esquire
PO Box 395
Sullivan's Island, SC 29482
Cain Denny, Esquire
PO Box 1205
Charleston, SC 29402

7. Does he/she think he/she needs help caring for himself/herself? ☒ NO ☐ YES If yes, in what areas?

Ms. Shaw-Baker is enjoying the company that she gets from having helpers with her. She does not believe she requires assistance.

8. Would he/she like help in caring for himself/herself? ☒ YES ☐ NO

9. Does he/she know the proposed Guardian? ☒ YES ☐ NO

10. How does he/she feel about having that person appointed as his/her guardian?

Ms. Shaw-Baker is well aware of the fact that she has co-Guardians. She is opposed to the Court's insistence that she is in need of such protection. Ms. Shaw-Baker does not want Ms. Orenstein to continue in her duties. She sees Ms. Orenstein as "cold." Ms. Shaw-Baker is related by blood to her other co-Guardian, Ms. Lisa Fisher of California. Although, Ms. Shaw-Baker does not feel the need for the protection of a Guardian, she is comforted by knowing Lisa can and will assist her when it is necessary.

11. Does he/she feel any of the guardian powers or duties should be limited or restricted in any way? If so, how?



Ms. Shaw-Baker feels she should have the final decision with regard to her own care and person. She has stated that she likes having the assistants with her. She stated that she feels she is likely to continue to seek assistance and she will make these decisions with the counsel of her great-niece, Lisa Fisher. Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

12. How does he/she feel about the proposed guardianship?

Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

13. How does he/she feel about the proposed scope and duration of the proposed guardianship?

Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

REPORT ON THE PROPOSED GUARDIAN

1. Has an adult protective service case or family management case ever been opened on this person? ☒ NO ☐ YES
If yes, please explain.

If yes, does the DSS record reveal anything you believe the court should know? ☒ NO ☐ YES If yes, please explain.

2. Does your investigation of the proposed guardian reveal anything that you believe the court should know? ☒ NO ☐ YES If yes, please explain.

3. Does your investigation reveal any other person who should be considered to be appointed the guardian in this matter? ☒ NO ☐ YES If yes, please explain, including name, address, telephone, age, and relationship to allegedly incapacitated person.

REPORT ON CONDITION OF PRESENT PLACE OF RESIDENCE

1. Date and time visited: October 8, 2008
1530 hrs (3:30 pm)
2. Address (include street, city, county, state, zip): 308 Cassina Drive, Charleston, Charleston County,
SC 29407
3. Type of abode: single story ranch house
4. Condition:
- a. exterior: clean, no repairs needed
 - b. Interior: clean, no repairs needed. 1 bedroom is filled with boxes, however, there is new carpet and the walls and ceilings have been freshly painted.
 - c. utilities working: yes
 - d. cleanliness: above average
 - e. fire hazards: none noted

- f. other (explain): Ms. Shaw-Baker's house has been cleaned up and made habitable as the result of a Charleston County Probate Court Order. Ms. Shaw-Baker has had around the clock care since then and she has had help with cooking and cleaning.

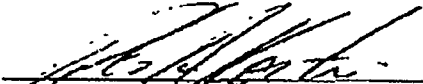
CONCLUSIONS AND ADDITIONAL COMMENTS:

Prior to your visit, did you know the person who is alleged to be incapacitated? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you know the person who is seeking appointment? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you or do you now have a personal interest in these proceedings? ☒ NO ☐ YES If yes, please explain.

Executed this 9th day of October, 2008.

Signature: 
Name: Peter A. Kouten, Esquire
Address: 7013 Dorchester Rd, Ste E, Box 5
N Charleston, SC 29418
Telephone (O): 843-767-5284
(H): 843-670-3919

Re: Matter of Alice Shaw-Baker
Case No.: 2008-GC-10-088
Post-Hearing Court Ordered Visits

November 7, 2008

Ms. Shaw-Baker was at the rear patio with the caregiver. She was not overjoyed to see me and was of the mind that the subsequent visits were not necessary. Although agitated, she was cordial and alert. The appointment for a full neuropsychological evaluation by Randolph Waid, Ph.D. per Court's order has been set. It is in two weeks (November 20) in Mt. Pleasant. Ms. Shaw-Baker smokes outside on the patio or in the kitchen.

November 14, 2008

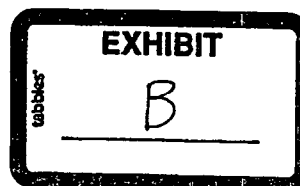
Alice was happier and in better spirits. The house is clean and the heater is operational. It is colder. She is awaiting her doctor's appointment next week. She has a hair appointment this afternoon. She is smoking outside in better weather but on cold days she smokes in the kitchen. She remains in the tiled areas of the house when smoking. The caregivers state she is sleeping well and eating properly. Lisa Fisher calls regularly and sent the caregivers each a gift (peanut brittle and box candy)

November 21, 2008

Alice had her doctor's visit yesterday. She was sleeping. She spent most of yesterday taking a battery of tests. The caregiver stated that she got home yesterday and slept from 10:30 pm to 6:00 am. It was tiring. She has been in good spirits. The POD (mobile storage unit) was re-delivered to the house so Alice could get her winter clothes. She is considering purchasing a shed for her things so that the POD can be emptied. The Guardian is awaiting doctor's results.

December 1, 2008

Alice had just woken from a nap. She has retrieved more stuffed animals from the POD. They are cleaning an area in a rear shed to accommodate the things in the POD. It is a process. The house is well-kept and uncluttered. Alice continues to smoke outside or in the kitchen per Court-Order. I spoke with Lisa Fisher regarding the doctor's report and he has not completed the final draft. She will forward the test result to the Court when they are complete. Ms. Fisher further stated that Alice will also be seeing a physician regarding her medical conditions.



STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	COMMITMENT DIVISION
COUNTY OF CHARLESTON	)	CASE NO: 2008-GC-10-088
ELISABETH SPENCER,	)	
	)	
Petitioner,	)	MONTHLY VISITOR'S REPORT
	)	BY COURT-APPOINTED
vs.	)	GUARDIAN AD LITEM FOR
	)	ALICE SHAW-BAKER
ALICE SHAW-BAKER, an alleged	)	(NOVEMBER 1 THROUGH DECEMBER 1, 2008)
Incapacitated person, and	)	
LISA FISHER, her next of kin,	)	
	)	
Respondents.	)	
	)	

This Court, with the Honorable Judge Tamara C. Curry presiding on October 29, 2008, heard arguments regarding the Appointment of a Guardian and Conservator for Ms. Alice Shaw-Baker. Pursuant to the Guardian and Conservator Appointment Orders for Ms. Shaw-Baker, Respondent, Lisa Fisher, has assumed the duties as permanent Guardian and Conservator for Ms. Shaw-Baker.

The Court further ordered that "until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis."

The Guardian ad litem Peter A. Kouten submits the monthly report for the time period November 1 through December 1, 2008 as Exhibit A to this report, now incorporated by reference.

Peter A. Kouten, Esquire
7013 Dorchester Road, Suite E, Box 5
North Charleston, SC 29418
Tel: (843) 767-5284
Fax: (843) 767-5286
Cell: (843) 670-3919
pkouten@gmail.com

This first day of on December, 2008.
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO: 2008-GC-10-088

ELISABETH SPENCER,

Petitioner,

vs.

ALICE SHAW-BAKER, an alleged)
incapacitated person, and)
LISA FISHER, her next of kin,)

Respondents.

**ORDER
GRANTING FEES TO
APPOINTED ATTORNEY AND
GUARDIAN AD LITEM**

08 NOV 12 34 9:59
CLERK OF COURT
PROBATE COURT
COMMITMENT DIVISION

Hearing Date: October 29, 2008
Judge: Hon. Tamara Curry
Petitioner: Elizabeth Spencer
Attorney for Petitioner: C. Mac Gibson, Jr.
Alleged Incapacitated Person: Alice Shaw-Baker
Guardian ad Litem: Peter A. Kouten, Esq.
Other Respondent: Lisa Fisher
Attorneys for Lisa Fisher: John Hughes Cooper, Esq.
Cain Denny, Esq.
John Townsend Cooper, Esq.
Temporary Co-Guardians: Lisa Fisher and Jane Orenstein
Temporary Conservator: Family Services, Inc.

ACC
10/2
11/11/08

This matter came before this Court for a hearing on appointment of Guardian and Conservator. On July 31, 2008, Elizabeth Spencer filed Petitions for a Finding of Incapacity and for Appointment of Guardian and Conservator. The Court appointed Attorney Peter A. Kouten to represent the interests of Ms. Alice Shaw-Baker in this matter. Based on the Court's request resulting from the hearing on October 29, 2008, Peter A. Kouten, Esquire has submitted for the Court's review and approval his bill for services as Ms. Shaw-Baker's attorney and Guardian *ad litem* incurred from October 6, 2008 through November 3, 2008.

FINDINGS OF FACT

After reviewing the Guardian *ad litem*'s itemized bill, I find that the professional fees requested by the GAL, Peter A. Kouten, Esquire, for the services rendered to Ms. Shaw-Baker and

ATTEST: A TRUE COPY
DEPUTY CLERK
CHARLESTON COUNTY, SOUTH CAROLINA

EXHIBIT

C

for disbursements during the above referenced dates in the amount of \$3915.84 (THREE THOUSAND NINE HUNDRED AND FIFTEEN DOLLARS AND EIGHTY FOUR CENTS) are appropriate, fair and reasonable. Mr. Kouten is a member in good standing of the South Carolina and Charleston County Bar Associations who regularly appears before this Court. I find that the GAL's hourly rate of \$150.00 in this matter is fair and reasonable in light of his experience and training, and is within the prevailing rates of attorneys and GAL's of similar experience and training. I find that his services have been of benefit to Ms. Shaw-Baker and the other parties in this matter.

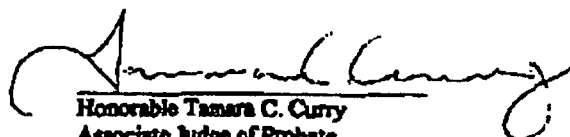
Based on the above, it is therefore

ACC
2012
11/16/08
ORDERED, ADJUDGED AND DECREED that the Conservators for Ms. Hopkins pay to the court appointed attorney and Guardian *ad litem* professional fees in the amount of \$3915.84 (THREE THOUSAND NINE HUNDRED AND FIFTEEN DOLLARS AND EIGHTY FOUR CENTS) for his services rendered and disbursements to Ms. Shaw-Baker during the above referenced dates; and it is further,

ORDERED, ADJUDGED AND DECREED that Attorney Kouten submit future periodic bills for his continued services as attorney and Guardian *ad litem* for Ms. Alice Shaw-Baker, including visits and reports to the Court, until such time as this Court deems that his services are no longer necessary in reference to the case at bar.

IT IS SO ORDERED.

gr
This 12 day of November, 2008
Charleston, South Carolina


Honorable Tamara C. Curry
Associate Judge of Probate
County of Charleston

THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

December 3, 2008

Lisa Fisher, Esquire

PO Box 91112

Long Beach, CA 90809-1112

Re: Matter of Alice Shaw- Baker

Case No.: 2008-GC-10-088

DATE	DESCRIPTION	HOURS	AMOUNT
11/7/08	Court Ordered weekly visit per Judge Curry NOTE: all visit summaries are attached and Incorporated by reference	1.7	\$255.00
11/14/08	Weekly Visit	.6	90.00
11/21/08	Weekly Visit	1.2	180.00
12/1/08	Weekly Visit	.4	60.00
SUBTOTAL FOR SERVICES THROUGH Dec 3, 2008			\$585.00
SUBTOTAL FOR SERVICES THROUGH Nov 3, 2008 (prior invoice)			3915.84
TOTAL DUE			<u>\$4500.84</u>

Subject: Alice Shaw-Baker report
From: Peter Kouten (pkouten@gmail.com)
To: shiplaw@jcooper.com; lfisher6736@yahoo.com;
Date: Tuesday, December 23, 2008 8:51 AM

Dear John and Lisa:

Please find attached report that was forwarded to the court last month. I will continue to forward you these monthly until I am relieved. Note that Family Services did pay the initial invoice so the amount due is for November visits only. I will be sending a December visitor's report next week so if you want to wait for then to send payment, that is fine. I saw Alice yesterday and she was agitated. Money issues. See wanted me to come back today to see what was left in the POD. I hope to make sure it is empty today. Call me with any questions or comments and have a Merry Christmas.

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road , Suite E

North Charleston , SC 29418

office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286

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EXHIBIT

D

Subject: Family Services
From: Peter Kouten (pkouten@gmail.com)
To: Ifisher6736@yahoo.com;
Date: Thursday, December 18, 2008 6:14 AM

Lisa:

I hope all is well for you. I understand from Alice that you are in a large trial.

I have your letter dated December 7. I wanted to relay to you that I have received a check from Family Services for my initial invoice so that the balance due is the \$585.00 from the second invoice. I did send the second invoice to them and they told me the accounts had been transferred. It must be that the documents are on the way.

I have been checking on Alice and she has been in good spirits. I will continue to visit until the court relieves me. Please call me if you need me to do anything for Alice. I have yet to see any report from doctors. I will keep you posted.

Thanks, Peter

Peter A. Kouten

Kouten Law Firm, LLC

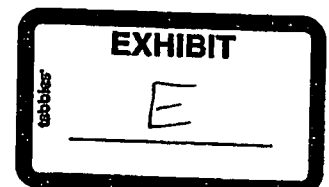
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Subject: RE: Dr Waid's report
From: Peter Kouten (pkouten@gmail.com)
To: lfisher6736@yahoo.com;
Cc: shiplaw@jhcooper.com;
Date: Friday, January 16, 2009 1:57 PM

Thanks Lisa. I was responding to what the order actually said as I had to re-read it after the Jane incident. Be assured that I will help check on Alice as long as you like. Peter

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road, Suite E

North Charleston, SC 29418

office: 843-767-5284

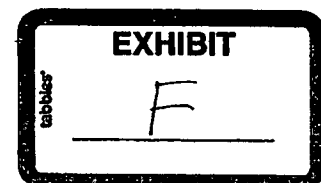
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From: lisa fisher [mailto:lfisher6736@yahoo.com]



Sent: Wednesday, January 14, 2009 4:30 PM
To: pkouten@gmail.com
Cc: john hughes cooper
Subject: Re: Dr Waid's report

Dear Mr. Kouten,

I received and reviewed your letter. Alice has two doctor's appointments on January 26, 2009. I will be traveling to Charleston to help with these appointments.

I will bring to the doctor's attention the report from Dr. Waid, and will attempt to see the appropriateness of an MRI.

I don't recall asking when you would be relieved. I always thought it would be when the status conference was heard. I certainly hope that I did not make it sound like you were not appreciated and my desire was to get you off the case, because I certainly do appreciate all of your work and assistance to my aunt. Further, I am glad that Alice has a trusted person who can visit with her occasionally. I want her to have a full and active life. So Thank you for all of your help.

Sincerely,

Lisa Fisher
(562) 965-3267

— On Wed, 1/14/09, Peter Kouten <pkouten@gmail.com> wrote:

From: Peter Kouten <pkouten@gmail.com>
Subject: Re: Dr Waid's report
To: lfisher6736@yahoo.com, "john hughes cooper" <shiplaw@jhcooper.com>
Date: Wednesday, January 14, 2009, 11:35 AM

Lisa and John:

Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Waid sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted.

To answer Lisa's question, it appears that I will continue in my visits until relieved by the Court. That will probably happen during the status conference. If we know a rough timeframe for receipt of reports, I'm sure the status conference date can be set if it is your intention to back off 24 hr care.

Sincerely,

Peter A. Kouten
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
office: 843-767-5284
cell: 843-670-3919

fax: 843-767-5286

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Subject: RE: Alice

From: Peter Kouten (pkouten@gmail.com)

To: lfisher6736@yahoo.com;

Cc: shiplaw@jhcopper.com;

Date: Friday, January 2, 2009 5:52 AM

Thanks Lisa. I have been tracking Jane's phone number this am. I spoke with the court on Wednesday and they suggested mailing her a confirmation of our discussion after we speak. I will make sure she knows:

1. she is no longer appointed in any capacity as it applies to Alice .
2. any contact re: Alice should come through me or John or Lisa

I will discuss these issues with her and follow up with the letter. She must have sent the email because she knows I went to the court. It's good to know that she has the email addresses showing that she could have emailed you in the first instance and not barged into the house. Alice had also mentioned that she had not spoken to Doris since she called the Charleston Police but lately she had been "running into her." I guess this is during her walks. She found it curious and believed it was a fact finding encounter.

Peter A. Kouten

Kouten Law Firm, LLC

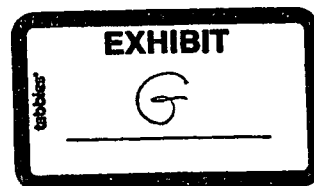
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From: lisa fisher [mailto:lfisher6736@yahoo.com]
Sent: Friday, January 02, 2009 7:37 AM
To: pkouten@gmail.com
Cc: john hughes cooper
Subject: Fw: Alice

Dear Mr. Kouten,

I received this email from Orenstein. I was with Alice all day on New Years. She denies calling Thees. I am concerned about Orenstein's involvement--Thees was their witness, it would seem that she would know. You know more about the procedural issues in the department than I, so I thought I should tell you. I was surprised that I didn't get copies of the inventory, accounting, billings of the other side, etc. I have spoken to Mr. Cooper about getting the documents, and am diligently working on marshalling the assets.

I am taking Alice to a new doctor today. I will let you know how it goes.

Also, I got Alice an air santiizer for her house to get rid of the smoke. It will arrive in about a week.

Thank you for all of your help.

Lisa Fisher

--- On Thu, 1/1/09, guardianjane@bellsouth.net <guardianjane@bellsouth.net> wrote:

From: guardianjane@bellsouth.net <guardianjane@bellsouth.net>
Subject: Alice
To: "shiplaw" <shiplaw@jhcooper.com>, "Ifisher6736" <Ifisher6736@yahoo.com>
Date: Thursday, January 1, 2009, 7:20 AM

I had a call this morning from Doris Thees, Alice 's neighbor, who did not know that I am no longer involved with Alice . She was calling to tell me that Alice called her at 6am today, and she'd appreciate it if someone could put a stop to such calls.

I just think you should know.

HAPPY NEW YEAR!

Jane Orenstein

THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

January 5, 2009

VIA EMAIL (guardianjane@bellsouth.net)

Ms. Jane Ornstein

128 Wainwright Manor

Summerville, SC 29485

Re: Matter of Alice Shaw-Baker
2008-GC-10-0

Dear Ms. Ornstein:

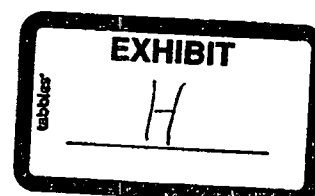
Please accept this letter as a follow-up to our recent conversation regarding Ms. Alice Shaw-Baker. We spoke on January 2 after I had received information from Alice's caregiver that you had presented yourself at Ms. Shaw-Baker's house. There were conflicting facts regarding your visit and the circumstances surrounding the visit. The important outcome is that you are noticed that I am continuing in my duties as Court-Appointed Visitor. Please contact me first with any matters pertaining to Ms. Shaw-Baker.

My cell phone number is 843-670-3919.

Sincerely,

Peter A. Kouten

cc: Lisa Fisher, Esq. **VIA EMAIL**
John Townsend Cooper, Esq. **VIA EMAIL**
Mac Gibson, Esq. **VIA EMAIL**



Subject: Fee statement

From: Peter Kouten (pkouten@gmail.com)

To: lfisher6736@yahoo.com;

Cc: shiplaw@jcooper.com;

Date: Saturday, January 10, 2009 6:22 AM

Ms. Fisher:

First, I want to thank you for the boy's gift certificates. They were appreciative. I am forwarding the Order for fees signed by Judge Curry. I wanted to fax the signed Order but I did not see a fax number on your letterhead. I will follow this email with a hardcopy of the signed Order.

As always, please contact me if you have any questions or need any assistance.

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road , Suite E

North Charleston , SC 29418

office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286



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Re: Matter of Alice Shaw-Baker
Case No.: 2008-GC-10-088
Post-Hearing Court Ordered Visits

December 12, 2008

Alice is well. She continues to smoke but restricts her smoking to the kitchen area and outside. She leaves that house for food shopping/ cigarettes with the caregivers. Usually 5x a week. The POD in the driveway is near empty and it should be returned to the source by the end of the month. The items are being sorted and stored in the rear sheds of closets, etc. Alice has her hair appointment at the house and the hairdresser seems to have become part of the team. She sits with Alice several hours a week. I have received information from Ed Jellison at Family Services, Inc. that Lisa Fisher has been given charge of Alice's finances. There has been no update on the delivery of the pending doctor's reports.

December 22, 2008

Alice had a list of concerns today. She was not in good spirits. She recognizes that she is not in control of her money and she explained that she needs money for food- it is her medicine. Alice treats her diabetes through diet. She stated that Attorney Cooper was to stop by with money but that he had yet to arrive. I later confirmed that Mr. Cooper did bring Alice \$200. The funds are in transition as Lisa Fisher met with Ed Jellison and received Alice's assets last week. Alice seems more and more depressed. Lisa also took Alice to the doctor for further examinations. Reports on those exams and the prior exam are pending. Alice has boxes in the POD but it is almost empty. I am returning to visit Alice tomorrow, at her request, to see if the POD can be returned by the end of the month.

December 23, 2008

Alice was in better spirits today. The POD is being emptied and Alice is storing many items in the rear sheds. It seems that Alice spends a good part of her day on the sofa watching TV. It would seem that she should be getting out more and being exposed to some activity. I expressed this to Attorney Cooper and he will discuss these issues with Lisa Fisher. I asked Alice what she wanted for Christmas and she said cigarettes. She has continued to smoke in the non carpeted areas of the house. She often forgets she is smoking and pulls another cigarette from the pack while holding a lit cigarette. Barbara Anne, her hair dresser has been staying with Alice some, but I am not sure Alice remembers who she is.

December 24, 2008

Short visit to see Alice and empty POD. Final boxes moved to the shed.

December 29, 2008

Call from Lisa Fisher re: a visit to Alice from Jane Ornstein. Alice was upset by the casual visit and the caregiver was cordial and really didn't know how to react. She should not be visiting as it upsets Alice and she has been removed as temporary guardian. I will seek guidance from the court in this matter.

Visited Alice and talked about Ms. Ornstein. Alice stated that Ms. Ornstein was not there to bring her a gift as she claimed. Alice is doing well and wants to get out of the house more often. Lisa is visiting for New Year's and will take Alice on doctor appointments while she is here.



THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

January 5, 2009

Lisa Fisher, Esquire

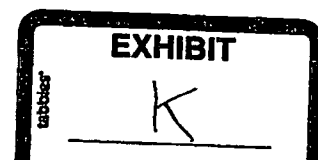
PO Box 91112

Long Beach, CA 90809-1112

Re: Matter of Alice Shaw- Baker

Case No.: 2008-GC-10-088

DATE	DESCRIPTION	HOURS	AMOUNT
12/12/08	Court Ordered weekly visit per Judge Curry NOTE: all visit summaries are attached and Incorporated by reference	1.1	165.00
12/22/08	weekly visit Ms. Baker	1.4	210.00
12/23/08	weekly visit Ms. Baker	.7	105.00
12/24/08	visit w/ Alice to empty POD	.3	45.00
12/29/08	TC Lisa Fisher re: visit from Jane Ornsteen to Alice Discuss options and solutions for Alice getting Out of house, doctor's reports, notice to Ct re: Jane Visit w/ Alice re: Jane's visit and Lisa coming	.4 .7	60.00 105.00
SUBTOTAL FOR DECEMBER SERVICES			\$690.00
SUBTOTAL FOR NOVEMBER INVOICE THROUGH Dec 3, 2008			\$585.00
TOTAL DUE			<u>\$1275.00</u>



STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	COMMITMENT DIVISION
COUNTY OF CHARLESTON	)	CASE NO: 2008-GC-10-088
ELISABETH SPENCER,	)	
	)	
Petitioner,	)	ORDER GRANTING FEES
	)	BY COURT-APPOINTED
vs.	)	GUARDIAN AD LITEM FOR
	)	ALICE SHAW-BAKER
ALICE SHAW-BAKER, an alleged	)	(DECEMBER 12 - DECEMBER 29, 2008)
Incapacitated person, and	)	
LISA FISHER, her next of kin,	)	
	)	
Respondents.	)	
	)	

This Court, with the Honorable Judge Tamara C. Curry presiding on October 29, 2008, heard arguments regarding the Appointment of a Guardian and Conservator for Ms. Alice Shaw-Baker. Pursuant to the Guardian and Conservator Appointment Orders for Ms. Shaw-Baker, Respondent, Lisa Fisher, has assumed the duties as permanent Guardian and Conservator for Ms. Shaw-Baker.

The Court further ordered that "until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis."

The Guardian ad litem Peter A. Kouten submits the monthly report for the time period December 1 through December 31, 2008 as Exhibit A to this report, now incorporated by reference. The Court further Ordered that the GAL submit monthly fee requests to the Court for approval.

FINDINGS OF FACT

After reviewing the Guardian *ad litem*'s itemized bill, I find that the professional fees requested by the GAL, Peter A. Kouten, Esquire, for the services rendered to Ms. Shaw-Baker and for disbursements during the above referenced dates in the amount of

EXHIBIT
1

Six Hundred and Ninety dollars and 00/100 (\$690.00) are appropriate, fair and reasonable. Mr. Kouten is a member in good standing of the South Carolina and Charleston County Bar Associations who regularly appears before this Court. I find that the GAL's hourly rate of \$150.00 in this matter is fair and reasonable in light of his experience and training, and is within the prevailing rates of attorneys and GAL's of similar experience and training. I find that his services have been of benefit to Ms. Shaw-Baker and the other parties in this matter.

Based on the above, it is therefore

ORDERED, ADJUDGED AND DECREED that the Conservator pays to the court appointed attorney and Guardian *ad litem* professional fees in the amount of Six Hundred and Ninety dollars and 00/100 (\$690.00) for his services rendered and disbursements during the above referenced dates; and it is further,

ORDERED, ADJUDGED AND DECREED that Attorney Kouten submit future periodic bills for his continued services as attorney and Guardian *ad litem* for Ms. Alice Shaw-Baker, including visits and reports to the Court, until such time as this Court deems that his services are no longer necessary in reference to the case at bar.

IT IS SO ORDERED.

Honorable Tamara C. Curry
Associate Judge of Probate
County of Charleston

This ____ day of January, 2009
Charleston, South Carolina

Subject: Re: Dr Waid's report

From: Peter Kouten (pkouten@gmail.com)

To: lfisher6736@yahoo.com; shiplaw@jcooper.com;

Date: Wednesday, January 14, 2009 11:35 AM

Lisa and John:

Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Wald sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted.

To answer Lisa's question, it appears that I will continue in my visits until relieved by the Court. That will probably happen during the status conference. If we know a rough timeframe for receipt of reports, I'm sure the status conference date can be set if it is your intention to back off 24 hr care.

Sincerely,

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road , Suite E

North Charleston , SC 29418

office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286



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7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

January 14, 2009

Elizabeth Sykes
Charleston County Probate Court
100 Broad Street, Ste 469
Charleston, SC 29401

Re: Matter of Alice Shaw- Baker
Case No.: 2008-GC-10-088

Dear Ms. Sykes:

As a condition of the Court's Guardianship and Conservatorship Appointment Order for Ms. Alice Shaw-Baker dated 11/19/08, I was to "visit Alice Shaw-Baker on a weekly basis" until receipt of reports from neuropsychological and medical evaluations. The neuropsychological evaluation was purposed by Dr. Waid per Court Order.

The Order sought to clarify whether Ms. Shaw-Baker:

1. has dementia and, if so, can it be addressed with medication;
2. could competently and safely drive an auto;
3. requires 24 hour care and, if not, a recommendation of appropriate care levels and a proper procedure to determine the same.

It is Dr. Waid's medical opinion that Alice has "definitive neurocognitive impairment" which gives rise to "a dementia." Dr. Waid is unsure whether the difficulty is associated with her diet/ diabetes. He does recommend she be assessed by a geriatric psychiatrist to determine if she can profit from diabetes medications. He also suggests an MRI to help determine the "causal factors of her neurocognitive decline."

Dr. Waid does not believe Alice should drive in her current state, however, her condition may improve from the above course of action.

Dr. Waid is of the belief that Alice can have less than 24 hour supervision and suggests a minimum of 12 hours daily between the hours of 8 am and 8 pm to include the preparation of all her meals. Dr. Waid suggests continued monitoring may alter Alice's need for care. She may need less if she responds to diabetes medications if they are necessary based on the evaluation.



Additionally, Dr. Waid suggests Alice maintain primary care on a regular basis concerning her diabetes, hypertension, cholesterol, and other medical conditions.

If you have any questions, please contact my office.

Sincerely,

**Peter A. Kouten
Kouten Law Firm, LLC**

**cc: Lisa Fisher
John Hughes Cooper**

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT

CASE NUMBER: 2009-ES-10- 318
09 MAR 10 AM 9:30

APPLICATION FOR

INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

PETITION FOR

FORMAL

☐ TESTACY
☒ APPOINTMENT

Applicant/Petitioner: Bessie Wyndham Huckabee

Address: 5318 McRoy St, North Charleston, SC 29418

Telephone: cell 709-6860

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Nominated Personal Representative for Decedent's Will

2. Decedent Information

Name: Alice Shaw-Baker
Social Security Number: 562-32-9423
Date of Birth: August 14, 1929
Date of Death: February 25, 2009
Age at date of death: 79
Domicile at date of death: CHARLESTON SC
(county) (state)

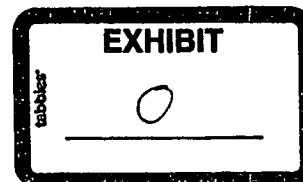
3. Venue for this proceeding is proper in this county because:

- ☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

- 4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Bessie Huckabee	not a minor	5318 McRoy St, N Chas, SC 29418	friend
Sandra Byrd	not a minor	Goose Creek, SC	friend
Key Passaluniguo	not a minor	Charleston, SC	friend

(use additional sheet if necessary)



FORM 6300 (2/2004)
62-3-203, 62-3-301, 62-3-303, 62-3-401, 62-3-402, 62-3-409
62-3-414, 62-3-601, 62-3-704, 44-23-1090, 44-23-1120

Page 1 of 6

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Betty Fisher	not a minor	PO Box 91112, Long Beach, CA 90809	niece
Lisa Fisher	not a minor	PO Box 91112, Long Beach, CA 90809	grand niece

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☐ NO ☒ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses of such Personal Representative, on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of 180 and real estate of about the value of 180. (A full inventory and appraisement, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☒ The original is attached
☐ The original is in the Court's possession
☐ An authenticated copy of a will probated in another jurisdiction is attached
☐ An authenticated copy of a will not probated in another jurisdiction is attached
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: May 21, 2001

codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

- ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Section I, Part 7- Lisa Fisher was appointed guardian and conservator for Ms. Shaw-Baker by Order of CC Probate Court on November 1, 2001.
Section I, Part - This court has appointed Lisa Fisher based on her presentation of an alleged Last Will and Testament presented to the court dated _____

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Bessie Wyndham Huckabee, 5319 McRoy St, North Charleston, SC 29418

2. Priority for this appointment is:

- ☒ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☐ named as nominee of Primary and/or Alternate Personal Representative
☐ other devisee of decedent, or nominee (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent, or nominee of said spouse
☐ other heir of decedent (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

none

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 2nd day of March, 2018

Notary Public for South Carolina
My Commission Expires: 11/15/2018

Signature: Bessie Huckabee
Name: Bessie Huckabee
Address: 5319 McRoy St, North Charleston, SC
29418
E-mail: _____
Telephone (O): _____
(H): 843-552-2086

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally this 11th day of March, 2018

Danah L. Cherry
Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____.

Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, be admitted formally to probate.

Executed this _____ day of _____, 20____.

Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, 20____.

Sammy C. Curry
4550
Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Berrie Huckabee
Name: _____
Address: _____
E-mail: _____
Telephone (O): _____
(H): _____

Signature: _____
Name: _____
Address: _____
E-mail: _____
Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
E-mail: _____
Telephone (O): _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF ALICE SHAW-BAKER

CASE NUMBER 2009ES10-00378

FIDUCIARY LETTERS

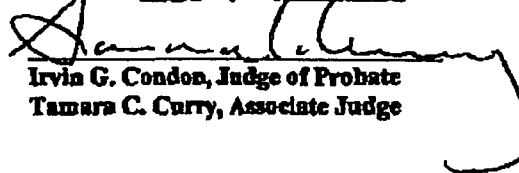
X Personal Representative
____ Conservatorship
____ Trusteeship

On the 11TH day of March, 2009, BESSIE WYNDEHAM HUCKABEE was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment qualification, and authority of the above fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS: None

Executed this 11TH Day of March, 2009.


Irvin G. Condon, Judge of Probate
Tamara C. Curry, Associate Judge

FORM #14MPC (1/91)
62-3-103, 62-3-304, 62-3-421, 62-70-201

6

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT
PROOF OF DELIVERY

CASE NUMBER: 2009-ES-10-0378

On the MARCH day of 12, 2009, I mailed or delivered the following document, INFORMATION TO HEIRS AND/OR DEVISEES

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery
☐ certified mail
☒ ordinary first class mail
☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
BLANK	BLANK
Bessie Huckabee	5319 McRay Street, North Charleston, SC 29418
Sandra Byrd	254 Jean Walla Drive, Goose Creek, SC 29445
Kay Passafiume	4448 Paramount Drive, North Charleston, SC 29405
Lisa Fisher, Esquire	PO Box 81112, Long Beach, CA 90809-1112

SWORN to before me this 12th day of
March, 2009

Peter A. Kouten
Notary Public for South Carolina
My Commission Expires: 7/24/2013

Signature: [Signature]
Name: PETER A. KOUTEN, ESQ
Address: 7013 DORCHESTER RD, STE E
N CHAS, SC 29418
Telephone (O): 767-5284
(H):
E-mail: PKOUTEN@GMAIL.COM

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____
E-mail: _____

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT
INFORMATION TO HEIRS AND DEVISEES

CASE NUMBER: 2009-ES-10-0378

On MARCH 10, 2009, Application/Petition was made to the Probate Court of CHARLESTON County, at (address), 84 BROAD STREET, CHARLESTON, SC 29401, for the (check all that apply):

INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

FORMAL

☐ TESTACY
☐ APPOINTMENT

In the above matter,

(Complete is applicable) The decedent's will dated MAY 21, 2001, and codicil(s) dated N/A, was/were presented.

This notice is being sent to persons who have or may have some interest in the estate.

Bond HAS ☐ HAS NOT ☒ been filed.

My application/petition was granted within the past thirty days on MARCH 10, 2009.

****Disclaimer: This form is required to be sent to all potential heirs of the deceased. Receipt of this form does not mean that you will inherit from the deceased. You may review the file in the Probate Court or see an attorney if you desire further information.**

Applicant / Personal Representative Name: BESSIE HUCKABEE
Address: 6318 McRoy Street
North Charleston, SC 29418
Telephone (O):
(H): 843-652-2096

Applicant / Personal Representative Name:
Address:
Telephone (O):
(H):

Attorney: PETER A. KOUTEN
Address: 7013 DORCHESTER RD, STE E
NORTH CHARLESTON, SC 29418
Telephone: 843-767-5284

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER, etal.,)
Plaintiffs,)

v.)

BESSIE HUCKABEE, etal.,)
Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate No.:)
2009-ES-10-0378)

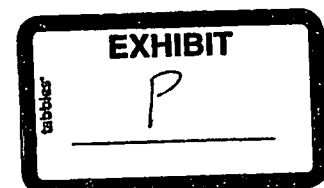
ANSWER OF DEFENDANTS

**BESSIE HUCKABEE, KAY PASSAILAIGUE
AND SANDRA BYRD
(Jury Trial Demanded)**

Defendants Bessie Huckabee, Kay Passailaigue and Sandra Byrd answer the complaint of
the Plaintiffs as follows:

**FOR A FIRST DEFENSE
(General Denial)**

1. Defendants admit the allegations of Paragraph 1.
2. Defendants admit the allegations of Paragraph 2 upon information and belief.
3. Defendants admit the allegations of Paragraph 3 upon information and belief
excepting the allegation that Lisa Fisher is currently the Conservator of Alice
Shaw-Baker.
4. Defendants admit the allegations of Paragraph 4.
5. Defendants admit the allegations of Paragraph 5 to the extent that Kay
Passailaigue ("Kay") is a devisee under the May 21, 2001 submitted to the
Probate Court by attorney for Plaintiff and that she is the sole beneficiary of the
National Life Insurance policy and that she is a resident of Charleston County.



Defendants lack sufficient information to affirm or deny the remaining allegations of Paragraph 5.

- 6. Defendants admit the allegations of Paragraph 6.**
- 7. Defendants deny the allegations in Paragraph 7.**
- 8. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 8 regarding the State Budget and Control Board and the South Carolina Retirement System and therefore deny those allegations and demand strict proof thereof.**
- 9. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 9 regarding ING and the South Carolina Deferred Compensation Program and therefore deny those allegations and demand strict proof thereof.**
- 10. Defendants admit the allegations of Paragraph 10 to the extent that Kay is the sole beneficiary of the National Life Insurance policy and deny the remaining allegations of Paragraph 10 and demand strict proof thereof.**
- 11. Defendants admit the allegations of Paragraph 11.**
- 12. Defendants admit the allegations of Paragraph 12.**
- 13. Defendants admit the allegations of Paragraph 13.**
- 14. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 14.**
- 15. Defendants admit the allegations of Paragraph 15.**
- 16. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 16.**

17. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 17.
18. Defendants admit the allegations of Paragraph 18.
19. Defendants admit the allegations of Paragraph 19.
20. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 20.
21. Defendants admit the allegations of Paragraph 21.
22. Defendants admit the allegations of Paragraph 22 to the extent that Alice Shaw-Baker ("Alice") owned at least three Chihuahuas that she cared for and loved and deny the remaining allegations of Paragraph 22 and demand strict proof thereof.
23. Defendants deny that all of Alice's home decor "featured" Chihuahua themes.
24. Defendants deny the allegations of Paragraph 24 and demand strict proof thereof.
25. Defendants admit the allegations of Paragraph 25.
26. Defendants admit the allegations of Paragraph 26.
27. Defendants admit the allegations of Paragraph 27.
28. Defendants admit the allegations of Paragraph 28.
29. Defendants admit the allegations of Paragraph 29.
30. Defendants admit the allegations of Paragraph 30.
31. Defendants admit the allegations of Paragraph 31.
32. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 32 and therefore deny the allegations and demand strict proof thereof.

33. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 33 and therefore deny the allegations and demand strict proof thereof.
34. Defendants admit the allegations of Paragraph 34.
35. Defendants admit the allegations of Paragraph 35.
36. Defendants admit the allegations of Paragraph 36 to the extent that Alice executed the Durable Power of Attorney but deny knowledge of the existence of said document and therefore deny the existence of a fiduciary relationship as would exist had Bessie known and accepted the powers and duties of a Durable Power of Attorney.
37. Defendants admit the allegations of Paragraph 37.
38. Defendants admit the allegations of Paragraph 38, to the extent that the Health Care Power of Attorney provided for such in the event that Alice was incapable of acting for herself, an eventuality that never occurred prior to the Court's revocation of said Health Care Power of Attorney.
39. Defendants admit that Alice placed trust and confidence in Bessie and Kay as friends and deny the remaining allegations of Paragraph 39 and demand strict proof thereof.
40. Defendants deny the allegations of Paragraph 40 and demand strict proof thereof.
41. Defendants deny the allegations of Paragraph 41 and demand strict proof thereof.
42. Defendants deny the allegations of Paragraph 42 and demand strict proof thereof.
43. Defendants deny the allegations of Paragraph 43 and demand strict proof thereof.
44. Defendants deny the allegations of Paragraph 44 and demand strict proof thereof.

45. Defendants deny the allegations of Paragraph 45 and demand strict proof thereof.
46. Defendants deny the allegations of Paragraph 46 and demand strict proof thereof.
47. Although Kay is the sole beneficiary of Alice's life insurance, Defendants deny the allegations of Paragraph 47 and demand strict proof thereof.
48. Defendants deny the allegations of Paragraph 48 and demand strict proof thereof.
49. Defendants deny the allegations of Paragraph 49 and demand strict proof thereof.
50. Defendants deny the allegations of Paragraph 50 and demand strict proof thereof.
51. Defendants admit the allegations of Paragraph 51 and that the Petition was resultant from repeated telephone calls regarding Alice, including calls and conversations with Bessie and Kay.
52. Defendants admit the allegations of Paragraph 52.
53. Defendants admit the allegations of Paragraph 53.
54. Upon information and belief, Defendants admit the allegations of Paragraph 54.
55. Defendants deny the allegations of Paragraph 55 that representations were made to induce Alice and that Alice was incapacitated at the timeframe referenced and demand strict proof thereof.
56. Defendants deny the allegations of Paragraph 5 that Plaintiffs Betty Fisher and Lisa Fisher assisted Alice and demand strict proof thereof.
57. Defendants deny the allegations of Paragraph 57 and demand strict proof thereof.
58. Defendants deny the allegations of Paragraph 58 and demand strict proof thereof.
59. Defendants deny the allegations of Paragraph 59 and demand strict proof thereof.
60. Defendants admit the allegations of Paragraph 60.
61. Defendants admit the allegations of Paragraph 61.

62. Defendants admit the allegations of Paragraph 62 to the extent the Lisa Fisher did her duties, for the most part, through agents while she was in California and that attorney John Cooper assisted in the performance of the allegations aforementioned.

63. Defendants deny the allegations of Paragraph 63 and demand strict proof thereof.

64. Defendants admit the allegations of Paragraph 64.

65. Defendants admit the allegations of Paragraph 65.

66. Defendants deny the allegations of Paragraph 66 to the extent that the Court Order states that "Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will" unless specifically ordered by the Court.

67. Defendants deny the allegations of Paragraph 67 and demand strict proof thereof.

68. Defendants deny the allegations of Paragraph 68 and demand strict proof of the existence of a subsequent will.

69. Defendants deny the allegations of Paragraph 69 and demand strict proof thereof.

70. Defendants admit the allegations of Paragraph 70.

71. Defendants admit the allegations of Paragraph 71.

72. Defendants deny the allegations of Paragraph 72 and demand strict proof thereof.

73. Defendants deny the allegations of Paragraph 73 and demand strict proof thereof.

74. Defendants deny the allegations of Paragraph 74 and demand strict proof thereof.

75. Defendants deny the allegations of Paragraph 75 and demand strict proof thereof.

76. Defendants deny the allegations of Paragraph 76 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIRST CAUSE OF ACTION
(Constructive Trust)
(Denial)**

77. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim

78. Defendants admit the allegations of Paragraph 78 to the extent the Lisa Fisher holds the estate assets. She has been removed as Conservator of Alice's estate by Court Order.

79. Defendants admit the allegations of Paragraph 79.

80. Defendants admit the allegations of Paragraph 80.

81. Defendants deny the allegations of Paragraph 81 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SECOND CAUSE OF ACTION
(Declaratory Judgment Regarding Revocation)
(Denial)**

82. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim

83. Answering Paragraphs 83, 84, 85, and 86 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S THIRD CAUSE OF ACTION
(Undue Influence)
(Denial)**

84. Answering Paragraph 87, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim

85. Answering Paragraphs 88, 89, 90, 91, 92, 93, 94 and 95 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FOURTH CAUSE OF ACTION
(Fraud)
(Denial)**

86. Answering Paragraph 96, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
87. Answering Paragraphs 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIFTH CAUSE OF ACTION
(Declaratory Judgment Regarding Improper Execution)
(Denial)**

88. Answering Paragraph 114, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
89. Answering Paragraphs 115, 116, and 117, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SIXTH CAUSE OF ACTION
(Declaratory Judgment Regarding Subsequent Will)
(Denial)**

90. Answering Paragraph 118, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
91. Answering Paragraphs 119, and 120, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Unjust Enrichment)
(Denial)**

92. Answering Paragraph 121, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
93. Answering Paragraphs 122, 123, 124, 125, 126 and 127, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Promissory Estoppel)
(Denial)**

94. Answering Paragraph 128, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
95. Answering Paragraphs 129, 130, 131, 132, and 133, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S NINTH CAUSE OF ACTION
(Petition for Removal of Bessie as Personal Representative)
(Denial)**

96. Answering Paragraph 134, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
97. Answering Paragraphs 135, 136, 137, 138, 139, 140, and 141, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S TENTH CAUSE OF ACTION
(Petition for Appointment of Betty Fisher as Personal Representative)**

(Denial)

98. Answering Paragraph 142, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

99. Defendants admit the allegations of Paragraph 143.

100. Answering Paragraph 144, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Attorneys' Fees and Costs)
(Denial)**

101. Answering Paragraph 145, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

102. Answering Paragraph 146, Defendant's deny and demand strict proof thereof.

**FOR A SECOND DEFENSE TO
ALL CAUSES OF ACTION**

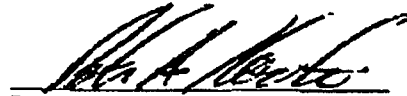
103. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

104. Plaintiff's Complaint should be dismissed for failure to state claims with sufficient facts to constitute causes of actions against Defendants pursuant to Rule 12(B)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants Bessie Huckabee, Kay Passailaigue and Sandra Byrd pray that

a. the Complaint of the Plaintiffs be dismissed with costs;

- b. that the Defendants seek a jury trial in the event the actions are not dismissed; and
- c. any such other relief as the Court may deem just and proper.



Peter A. Kouten, Esquire
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
843-767-5284

Attorney for Defendants
Bessie Huckabee, Kay Passailaigue
And Sandra Byrd

May 28, 2009
Charleston, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2009-CP-10-3010

BETTY FISHER et al
Plaintiffs,

v.

BESSIE HUCKABEE et al
Defendants,

In the Matter of
Alice Shaw-Baker.

) MOTION BY PLAINTIFFS BETTY
) FISHER AND LISA FISHER TO
) RECONSIDER, ALTER, AMEND,
) AND VACATE FEBRUARY 10, 2014 ORDER
) DENYING MOTION TO DISQUALIFY AND
) REMOVE OPPOSING COUNSEL PETER
) KOUTEN DUE TO NON-WAIVABLE
) CONFLICT OF INTEREST;
) MEMORANDUM OF LAW;
) AFFIDAVIT OF LISA FISHER

FILED
2014 FEB 18 PM 3:56
JULIE J. ARMSTRONG
CLERK OF COURT

COME NOW Plaintiffs Betty Fisher and Lisa Fisher by and through her undersigned counsel ("Plaintiffs"), will move this Honorable Court pursuant to South Carolina Rules of Civil Procedure §§ 59 and 60(b) for an Order Reconsidering, Amending, Altering, and Vacating this court's order filed on February 4, 2014 (and received by counsel on February 6, 2014) which issued its decision denying Plaintiffs' Motion to Disqualify and Remove Counsel Peter Kouten:

"Decision by the Court: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered...

IT IS ORDERED AND ADJUDGED: Statement of Judgment by the Court: Plaintiff's [sic] Motion to Disqualify, filed on August 1, 2012, heard by the Court on November 28, 2012, is DENIED." (Original emphasis)

The failure of the Court to state its rationale for denying the motion precludes Plaintiffs from seeking meaningful review and is in violation of Due Process and Equal Protection under the United States and South Carolina State Constitution.¹

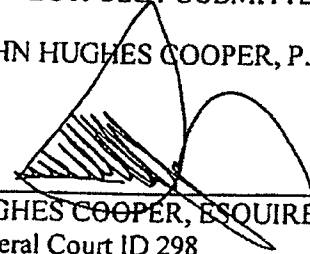
Further grounds for the motion are that it ignores the clear mandate and public policy of the State of South Carolina to protect the elderly and to prevent attorneys from engaging in conduct which places a former client at risk of revealing confidences. Alice Shaw Baker was a resident of Charleston, SC, committed to the protection of animals and animal charities. Denial of the motion to disqualify Counsel Peter Kouten allows him to:

- 1) continue to ignore the fiduciary duty he owed Alice Shaw Baker, his ward pursuant to multiple statutory duties in the Probate Code;
 - 2) use confidences obtained by and through his prior representation to her estates prejudice and for the benefit of those adverse to her known estate plan;
 - 3) place his own pecuniary interests above those of his former ward, with no possibility of obtaining written consent and/or providing her with disclosure of this adverse interest, due to her untimely death;
- and
- 4) continue to violate the known public policy in the State of South Carolina to avoid conflicts that create the “appearance if not the actuality of evil” in his representation. His continued representation is a blot on the high standards held by the South Carolina Bar and as voiced by the clear legal precedent. (See S.C. Rules of Professional Conduct, including but not limited to: Rule 407, Rules § § 1.7, 1.9, et seq. and the legal authority set forth in *Townsend v. Townsend*, 323 S.C. 309, 474 S.E. 2d 424 (1996).)

¹ Plaintiffs are obliged to obtain a ruling to preserve appellate review. (See *Vespazianni v. McAlister*, 307 S.C. 411, 413)

This Motion is based on the South Carolina Rules of Civil Procedure,² and applicable case and statutory law.

RESPECTFULLY SUBMITTED,
JOHN HUGHES COOPER, P.C.

By: 
JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335

and
LISA FISHER, ESQUIRE
Pro Hac Vice
c/o JOHN HUGHES COOPER, P.C.
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464
843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF

February 17, 2014

² Herein, plaintiffs reference the South Carolina Rules of Civil Procedure as "Rule" or "Rules".

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-3010

FILED
2014 JUN 10 AM 10:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

In the matter of ALICE SHAW BAKER,

Deceased.

BETTY FISHER
and LISA FISHER.....Appellants

v.

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE,
SANDRA BYRD, and HENRY MCMASTER, in his Capacity as Attorney General of South
Carolina, Defendants, of whom BESSIE HUCKABEE, KAY PASSAILAGUE SLADE, and
SANDRA BYRD are.....Respondents

NOTICE OF APPEAL

Betty Fisher and Lisa Fisher appeal the following judgments and final orders of the
Honorable J.C. Nicholson, Jr. denying Plaintiffs' Motion to Disqualify filed on August 1, 2012
and heard on November 28, 2012:

1. Consent Order for Substitution of Counsel dated October 10, 2013 and filed October 14, 2013;

2. Judgment dated January 30, 2014 and filed February 4, 2014;

3. Judgment dated May 5, 2014 and filed May 7, 2014.

Appellant received written notice of entry of this judgment on May 12, 2014.

June 10, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR APPELLANTS

Other Counsel of Record:

Hon. Mary Frances Jowers, Assistant Attorney General

The Honorable Alan Wilson

Attorney General of South Carolina

PO Box 11549

Columbia, SC 29211

803-734-3970

Attorney for Defendant Attorney General

Peter A. Kouten, Esquire

Kouten Law Firm, LLC

P.O. Box 340

John's Island, SC 29457

843-670-3919

Attorney for Respondents

(Continued on next page)

W. Westbrook Wills III, Esquire
38 Broad Street Ste. 200
Charleston, SC 29401
843-805-6300
Attorney for Respondents

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher et al.,)
Plaintiffs,)

vs.)

Bessie Huckabee et al.,)
Defendants,)

In the Matter of)
Alice Shaw-Baker.)

CONSENT MOTION FOR DATE CERTAIN TRIAL

FILED
2017 JAN 17 PM 3:47
JULIE J. ARMSTRONG
CLERK OF COURT

PLEASE TAKE NOTICE that Plaintiffs, Betty Fisher and Lisa Fisher, by and through their attorneys, hereby move this Honorable Court for an Order setting the case for a jury trial to begin date certain on May 15, 2017, in the Charleston County Court of Common Pleas. Defendants join in this request.

The request for date certain is to accommodate the scheduling of the parties, expert witnesses, fact witnesses, and counsel. Counsel for the parties have identified 27 potential witnesses, of whom 3 will be presented by deposition, 3 more are records custodians and may be eliminated by Stipulation, and approximately 5 may not need to be called. This leaves a core of approximately 16 expected live witnesses, including Plaintiff Betty Fisher (resident of California) and Plaintiff Lisa Fisher (resident of California). The remaining 14 expected live witnesses are residents of the Charleston area.

The parties represent to the Court that the trial of this case will likely take one week and that the parties, witnesses, and counsel can be available for trial during the week of May 15 - 19, 2017. Although this motion is being filed by counsel for Plaintiffs, it is specifically represented to the Court that counsel for all parties join in the request for a date certain trial. In the

furtherance of justice and the convenience of parties, experts, witnesses, and counsel, the parties respectfully request that the case be set date certain for May 15, 2017.

WE SO MOVE:

JOHN HUGHES COOPER, P.C.

By:

John Hughes Cooper
John Hughes Cooper, Esquire
SC Bar 1387

1476 Ben Sawyer Blvd., Suite 11

Mt. Pleasant, SC 29464

843-693-9099; fax 843-883-9335

shiplaw@jhcooper.com

ATTORNEYS FOR PLAINTIFFS

*by John Townsend Cooper
with Specific Permission*

Consent Motion for Date Certain
2009-CP-10-3010

WE CONSENT:

THE LAW OFFICE OF W. WESTBROOK WILLS, III

By: W. Westbrook Wills, III by John Townsend Cooper
W. Westbrook Wills, III, Esquire with Specific Permission
SC Bar 76681

P.O. Box 822

Folly Beach, SC 29439

843-805-6300

wwills@wwillslaw.com

ATTORNEYS FOR DEFENDANTS,
HUCKABEE, SLADE, and BYRD

Consent Motion for Date Certain
2009-CP-10-3010

WE CONSENT:

KOUTEN LAW FIRM, LLC

By: Peter A. Kouten by John Townsend Cooper
Peter A. Kouten, Esquire
SC Bar 76875 with Specific Permission

P.O. Box 340

Johns Island, SC 29457

ATTORNEYS FOR ESTATE OF
ALICE SHAW-BAKER

Consent Motion for Date Certain
2009-CP-10-3010

WE CONSENT:

SOUTH CAROLINA ATTORNEY GENERAL

By:

Mary Frances Jowers
Hon. Mary Frances Jowers
Assistant Attorney General
SC Bar 68413

by John Townsend Cooper
with Specific Permission

P.O. Box 11549

Columbia, SC 29211-1549

ATTORNEY FOR DEFENDANT,

ATTORNEY GENERAL ALAN WILSON

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)

Plaintiffs,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

In the Matter of the Estate of)

Alice Shaw-Baker.)

Charleston County Probate)

No.: 2009-ES-10-0378)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-10-3010

**DEFENDANTS' AMENDED
NOTICE AND AMENDED
MOTION FOR SUMMARY
JUDGMENT**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG-4 PM 4:05

FILED

TO: JOHN HUGHES COOPER, ESQ., COUNSEL FOR PLAINTIFFS

PLEASE TAKE NOTICE that in ten (10) days hercafter, or as soon thereafter as counsel my be heard, the Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue in the above styled action will move through the undersigned and pursuant to Rule 56, SCRPC for summary judgment in favor of each of them as to each of Plaintiffs' causes of action, including Plaintiffs' request for declaratory relief regarding the validity of the Will¹ at issue in this matter, and summary judgment with regard to the disposition of the non-probate assets of the Estate of Alice Shaw-Baker on the following grounds:

¹ May 21, 2001 Will of Alice Shaw-Baker, submitted to the Charleston County Probate Court by Ms. Shaw-Baker's Court-appointed guardian, and filed in this Court with the present action on March 10, 2009.

1) Plaintiffs have not and cannot come forward with any admissible evidence to create a question of material fact as to the valid formal execution of the Will as required under the provisions of S.C. Code § 62-2-502:

2) Plaintiffs have not and cannot come forward with any admissible evidence to create a question of material fact as to whether Alice Shaw-Baker revoked the Will;

3) Plaintiffs have not and cannot meet their burden of coming forward with specific evidence to demonstrate by unmistakably and convincingly that Alice Shaw-Baker was subjected to or influenced by undue influence in either making or executing the Will. See Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329 (2003)(“Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.”);

4) Plaintiffs’ cause of action for fraud fails as a matter of law because 1) under South Carolina law, fraud claims do not survive to the estate of a deceased individual, and 2) Plaintiffs have not and cannot meet their burden of demonstrating fraud by unmistakable and convincing evidence, as required under South Carolina law;

5) Because the Will is valid as a matter of law, Plaintiffs lack standing to assert each of their remaining causes of action.

Defendants’ Amended Notice of Motion and Amended Motion for Summary

Judgment restates and corrects their Notice of Motion and Motion for Summary

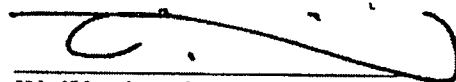
Judgment filed on August 2, 2017. This motion (as amended) is based upon the

pleadings, South Carolina Rules of Civil Procedure, the statutory and common law of South Carolina, and such further authorities, affidavits, and memoranda as may be submitted to the Court prior to a hearing on this motion.

Dated this 3rd day of August 2017

Respectfully submitted,

LAW OFFICE OF
W. WESTBROOK WILLS III

A handwritten signature in black ink, appearing to be 'W. Westbrook Wills III', written over a horizontal line.

W. Westbrook Wills III
P.O. Box 822
Folly Beach, SC 29439
Tel. (843)-805-6300
wwills@wwillslaw.com
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
))
))
BETTY FISHER and LISA FISHER,)
))
))
Plaintiff,)
))
v.)
BESSIE HUCKABEE et al)
))
Defendants,)
))
In the Matter of the Estate of)
Alice Shaw Baker)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

**MOTION BY PLAINTIFFS BETTY FISHER
and LISA FISHER FOR THE FOLLOWING:**

- 1) ORDER TO CHANGE VENUE;
- 2) ORDER VACATING THE DATE OF TRIAL;
- 3) ORDER STAYING ANY AND ALL HEARINGS, INCLUDING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

2017 OCT - 2 4:11:35
11/21/17

**TO THE HONORABLE COURT, ALL INTERESTED PARTIES, AND COUNSEL OF
RECORD:**

YOU WILL TAKE NOTICE that the undersigned as attorney for the Plaintiffs will move the Court for the following orders:

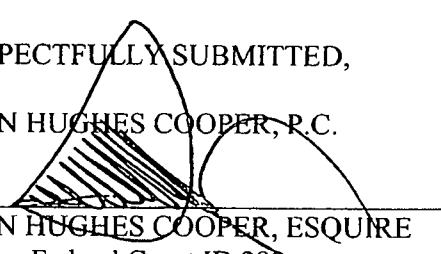
- 1) an Order to Change Venue of this case to Beaufort County pursuant to S.C. Code § 15-7-100, S.C. Code § 62-3-201, and S.C. Const. Art. V, § 23 on the grounds that the law and facts mandate transfer based on the previous order and findings of the South Carolina Supreme Court on August 16, 2017 and to ensure that a fair and impartial trial can be heard;
- 2) an Order vacating the current trial date of October 23, 2017 pending ruling in the South Carolina Supreme Court on Plaintiff's Petition for Writ of Certiorari, *Fisher v. Huckabee*, Case no. 2016-000320, set for oral argument on October 19, 2017;

- 3) an Order Staying all hearings in the matter, pending transfer of the matter to Beaufort County, including but not limited Defendants' Motion for Summary Judgment pending resolution of this Motion for Order to Change Venue and conclusion of stay in related matter before the South Carolina Supreme Court, *Fisher v. Huckabee*, Case no. 2016-000320, as required by the abatement mandated in S.C. Code § 62-1-303 (b).

This Motion will be based upon the applicable statutory law, regulatory law and case law, upon any Affidavits filed with the Court upon any pleadings of record, upon any and all discovery and upon such further information as may be received by the Court.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

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843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE

Pro Hac Vice

c/o JOHN HUGHES COOPER, P.C.

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Mount Pleasant, SC 29464

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF

September 29, 2017

MEMORANDUM IN SUPPORT OF MOTION

FOR ORDERS TO CHANGE VENUE, VACATING THE DATE OF TRIAL AND STAYING HEARING ON ANY AND ALL HEARINGS, INCLUDING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

On or about April 27, 2009, Plaintiffs Betty Fisher and Lisa Fisher (hereinafter "Plaintiffs") commenced this action in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009, to ensure that the assets of the decedent Alice Shaw Baker go to animal charities. After heavily contested pre-trial and appellate filings, this matter is set for trial on a date certain now scheduled for October 23, 2017.

However, Plaintiffs have notified this Court that this matter can not go forward until the related civil actions and probate actions now before the South Carolina Supreme Court are resolved. These appeals may materially impact this case concerning, in part, the wrongful actions of Defendants and their prior counsel Peter A. Kouten, Esquire (hereinafter "Mr. Kouten") and his associates.¹ Mr. Kouten recently was appointed Associate Probate Judge in Charleston County.

On August 16, 2017, the South Carolina Supreme Court sua sponte found that the Charleston County Probate Court was disqualified and ordered the underlying probate actions, *In re Conservatorship/Guardianship of Alice Shaw Baker* ("conservatorship") case no. 2008-GC-10-00088 and *In re Estate of Alice Shaw Baker*, ("estate") case no. 2009-ES-10-378, transferred to Beaufort County.

¹ Mr. Kouten is Defendant in related action, *Fisher v. Huckabee*, case no. 2012-CP-10-1332, as are all other defendants in this action. Also, to the extent Mr. Kouten is disqualified from his representation of Defendants due to conflict of interest, Jessica Crowley, Esquire, Mr. Kouten's associate is also disqualified, and by implication so is, Mr. Wills.

Due to this transfer and the law and facts in this case, this Civil Action may not be heard on October 23, 2017 and requires the matter be transferred to the Beaufort County Circuit Court for all further proceedings.

Also, as set forth in the S.C. Code § 62-1-303 (b), this matter is in abeyance as a matter of law and by way of Rule 205, SCACR for the related appeal.

Therefore, Plaintiffs respectfully move the court to issue the orders as set forth herein.

II.

STATEMENT OF FACTS

A. Background Facts

On or about April 27, 2009, Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") commenced this action in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009, to ensure that the assets of the decedent Alice Shaw Baker go to animal charities.

Alice Shaw Baker had long been an important member of South Carolina's community.

She was born August 14, 1929 in San Francisco, California. Ms. Shaw-Baker was enlisted in the United States Navy for four years and, during her enlistment, stationed in Charleston, South Carolina. Ms. Shaw-Baker worked for Charleston Memorial Hospital for approximately twenty years until her retirement.

She was a member in good standing of her church. She volunteered her time rescuing animals. She had devoted her life to caring for animals and supporting animal charities.

Plaintiffs allege in this Will Contest/revoked will case that Defendants Huckabee, Slade, and Byrd worked for Ms. Shaw Baker at Charleston Memorial Hospital, and used their working relationship with Ms. Shaw Baker to gain information about her private life, her finances, and her estate plan. Furthermore, Defendants used this information to gain control over Ms. Shaw Baker's mind and her will, and to interfere with the known estate plan that Ms. Shaw Baker had established for the benefit and protection of animals. Also, Plaintiffs allege that Defendants falsely claimed that Slade owned an animal rescue in their scheme to deceive Ms. Shaw Baker.

During these proceedings, the Probate Court appointed Mr. Kouten as *Court Appointed Counsel*, Guardian Ad litem, and visitor to Alice Shaw Baker in the Conservatorship proceedings. Ms. Shaw Baker agreed to the appointment of her great niece Lisa Fisher and was appointed as conservator/guardian in October 2008.

While representing Ms. Shaw Baker, Mr. Kouten began representing the defendants Huckabee, Slade and Byrd even though their interests were adverse to Ms. Shaw Baker. This conflict of interest arose while Ms. Shaw Baker was still alive, **and not merely after her death.** During the entirety of Mr. Kouten's representation, he is alleged to have disclosed Ms. Shaw Baker's confidential information to the current attorneys, W. Westbrook Wills III, Esquire ("Mr. Wills") and Jessica Crowley, Esquire ("Ms. Crowley"), in violation of Rules of Professional Conduct and were actions that were adverse to the wishes of Ms. Shaw Baker.

These actions were discovered after Alice Shaw Baker's death, and resulted in several appeals concerning the disqualification and wrongful acts. Plaintiffs filed another action for

tortuous action of Defendants in related *Fisher v. Huckabee*, case no. 2012-CP-10-1332 ("Civil action").

This matter is before the South Carolina Supreme Court on Petition for Writ of Certiorari, and set for Oral Argument on October 19, 2017. There is also a Petition for Writ of Certiorari in the probate action.

B. Current Status of the Case.

The will contest/revocation matter is set for trial on the date certain of October 23, 2017.

The South Carolina Supreme Court has scheduled oral argument in the related case of *Fisher v. Huckabee*, 2016-000320 for October 19, 2017. This case deals with the conflict of interest of (recently appointed Judge) Peter Kouten, and the related attorneys, Mr. Wills and Ms. Crowley.

On August 16, 2017, the South Carolina Supreme Court sua sponte transferred the underlying probate case, *In the Matter of Alice Shaw Baker* (Cases no. 2008-GC-10-00088 and 2009-ES-10-378) to Beaufort County, before the Honorable Kenneth E. Fulp, Jr. or alternatively to an Associate Probate Judge for Beaufort County.

In said order, Chief Justice Donald W. Beatty found that "Irvin G. Condon, Judge of Probate for Charleston County, and the associate Probate Judges of Charleston County are disqualified from any further hearings". (Attached hereto is a true and correct copy of said order marked as Exhibit A)

Due to the transfer of the underlying case by the South Carolina Supreme Court and the related factual issues before the South Carolina Supreme Court, this case is currently abated and must be stayed.

C. Factual Issues that Demonstrate Transfer is also Warranted to Prevent Prejudice and in the Interests of Justice

On June 29, 2017, Charleston Law School reported on the appointment of Former Counsel Peter Kouten (defendant in related civil action and a crucial witness in the instant action) as an associated probate judge in Charleston County Probate Court. In said article, Presiding Judge of the Probate Court, Judge Condon stated:

"Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court," said Charleston County Probate Judge Irvin Condon."

(Attached hereto as Exhibit B webpage <http://charlestonlaw.edu/alumnus-peter-kouten-appointed-charleston-county-associate-probate-judge>)

The evidence demonstrates that at the time adverse rulings were issued by the Probate Court and Plaintiff was seeking disqualification of Mr. Kouten, there was a longstanding and non-disclosed relationship which affected and continues to affect the parties.

For instance, In October 2011, there was a seminar by the South Carolina Bar, entitled UAGPPJA is Coming to South Carolina. In said seminar, Mr. Kouten was a guest speaker at the invitation of Judge Irvin Condon (Attached hereto is a true and correct copy of the Bar program and faculty attending the seminar marked as Exhibit C)

Additionally, public record disclosed that Probate judge, Irvin Condon, appointed Mr. Kouten "special administrator" in the case of *Caldwell v. Clerk of Probate Estate Court Allison*. This was a

heavily litigated case that the plaintiff pro se attempted to have heard by the United States District court. In said case, the plaintiff alleged that the judge had defamed him and issued void orders. *Caldwell* demonstrates a close relationship between Judge Condon and Mr. Kouten which was required to be disclosed to Plaintiffs in this instant case.

After his appointment as associate probate judge, the Chief Justice of South Carolina Donald W. Beatty issued an order that stated:

"Honorable Peter A. Kouten, Charleston County Associate Probate Judge, may preside over the Charleston County Mental Health Court in the absence of Judge Irvin G. Condon and Judge Tamara C. Curry. Pursuant to this assignment, Judge Kouten will be responsible for administering the program and coordinating the role of the judiciary with the functions of the Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston county General Sessions court, private mental health care providers and the Charleston County Sheriff's Department. Judge Kouten shall be responsible for overseeing all defendants preliminarily determinated to be eligible for the Mental Health Court. "

(Attached hereto is a true and correct copy of said order dated July 28, 2017 marked as Exhibit D).

This authority provided to Mr. Kouten in his duties for the Probate Court also create a limited availability of jurors who won't have access to/or knowledge of his promotion to Judge. When Mr. Kouten is called as a witness in the instant case, Plaintiffs will be unfairly prejudiced by his recent elevation to the bench.

Judge Tamara Curry issued orders in the Probate Court that are currently before the South Carolina Supreme Court and were adverse to Plaintiffs without appropriate findings. These include allegations wherein Judge Curry refused to allow counsel to argue or speak, and precluded presentation of evidence.

Plaintiffs contend that as a matter of law all of these facts, the adverse findings, and the relationship of the parties mandated disqualification by both Mr. Kouten and the Probate Court, and were in violation of Rule 501 SCACR, Code of Jud. Conduct, Canon 3. As such, these facts support Plaintiffs claims that **there is reason to believe that a fair and impartial trial cannot be had in Charleston County and that the ends of justice will be promoted by a change of venue.**

Although this case meets the stringent requirements for transfer under Code Ann § 15-7-100, it is the transfer of the underlying cases to Beaufort County by the South Carolina Supreme Court that takes this out of a discretionary transfer to a mandatory transfer as outlined herein.²

III.

TRANSFER OF VENUE IS PROPER UNDER S.C. CODE § 15-7-100 AND § 62-1-303

South Carolina Code Ann § 15-7-100 (1976) provides:

"(A) The court may change the place of trial if:

(1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;

(2) **there is reason to believe that a fair and impartial trial cannot be had there;** or

(3) the convenience of witnesses and **the ends of justice would be promoted by the change.**

(B) When the place of trial is changed, **all other proceedings must be in the county to which the place of trial is changed,** unless otherwise provided by the consent of the

² It has been said that "The Constitution is above any statutory enactment preventing a fair trial, and a statute which limits a change of venue to one application where it is impossible to obtain a fair trial and impartial jury, is unconstitutional to that extent." See *State ex rel. Red Cab, Inc. v. Shelby Circuit Ct.*, 183 N. E. 2d 336 (Ind. Sup. Ct. 1962, dissent; analysis under prior law).

By way of the South Carolina Supreme Court's Order of Transfer of the Probate Court, there has already been a determination of prejudice. Thus, it is undisputed that under the South Carolina Constitution, thereby transfer is mandated.

parties in writing duly filed or by order of the court. The pleadings and other papers must be filed or transferred accordingly." (*Id.*, Emphasis added)

Venue must be changed in this case in light of the South Carolina Supreme Court's finding that the Charleston Probate Court is disqualified and that the matter is transferred to Beaufort County Court.

Subsection (B) of § 15-7-100 must apply in that **all other proceedings must be in the county to which the place of trial is changed.** (Emphasis added) Although the underlying Conservatorship case and Probate case are distinct cases, the previous removal to the Circuit Court creates an implicit consolidation of the files and related proceedings. This coupled with the findings of the *Waddell* court below mandate immediate removal.

The court in *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E. 2d 783 (1992) provides that venue was controlled by S.C. Code Ann. § 62-1-303 and § 62-3-201 of the Probate code. In *Waddell*, the court held that since the action was originated in Probate Court, and presumptively removed to the Circuit Code pursuant to S.C. Code Ann. § 62-1-302 (1991), that:

"When the legislature provided a mechanism to remove certain cases from Probate Court to Circuit Court, they did not specify which venue statute would apply after removal. Because the action remains primarily an action governed by the Probate Code, we hold that the §§ 62-1-303 and 62-3-201 continue to govern in cases removed to the Circuit Court under § 62-1-302 (c) (1991)."

Section 62-1-303 (b) provides that if matters are commenced in more than one court of South Carolina, then the courts shall hold **it in abeyance** until the question of venue is decided, and **if the**

ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court."³ (Emphasis added)

Since the underlying orders were signed by members of the Probate Court and any and all of the jury pool, including those mentioned under the authority of Mr. Kouten, i.e. "Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston county General Sessions court, private mental health care providers and the Charleston County Sheriff's Department" will make locating a fair and impartial jury next to impossible.

The relationship of any appointed trial judge to the Probate department and Mr. Kouten will require review by Counsel and create an unnecessary cloud over this case.

Finally, the mere knowledge that Mr. Kouten is now a judge while also a witness in this case will give the appearance of validity to his testimony, again, unfairly prejudicing Plaintiffs.

Therefore, based on both § 15-1-700 and the mandatory transfer under § 62-1-303, Transfer is the only way to ensure an impartial and fair trial and jury.

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³ Section 62-3-201 does not apply herein, because it is based on location of the decedent's residence.

IV.

**THIS COURT HAS DISCRETION TO CHANGE OF VENUE UNDER § 15-1-700,
HOWEVER TRANSFER IN THIS CASE IS MANDATORY UNDER § 62-1-303.**

It is well settled that "South Carolina Courts have interpreted the general statutes providing for changes in venue to require a motion directed to the discretion of the trial court judge, whose ruling will not be disturbed in the absence of a manifest legal error." (See South Carolina Jurisprudence, June 2017, Venue § 24 citing *Durant v. Black river Elec. Co op, Inc.*, 271 S.C. 466, 248 SE 2d 264 (1978); *Cavalier v. Cooley*, 247 S.C. 509, 148 SE 2d 372 (1966).)

In *Matais v. Brown & Brown of South Carolina, Inc.*, 698 S.E.2d 773 (S.C. 2010), the court held that a Motion to change venue is addressed in the sound discretion of the trial judge. (See also *Holroyd v. Requea*, 361 S.C. 43, 603 SE 2d 417 (Ct. App. 2004).)

Mr. Kouten's new role as judge could easily impress a juror, and undermine the prior conduct and his relationship with defendants, his prior role as court appointed attorney, role as visitor, and role as guardian ad litem over the decedent Alice Shaw Baker. Plaintiffs will be sorely harmed if the jurors believe that Mr. Kouten's new job as a judge was an implicit finding of no wrongdoing.

This court's discretion must be weighed against a plaintiff's need for **"a fair and impartial trial"** and that the **"ends of justice would be promoted by the change"** of the trial to the same county as handling the probate matter.

The information set forth above regarding the relationship of Mr. Kouten and The Probate Court is extremely important in evaluating the facts of this case. The rules governing judges mandated earlier disqualification, as the Probate Court appointed Mr. Kouten, knowing him as a friend and clerk without disclosure. As "A judge shall not make unnecessary appointments. A judge shall exercise the power of

appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered."

The Commentary to Section 3C(4) makes clear that "Appointees of a judge included assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation **does not relieve** the judge of the obligation prescribed by Section 3C(4). " (Emphasis added)

The United States Supreme Court has an even more stringent standard for disqualification. Under *Liljeberg, the United States Supreme Court* 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988) the court held that the statute governing disqualification provides "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

There is no doubt that the relationship with Mr. Kouten and the Probate Court must be reasonably questioned. These facts associated with the Probate Court's decisions without factual findings allows a party to question the impartiality of the judges. (See *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 [*Ellis* stands for the proposition that impartiality may be "reasonably questioned when his [judge's] factual findings are not supported by the record."].)

Decisions in both the Circuit Court and in the Probate Court led to the current appeals, now before the South Carolina Supreme Court. These include orders and decisions by Judge Houston and Judge Nicholson of the Circuit Court and Judge Curry of the Probate Court which further supports a change of venue and stay of further proceedings.

As more fully explained in Section III. , the orders of the South Carolina Supreme Court mandate transfer under § 62-1-308 and Plaintiffs respectfully move this Court to issue orders transfer this action as supported by the prior order transferring the probate matters to Beaufort County.

V.

THE MOTION TO CHANGE VENUE IS TIMELY

The time for filing motions for change of venue are not definite. South Carolina courts have upheld change of venue motions made upon the call of the calendar for the term of court and for which the case is docketed for trial. (See *Bryan v. Richardson*, 240 S.C. 92, 124 SE 2d 731 (1962).)

Moreover, a plaintiff may even move after trial has commenced. (See *Royal Crown Bottling Co. v. Chandler*, 228 S.C. 412, 90 SE 2d 489 (1955).)

Court's have emphasized that change of venue is proper at any time. The court in *Willoughby v. Northeastern RR Co*, 46 S.C. 317, 24 SE 388 (1896) found that transfer was proper even after the case was 5 years old and after 2 mistrials.

Also, the court in *Witherspoon v. Spotts & Co*, 227 S.C. 209, 87 SE 2d 1477 (1955) held that transfer was proper even when the case was docketed for trial.

In this case, Defendants can show no prejudice to, or change of position by the delay of making this motion.

The investigation into facts demonstrating that prior counsel/current probate judge had a personal relationship with the very judges issuing adverse rulings was obviously evident to the South Carolina Supreme Court in their August 16, 2017 order which disqualified the entire Charleston County Probate Court.

Additionally, this case has been litigated and heard by several judges in the Circuit Court, all now with potential relationships with Mr. Kouten. Plaintiffs' case has been heavily litigated based on wrongs done individually by and on behalf of Defendants. The allegations by Plaintiffs include accusations that Mr. Kouten was not "faithful to the law" and that he had prejudice against the decedent based on her age. If he had been a judge at the time, these would have been violations of Rule 501, SCACR, Code of Jud. Conduct, Canon 3, and as demonstrated by the South Carolina Supreme Court created a duty by the Probate Court to recuse itself from these proceedings.

Additionally, the current attorneys for Defendants, Mr. Wills and Ms. Crowley, are alleged to have received confidential information as stated in the civil case against Mr. Kouten. Mr. Wills was a classmate of Mr. Kouten, and acted jointly with Mr. Kouten on behalf of defendants in this case. At this time, it is alleged that Mr. Kouten had confidential information from the decedent which he wrongfully disseminated to Mr. Wills and Ms. Crowley. Ms. Crowley was employed by Mr. Kouten as alleged in her Linked in page. (Attached hereto is a true and correct copy of said page marked as Exhibit E.)

All of these factors demonstrate facts and issues which affect the jury trial in this matter. Plaintiffs have a right and obligation to bring this motion to ensure that the procedure towards justice is fair. The procedure in *Waddell* supports Plaintiffs' position and creates a mandatory duty to transfer this case to Beaufort County Circuit Court.

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VI.

**VACATING THE TRIAL DATE OF OCTOBER 23, 2017 IS NECESSARY TO CONSIDER THIS
MOTION TO TRANSFER VENUE AND TO ABIDE BY THE STAY OF THE APPELLATE
CASES**

On the docket, is the consent order for a date certain on the trial in this matter, October 23, 2017. However, since the underlying probate matters are transferred to Beaufort County, the law provides for the transfer of this matter as necessary and essential for a fair trial .

Additionally, this matter is stayed, due to the pending appeal in the related matter before the South Carolina Supreme Court, wherein Plaintiffs requested the court to consider disqualification of Mr. Kouten, and as related to his associates in this case, Mr. Wills and Ms. Crowley.

Moreover, Counsel for Defendants has filed a Motion for Summary Judgment which can not be heard by this court. The relationship of Mr. Kouten, as new associate judge, will prevent Plaintiffs from a fair trial. Adverse rulings have been received from the Probate Court and this court which bear on the undisclosed relationship of Judge Condon and Judge Curry with Mr. Kouten.

Finally, Plaintiffs had previously filed appeals to this Circuit Court pursuant to S.C. Code 62-1-308(Supp. 2007) which held that "A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the **circuit court in the same county.**" Therefore, any issue relating to the probate would be transferred to the Beaufort County Circuit Court, and it would cause unnecessary confusion to have the case in two Circuit Courts.

Therefore, transferring this matter to the Circuit Court in Beaufort County is mandated, and continuing the trial to accommodate this motion is also required.

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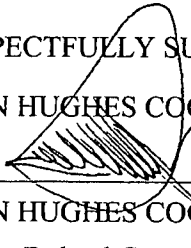
VII.

REMEDY SOUGHT

Based on the above law and facts, Plaintiffs pray that the court will grant this motion in its entirety.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 11

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE

Pro Hac Vice

c/o JOHN HUGHES COOPER, P.C.

1476 Ben Sawyer Blvd. Ste. 11

Mount Pleasant, SC 29464

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF

September 29, 2017

The Supreme Court of South Carolina

ORDER

I find that the Honorable Irvin G. Condon, Judge of Probate for Charleston County, and the Associate Probate Judges of Charleston County are disqualified from any further hearings In the Matter of Alice Shaw-Baker (Case No. 2008-GC-10-00088 and 2009-ES-10-378) and therefore are unable to sit as judge of probate in this matter in its entirety.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or, in the alternative, an Associate Probate Judge for Beaufort County be, and hereby is, appointed as special probate court judge to sit in the above matter in its entirety. As such special probate court judge, the Honorable Kenneth E. Fulp, Jr., or, in the alternative, an Associate Probate Judge for Beaufort County shall have all the powers and duties appertaining to a probate court judge for Charleston County in the handling of the above matter.


Donald W. Beatty
Chief Justice of South Carolina

August 16, 2017
Columbia, South Carolina



Shaw Baker affidavit x Alumnus Peter Kouten a

charlestonlaw.edu/alumnus/peter-kouten-appointed-charleston-county-associate-probate-judge/

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ALUMNUS PETER KOUTEN APPOINTED CHARLESTON COUNTY ASSOCIATE PROBATE JUDGE

Peter Kouten, a member of Charleston Law's first graduating class of 2007, describes becoming an associate probate judge in Charleston County as a "natural progression."

In many ways, Kouten—who was sworn in on June 29, is "coming home" to his new position. Kouten was a law clerk at the court immediately after law school and then practiced solely probate and estate planning for eight years at his firm, the Kouten Law Firm.

"I am honored to be appointed to a position to help people get the care and assistance they need," Kouten said. "Becoming a probate judge seems to be a natural progression from what I was doing as a probate attorney, and it is gratifying to help people on a different platform."

"Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court," said Charleston County Probate Judge Irvin Condon.



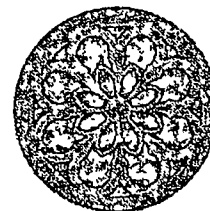
As one of four judges, Kouten will preside over all areas of the court, including mental health commitments, adult guardianships, conservatorships, and estate cases. The court also has adult and juvenile drug courts and a mental health court, and will soon start a veteran's court. Kouten spent three years in the Marine Corps and looks forward to being heavily involved with the veteran's court.

Although Kouten's legal career has been a direct path to the probate court, his path towards law school was less direct.



Born in Philadelphia and raised in nearby New Jersey, the 57-year-old Kouten moved to Charleston to follow family tradition and attend The

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EXHIBIT
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In many ways, Kouten, who was sworn in on June 29, is “coming home” to his new position. Kouten was a law clerk at the court immediately after law school and then practiced solely probate and estate planning for eight years at his firm, the Kouten Law Firm.



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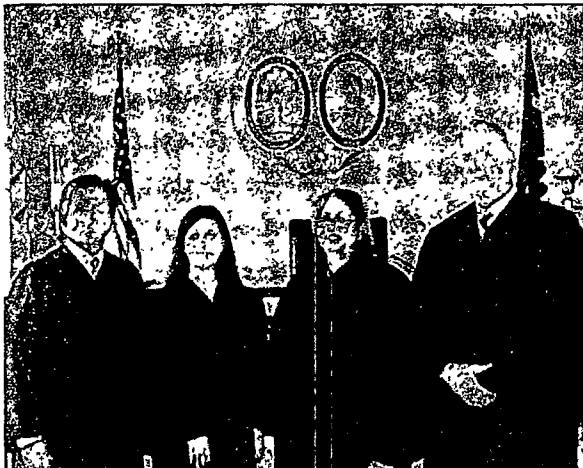
“Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court,” said Charleston County Probate Judge Irvin Condon.

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Although Kouten’s legal career has been a direct path to the probate court, his path towards law school was less direct.

Born in Philadelphia and raised in nearby New Jersey, the 57-year-old Kouten moved to Charleston to follow family tradition and attend The Citadel. After his third semester, he left and joined the Marine Corps. He later returned to Charleston, graduating from the College of Charleston in 1988 and earning a master’s degree in business administration from The Citadel in 1992.

With MBA in hand, Kouten formed what would become one of the largest and most successful home inspection companies in Charleston. He put the idea of



an article about a new law school in Charleston opening, the father of three seized the opportunity and did not look back.

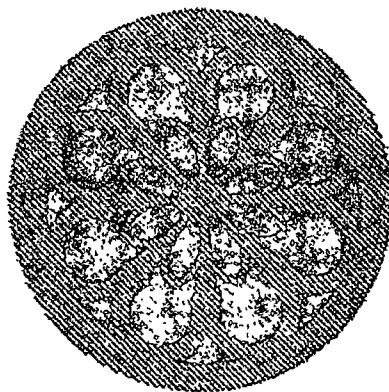
Kouten is grateful for his decision to attend the Charleston School of Law and credits the professors and staff members who mentored him along the way and the school's emphasis on public

service. "I have been molded by the unselfishness of those at the Charleston School of Law," he said during his investiture ceremony. "Those who have passed on experience, strength and hope intentionally or by example."

Surrounded by family, friends and colleagues, Kouten celebrated the natural path of his legal career.

Story and photos by Michelle Mensore Condon

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John Hughes Cooper <shiplaw@jhcooper.com>

Fw: Fwd: South Carolina Bar Certificate of Completion

1 message

lisa fisher <lfisher6736@yahoo.com>

Fri, Sep 29, 2017 at 1.19 PM

To: John Hughes Cooper <shiplaw@jhcooper.com>, John Townsend Cooper <jtc@jhcooper.com>, Lisa Fisher <lfisher6736@gmail.com>

----- Forwarded Message -----

From: lisa fisher <lfisher6736@yahoo.com>**To:** L <lfisher6736@yahoo.com>**Sent:** Saturday, September 23, 2017 04:44:14 PM PDT**Subject:** Fwd: South Carolina Bar Certificate of Completion

Sent from my iPad

Begin forwarded message:

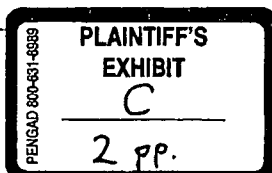
From: <jane points-brown@scbar.org>**Date:** November 17, 2011 at 4:01:59 PM PST**To:** <lfisher6736@yahoo.com>**Subject:** South Carolina Bar Certificate of Completion**Reply-To:** <support@inreachce.com>

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Certificate of Completion

South Carolina Bar

Name: Lisa Fisher**Member ID:** 192777**Purchase Date:** Tuesday, October 18, 2011**Completion Date:** Thursday, November 17, 2011**Transaction ID:** S201110180493862UFAMSTP3SJ

Course Title: UAGPPJA is Coming to South Carolina**Course Number:** DL-381**Duration:****Course Type:** Online Seminar**Faculty:** The Hon. Irvin Condon, The Hon. Deirdre Edmonds,
Eric M. Fish, M. Leigh Flynn, Peter A. Kouten,
Franchelle C. Millender, Beth M. Sulkowski

Credit Information: 3 Total CLE Credits (No Ethics)

Course Description:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act becomes effective in S.C. on January 1, 2011. Enacted to solve difficult questions of jurisdiction, the Uniform Act has been adopted in eighteen states and is pending in seven others.

Originally proposed in 2007 by the National Conference of Commissioners on Uniform State Laws, the Uniform Act outlines communication and cooperation between courts, transfer of proceedings from one state to another and recognition of appointments made in other states.

The Uniform Act is intended to solve those difficult questions of jurisdiction for appointments of guardians and conservators when more than one state is involved.

The S.C. Bar and the Elder Law Committee are pleased to sponsor a three-hour introduction to the Uniform Act, featuring Eric Fish from NCCUSL, Beth Sulkowski from the S.C. Alzheimer's Association and a panel of judges and practitioners.

This is your opportunity to become familiar with the Uniform Act and to be prepared when the new law is implemented in January.

Agenda**Welcome and Opening Remarks**

Franchelle C. Millender - Sherrill Roof Millender LLP

Why the Act was needed

Beth M. Sulkowski - Director of Communications & Advocacy
Alzheimer's Association, SC Chapter

Review of the Act

Eric M. Fish - Uniform Law Commission

Panel Discussion, Questions and Answers

Moderator: *Franchelle C. Millender*

Panel: *Eric M. Fish* - NCCUSL Legislative Counsel

The Hon. Irvin Condon - Charleston County Probate Court

The Hon. Deirdre W. Edmonds - Horry County Probate Court

Peter A. Kouten - Kouten Law Firm, LLC

M. Leigh Flynn - Law Office of Leigh Flynn, LLC

2017-07-28-02

The Supreme Court of South Carolina

RE: Charleston County Mental Health Court

ORDER

Pursuant to the provisions of S.C. CONST. Art. V, § 4,

IT IS ORDERED that the Honorable Peter A. Kouten, Charleston County Associate Probate Judge, may preside over the Charleston County Mental Health Court in the absence of Judge Irvin G. Condon and Judge Tamara C. Curry. Pursuant to this assignment, Judge Kouten will be responsible for administering the program and coordinating the role of the judiciary with the functions of the Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston County General Sessions Court, private mental health care providers and the Charleston County Sheriff's Department. Judge Kouten shall be responsible for overseeing all defendants preliminarily determined to be eligible for the Mental Health Court.

This order takes effect immediately and remains in effect unless amended or rescinded by the Chief Justice.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
July 28, 2017





Jessica Crowley

Attorney at Law at Crowley Law Firm, LLC -
Estate Planning & Probate Administration
Charleston, South Carolina | Law Practice

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Circuit Office of the Public Defender, Charleston
School of Law
Education Charleston School of Law
Websites Kouten Law Firm

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Owner / Attorney at Law at THE
BOWMAN LAW FIRM, LLC



Julie Risher, MA, LPC, BS
Seeing patients who need help or
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Mary Beth Watson
Estate Planning Paralegal



Kenneth Murphy, II
Attorney



Sabrina C. Call, Esq
Owner/Attorney at The Law Firm of
Sabrina Call, LLC



Martelle T. Morrison
Magistrate Judge at Charleston
County Government



Mallary Scheer
Attorney at Mallary L. Scheer,
Attorney at Law, LLC

Mital D. Patel
Attorney at Law

Barret Albritton
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Robert DeMarco
Attorney, DeMarco Law Firm, LLC

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Summary

Charleston, SC Attorney working at an Estate Planning Law Firm. We focus on Asset Protection, Estate Planning, Wills, Trust and Probate Administration, Elder Law, Probate Court, Conservatorships and Guardianships in Charleston County, Berkeley County, and Dorchester County. Please call 843-789-9614 for a free consultation.

<http://www.koutenlaw.com/>

Experience

Attorney at Law

Crowley Law Firm
March 2017 – Present (7 months)

Estate planning, Estate administration and Adult Guardianships & Conservatorships

Attorney at Law

Kouten Law Firm, LLC - Estate Planning
March 2014 – February 2017 (3 years)

Estate Planning, Probate and Trust Administration, Mediation, Elder Law, Advance Directives, Guardianships and Conservatorships, Special Needs Planning, Asset Protection in Charleston, SC. Serving Charleston County, Berkeley County and Dorchester County.

Extern

Ninth Circuit Office of the Public Defender
January 2013 – May 2013 (5 months) | Charleston, South Carolina Area

Worked on all phases of case preparation for multiple General Sessions cases. Researched and drafted legal memoranda, pre-trial motions, briefs, professional and client correspondence. Performed new client interviews both in the jail and in the office. Developed legal defenses and trial tactics to assist attorneys in trial preparation. Interviewed witnesses and developed direct- and cross-examinations for trial. Engaged in negotiations with and examination of arresting officers during preliminary hearings.

Student

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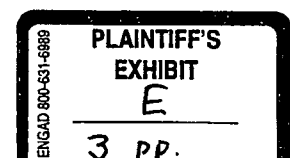
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Law Clerk

Ninth Circuit Office of the Public Defender
May 2012 – August 2012 (4 months)

Legal Research and Writing Teaching Fellow

Charleston School of Law
August 2011 – May 2012 (10 months)

Edited research memos and briefs of first year Legal Research, Analysis and Writing students and gave feedback on how to improve writing. Trained students how to use the library, Westlaw, Lexis-Nexis, and other research tools to perform legal research. Developed and presented instructional research and citation workshop for first year students. Assisted professor with class preparation and instruction.

Law Clerk

Rosen Law Firm
June 2011 – September 2011 (4 months) | Charleston, South Carolina Area

Performed legal research and assisted with trial preparation in domestic, personal injury, and medical malpractice litigation. Drafted memoranda, pre-trial motions, briefs, and orders. Interviewed witnesses, potential expert witnesses, and prospective clients. Performed extensive research and preparation for depositions of expert witnesses in complex domestic litigation.

Judicial Observation Program Participant

The Honorable Gordon B. Jenkinson
May 2011 – June 2011 (2 months)

Observed all stages of courtroom proceedings in Family Court. Researched and drafted memorandum on jurisdictional question. Assisted with preparation of legal materials for hearings.

Therapist, Staff Supervisor, Program Developer

Applied Behavior Analyst
April 2002 – August 2010 (8 years 5 months)

Created client-specific programs for treatment of children with Autism. Utilized operant conditioning in generalized settings to foster practical skills in the child. Supervised and trained Applied Behavior Analysis Therapists. Extensive training to include: Positive Behavioral Intervention, Therapeutic Crisis Intervention, and Advocacy for Children and Families.

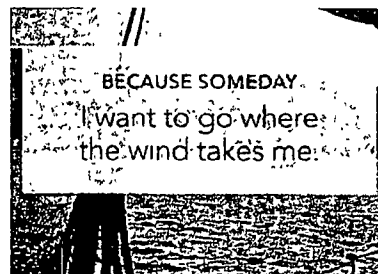
Honors & Awards

CALI Award for highest grade in Property

CALI Award for highest grade in Legal Research, Analysis and Writing

Academic Excellence Award in English

Academic Excellence in Spanish





Education

Charleston School of Law

Juris Doctor, Law, Cum laude
2010 – 2013

Cum Laude

Activities and Societies: Federal Courts Law Review, Managing Editor, Criminal Law Society, Member, Children's Advocacy and Family Law Society, Member, DACA Immigration Clinics, Volunteer, Performed over 600 hours of pro bono work

College of Charleston

Bachelor of Arts (B.A.), English Language and Literature/Letters /Creative Writing
2007 – 2009

Publications: Short Fiction: The Miscellany, Spring 2008, Short Fiction & Poem, The Miscellany Spring 2009, Poem, Illuminations: Journal of Contemporary International Poetry, Summer 2011

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

IN RE: THE ESTATE OF)
ALICE SHAW-BAKER)

CASE NO.: 2009-CP-10-3010

BETTY FISHER and LISA FISHER,)

Plaintiffs,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO PLAINTIFFS'
MOTION TO TRANSFER VENUE
VACATING DATE OF TRIAL AND
STAYING PROCEEDINGS**

FILED
2017 OCT 19 PM 4:02
CLERK OF COURT

COMES NOW, Defendants Bessie Huckabee, individually, Kay Passailague Slade, and Sandra Byrd (collectively “Defendants”) and hereby submit their Memorandum in opposition to Plaintiffs’ Motion for Order to Change Venue, Vacating the Date of the Trial, and Staying any and All Hearings, Including Defendants’ Motion for Summary Judgment, showing this Court as follows:

In this matter that dates back to April of 2009, Plaintiffs brought an action in the Probate Court for Charleston County to contest the last will of Alice Shaw-Baker.¹ Contemporaneously, Plaintiffs moved to remove the case to the Circuit Court, where it has been pending ever since. Plaintiffs also filed certain other actions, unrelated to the present will contest, purportedly as the “real representatives” of Alice Shaw-Baker on behalf of her Estate. Both the Circuit Court and the Court of Appeals have found that Plaintiffs lacked standing to maintain those other actions on behalf of Alice Shaw-Baker’s Estate. Nevertheless, Plaintiffs have used the appeals process

¹ Plaintiffs Betty Fisher and Lisa Fisher are niece and grandniece, respectively, to Alice Shaw-Baker, and are not named as beneficiaries in Ms. Shaw-Baker’s will. As Lisa Fisher is neither a named beneficiary under Ms. Shaw-Baker’s will, nor a potential intestate heir of her Estate, Defendants also question how she has any standing to assert claims as a Plaintiff in the present matter.

in those unrelated cases as a means of delaying the adjudication of the present will contest by conflating the issues on appeal in those cases with those at play here. Eight years later, on the eve of the trial to determine the validity of the will, Plaintiffs are seeking, once again, to push off the adjudication of the very issue which they themselves rely on to establish standing in each of their cases, and which adjudication definitively resolves **all** issues in this and every other case. Either Alice Shaw-Baker's will is valid, in which case Plaintiffs have no standing with regard to any of their claims, or the will is invalid, in which case Plaintiff Betty Fisher becomes the sole intestate heir of Ms. Shaw-Baker's Estate.

On June 29, 2017 Peter Kouten, attorney for Bessie Huckabee. in her capacity as Personal Representative for the Estate of Alice Shaw-Baker, was sworn in as Associate Judge for the Charleston County Probate Court. As Judge Kouten's appointment to the Bench precluded him from continuing to act as attorney for Ms. Huckabee in the present matter, he properly arranged for separate, independent counsel, Jessica Crowley, to take over the representation. Subsequently, the Probate Court reported Mr. Kouten's appointment to the Bench to the Supreme Court which, in turn, issued an Order on August 16, 2017 disqualifying Judge Irvin Condon, Judge for Probate for Charleston County, and the Associate Probate Judges of Charleston County from any further hearings In the Matter of Alice-Shaw Baker (Case No. 2008-GC-10-00088 and 2009-ES-10-378) (the "Order"). *A true and accurate copy of the Order is attached hereto as Exhibit "A "* The Supreme Court's August 16, 2017 Order further designated Judge Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or alternatively any Associate Probate Judge from Beaufort County, be appointed as "special probate court judge" to sit in the above matter in its entirety. The Order confers on such special probate judge

“all the powers and duties appertaining to a probate court judge for Charleston County in the Matter of Alice Shaw-Baker.

In light of the Order, Plaintiffs have filed the present motion in an attempt to seize on what they perceive as an opportunity to push off even further the adjudication on the merits of the will contest by vacating this Court’s Order for Date Certain Trial on October 23, 2017, and transferring the entire matter to Beaufort County, where the parties and that Court, without doubt, will have as difficult time re-scheduling a multi-week date certain trial. as we have had in Charleston County.² The result: more delay.

Plaintiff’s motion argues South Carolina statutory and case law mandate the case be transferred to Beaufort County, and that all activity in the case be stayed until such transfer can occur. In support of that position, Plaintiffs cite to S.C. Code Ann. §§15-7-100 (changing place of trial) and 62-1-303 (venue; multiple proceedings; transfer). However, contrary to Plaintiffs’ interpretation of those statutes, §§ 15-7-100 and 62-1-303 actually require the present matter remain in Charleston County.

A. Transfer of venue to Beaufort is not permitted under South Carolina Probate Code § 62-1- 303(e).

When a case that originate in the Probate Court is removed to the Circuit Court, the action remains primarily an action governed by the Probate Code, and § 62-1-303 controls with regard to changes of venue. See Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785(1992). Turning, therefore, to §62-1-303, Plaintiffs claim, without citing to any relevant authority, that

² It bears noting that in January of 2017 Plaintiffs requested, and Defendants consented to a date certain trial date of May 15, 2017. When the Court held the roster meeting for the trial calendar that included May 15, 2017, Defendants indicated not ready for trial, representing that matters on appeal involved issues that effected the will contest, and asked the Court to specially set the trial for another date. After a phone scheduling conference with Her Honor, Judge Jefferson, for the purpose of re-setting the trial date, Defendants would not consent to a bifurcated trial, and indicated they intended to call a number of witnesses sufficient to require a trial in excess of 5 days. The only date certain for trial which the Court could find which would accommodate Defendants began on October 23, 2017, some five months after the original date certain for trial

the statute mandates transfer of the present matter to Beaufort. Just the opposite is true. First, the Order does not transfer this case to Beaufort County, but instead disqualifies all Charleston County Probate Judges from hearing any matters related to the case, and appoints Beaufort County Probate Judge Fulp as a visiting Charleston County Probate Judge. See Exhibit "A." Importantly, the purpose of the Order is not to reassign the case to a proper venue, but rather to disqualify judges in the proper venue who may previously have had some connection with the case.

S.C. Code Ann. § 62-1-303 (e) clearly provides that,

If a probate court judge is disqualified from matters concerning a proceeding or a file, and venue has not been transferred to another county, a special probate court judge appointed for that proceeding or file has all of the powers and duties appertaining to the probate court judge of the county where the proceeding or file commenced. **and venue for any subsequent matters concerning that proceeding or file, including appeals, remains with the county where that proceeding or file commenced.** (Emphasis supplied)

This is precisely the situation in the present case. Here, rather than transferring venue, the Order appoints Judge Fulp as special probate court judge with the powers and duties appertaining to the Probate Court judges for Charleston County. In fact, the language of the Order mirrors that of § 62-1-303. As provided in that Section, venue for matters concerning the will contest remains in Charleston, where the proceeding or file commenced, and transfer of the case to Beaufort County would be improper.

B. Plaintiffs have made no showing that a transfer of venue is appropriate under S.C. Code Ann. § 15-7-100.

Plaintiffs next claim transfer of the case to Beaufort County is warranted under S.C. Code Ann. § 15-7-100.

§15-7-100 provides the Court may change the place of trial if:

(1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;

(2) there is reason to believe that a fair and impartial trial cannot be had there; or

(3) the convenience of witnesses **and** the ends of justice would be promoted by the change.

(B) When the place of trial is changed, all other proceedings must be in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed or by order of the court. The pleadings and other papers must be filed or transferred accordingly. (Emphasis supplied)

Under this Section and subject to it, where a motion to change venue is predicated on these grounds, the Court has discretion to change the venue if the movant meets the formidable burden of demonstrating both that the change in venue would serve the convenience of the parties and serve the ends of justice. See Arledge v. Colonial Oil Indus., Inc., 272 S.C. 88, 249 S.E.2d 740 (1978); Skinner v. Santoro, 245 S.C. 35, 138 S.E.2d 645 (1964)(the trial judge retains the sound discretion to change the place of trial if both the convenience of witnesses and the ends of justice would be served.). Of course, with regard to the discretion courts to transfer venue, the South Carolina Supreme Court has instructed “[w]e keep in mind two other rules of law: (1) the burden on the moving party is formidable; and (2) the right of a defendant in a civil trial to be tried in the county of his residence is a substantial one and should not be lightly ignored.” Davenport v. Summer, 269 S.C. 382, 384, 237 S.E.2d 494, 496 (1977)(citing Stevens v. Sun News, 267 S.C. 63, 226 S.E.2d 236 (1976)).

In determining whether the ends of justice would be served by a transfer of venue, our Supreme Court has also indicated that “[a] precise definition of the ends of justice is somewhat elusive. However, the ends of justice are promoted by having the credibility of witnesses judged

by jurors of the vicinage, the county in which the witnesses reside.” See McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 335–36, 479 S.E.2d 67, 71 (Ct. App. 1996)(referencing Holden v. Beach, 228 S.C. 234, 89 S.E.2d 433 (1955)).

In the present case, the will contest trial involves multiple witnesses, many of whom are elderly, over multiple days. As far as Defendant knows, the vast majority of the witnesses reside in Charleston County, and no witnesses are from Beaufort County. A transfer of venue to Beaufort County would be an enormous imposition on the witnesses, some of whom may not even be physically capable of travelling there, and clearly does not serve the convenience of the witnesses. Nor does transferring the case to Beaufort county serve the ends of justice. In fact, here, the opposite would occur, as Defendants would lose their substantial right in this civil action to a trial in the county of their residence. See McKissick, *supra* (having jurors from the same area as the witnesses is important in determining whether the ends of justice have been promoted by changing venue.)

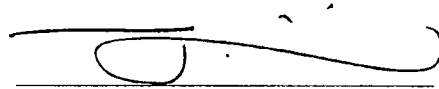
Importantly, Plaintiffs have not meet their formidable burden of demonstrating that a fair and impartial trial could not be had in Charleston County, despite their unfounded claim that a jury would be influenced by knowing that Mr. Kouten was formerly associated with the case, and now sits as a Probate Judge. That matter is resolved through the process of voir dire.

For the foregoing reasons, the Court should deny Plaintiffs’ Motion to Transfer Venue. For the same reasons, the Court should also deny Plaintiffs’ motions to stay all proceedings pending such transfer, and to vacate its Order for date certain.

[Signature on following page]

Respectfully submitted,

LAW OFFICE OF
W. WESTBROOK WILLS III



W. Westbrook Wills III
P.O. Box 822
Folly Beach, SC 29439
Tel. (843)-805-6300
wwills@wwillslaw.com
ATTORNEY FOR DEFENDANTS

Dated this 18th Day of October 2017
FOLLY BEACH, SC

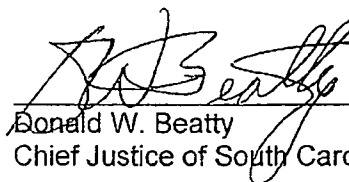
The Supreme Court of South Carolina

ORDER

I find that the Honorable Irvin G. Condon, Judge of Probate for Charleston County, and the Associate Probate Judges of Charleston County are disqualified from any further hearings In the Matter of Alice Shaw-Baker (Case No. 2008-GC-10-00088 and 2009-ES-10-378) and therefore are unable to sit as judge of probate in this matter in its entirety.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or, in the alternative, an Associate Probate Judge for Beaufort County be, and hereby is, appointed as special probate court judge to sit in the above matter in its entirety. As such special probate court judge, the Honorable Kenneth E. Fulp, Jr., or, in the alternative, an Associate Probate Judge for Beaufort County shall have all the powers and duties appertaining to a probate court judge for Charleston County in the handling of the above matter.


Donald W. Beatty
Chief Justice of South Carolina

August 16, 2017
Columbia, South Carolina



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher et al.,)
Plaintiffs,)
vs.)
Bessie Huckabee et al.,)
Defendants,)
In the Matter of)
Alice Shaw-Baker.)
_____)

**MOTION BY PLAINTIFFS TO ALTER, AMEND, OR
RECONSIDER OF ORDER OF OCTOBER 19, 2017
DENYING PLAINTIFFS' MOTION FOR CHANGE OF
VENUE, STAY, ETC.; MEMORANDUM**

FILED
2017 OCT 23 AM 8:37
CLERK OF COURT

COMES NOW Plaintiffs Betty Fisher and Lisa Fisher filing this Motion under Rule 59 for reconsideration of the Order Dated October 19, 2017 denying plaintiffs' motion to change venue, stay, etc.

Said Motions are made on approximately 5 hours notice and demand, despite the fact that co-counsel is in California and she had technical difficulties. In an effort to accommodate the court, and without waiving objection to the lack of notice and the prejudice, Plaintiffs state as follows

I.

**RECONSIDERATION OF THE OCTOBER 19, 2017 ORDER SUPPORTS GRANT OF THE
MOTION TO CHANGE VENUE, STAY, ETC.**

South Carolina Rules of Civil Procedure, Rule 59 (e) provides that: "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."

Further, South Carolina Rules of Civil Procedure, Rule 60(b) provides in pertinent part that: “On motion and upon such terms as are just, the court may relieve a party of his legal representative from a final judgment, order, or proceeding for the following reasons: **(1) mistake, inadvertence, surprise, or excusable neglect.**

As indicated in the concurrently filed motion for disqualification of the Honorable Judge Hughston, Plaintiffs want to prosecute this case, and they bring this motion in good faith to ensure that they are not prejudiced and that future appeals become unnecessary.

However the court’s form 4 order of October 19, 2017 denying plaintiffs’ motion to change venue, etc. gives favor to Defendants’ issues of preference for location based on their age, but doesn’t consider the constitutional and statutory protections and mandates afforded plaintiffs. Plaintiffs are citizens of California who have expended untold monies to prosecute this matter in good faith regarding their loved one, Alice Shaw Baker. The will contest and removal actions are important and must be decided by an impartial judge and jury. The issues raised in this motion for consideration rise to the level of prejudice to plaintiffs and as such this court must reconsider and grant the motion.

Summary of the basis for the court’s ruling , and the reasons for reconsideration, is that:

1) A party’s popularity

While plaintiffs certainly agree that this is not the basis for change of venue. The role of an acting judge who is the prime witness in the case before a judge that he had ex parte communications with is not merely a

Moreover, the defendant Bessie Huckabee failed and refused to abide by the judge’s order to obtain a bond, with full knowledge and participation of her attorney, Peter Kouten.

Under either scenario, Peter Kouten’s role as a judge, witness, head of mental health court create a prejudicial environment for plaintiffs. The supreme court *sua sponte* found disqualification, while

their order does not address the will contest case. As indicated below, immediate appeal of this order is mandated because it interferes with the mode of trial and denial of a fair jury trial.

Plaintiffs' contend that this ground mandates the grant of the motion, and the authorities provided by the court are insufficient.

2) the Parties can participate in the jury selection process;

As indicated below, this protection is insufficient. Peter Kouten, as judge, deals with the mental health, drug, and estates of the citizens, which as indicated in the moving papers also involves law enforcement and government agencies.

This too mandates the grant of the motion. Plaintiffs' ability to determine their dealings and the scope of the authority will merely complicate the case.

3) The time from the initial time setting for trial ;

The time from filing until now is unfortunate, but was necessary based on the scope of the arguments in this case and the abuse of the defendants.

4) The time since the court set the matter for trial;

Plaintiffs have never veered in their objection to setting this matter for trial, due to the related matters in this case. They are still before the Supreme Court, and are not limited to the objections and disqualification of counsel. They deal with the core relationship and role of Bessie Huckabee as her appointment is questioned with the earlier appointment of a special fiduciary. It also implicates her failure to get a bond.

Plaintiffs should not be denied their statutory, legal and constitutional rights based on this court's determination that the case is too old. It has been fully prosecuted to protect the rights of plaintiffs.

5) The age of the elderly litigants;

It is true that Betty Fisher is aging, however as stated this only benefits Bessie Huckabee. Here, the probate matter, for which she is personal representative is already transferred to Beaufort, therefore she can complain that the transfer is too far. Plaintiffs have to travel from California, and so to benefit their aunt/great aunt's estate.

Plaintiffs object to the courts position favoring Defendants.

6) Age of the case.

As earlier stated, the age of the case is proper based on the activities and necessary appeals. This court took no sua sponte action to protect the estate when Bessie Huckabee failed to get a bond, but Plaintiffs have had to litigate the propriety of this in the Supreme Court

The arguments set forth below also reference the issues related to the need to disqualify Judge Hughston which also mandates transfer.

A. Judge Hughston must recuse himself or be disqualified as set forth herein.

The Code of Judicial Conduct provides:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(iii) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.”

Additionally, it is well settled that Judges should recuse themselves where questions of impartiality or impropriety are raised. *State v. Cheatham*, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002).

In this case, as stated above, Peter A. Kouten had *ex parte* communications with Judge Hughston. Peter A. Kouten is the primary witness for Defendants in this case. Peter A. Kouten is now an Associate Judge of the Charleston County Probate Court. The Probate Court of Charleston has been disqualified from hearing the underlying probate case. Nevertheless, these prior communications with a witness who now is a judge in the same Court creates an actual ethical question. The underlying case was removed from the Probate Court, and Plaintiffs contend that the Supreme Court's decision to appoint a Special Judge from Beaufort County creates an inference that disqualification is necessary in this case. This coupled with the *ex parte* communication and standing as a judge mandates recusal, and/or disqualification in this case.

Submission of a proposed order without sending a copy to opposing counsel is an *ex parte* communication after the effective date of Rule 5(b)(3), SCRCP. *First Financial Ins. Co. V. Sea Island Sport Fishing Society, Inc.*, 327 S.C.12, 490 S.E. 2d 257 (1997). Peter A. Kouten's failure to serve plaintiffs with the *ex parte* proposed order violated Rule 5(b)(3), SCRCP, US Const. Amends V and XIV, § 1 (Due Process) and S.C. Const. Art I, § 3 (due process).

//

B. Statutory Stay of proceedings when matters are on appeal.

In this case, there is currently before the South Carolina Supreme Court a petition for writ of certiorari which implicates Bessie Huckabee, her powers and her standing (see Supreme Court, case *Fisher v Huckabee*, Case no. 2017-000743).

The South Carolina Appellate Court rules set forth the general rules and procedures regarding automatic stays, exceptions to automatic stays, and motions to lift automatic stay. (See Rule 241, SCACR; see also *Piedmont Press Ass'n v Record Publ Co*, 156 S.C. 43, 12 S.E. 721(1930), staying appeal pending outcome of appeal in a related case)

The service of a notice of appeal in a civil case stays all matters decided in the appealed order, including the relief granted in the order

As one case stated that a trial judge should grant a motion to stay when a failure to do so would put the moving party “between a rock and a hard place” at no fault of his own (See *Talley v John Mansville Sales Corp*, 285 S.C. 117, 328 S.E.2d 621 (1985))

All of these issues involve substantial rights which may be immediately appealed (See *Price v Peachtree Elec Services, Inc.*, 396 S.C. 403, 721 S.E. 2d 461 (S.C. App.2011).)

Finally, Plaintiffs contend that issues necessary for a determination of the Removal of Bessie Huckabee are still before the S.C. Supreme Court, in *Fisher v. Huckabee*, Case No. 2017-000743. In that case, whether the appointment of a Special Fiduciary and the failure of Bessie Huckabee to obtain a Bond impact this case. It affects whether or not she has standing to appear in this case as personal representative, and may affect the orders that come down in this case. This implicates the immediate appeals under Section 14-3-330 (immediate appeals from orders granting, continuing, modifying, or refusing an injunction.)

The right is lost where a plaintiff fails to seek review. *Edwards v. Timmons*, 297 S.C. 314, 377 S.E. 2d 97 (1988) (where appellant did not appeal the order referring matter to master in equity, she could not complain after final order that she was deprived of her right to a trial by jury), *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (where appellant failed to timely appeal an order referring dispute to master in equity, appellant could not later complain that he had been entitled to a trial by jury).

The purpose of immediate appeal of a right to a particular mode of trial is to preserve a party's constitutional right to trial by jury which would otherwise be lost. The questions of an actual trial is intrinsic. Therefore, this court's decision not to change venue, and allow the matter to be heard by a judge with prior knowledge and who engaged in ex parte communications with the primary witness in this case would impair plaintiffs' constitutional rights.

THEREFORE.

Plaintiffs respectfully request that the court reconsider these issues as stated, and as previously argued, so plaintiffs are not denied their rights and put in the dilemma of having a judge hear this matter who was already involved in the case in such a way as to unfairly prejudice plaintiffs.

RESPECTFULLY SUBMITTED.

JOHN HUGHES COOPER, P.C.

By:

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

shiplaw@jhcooper.com

JOHN TOWNSEND COOPER, Esquire

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2009-CP-10-3010

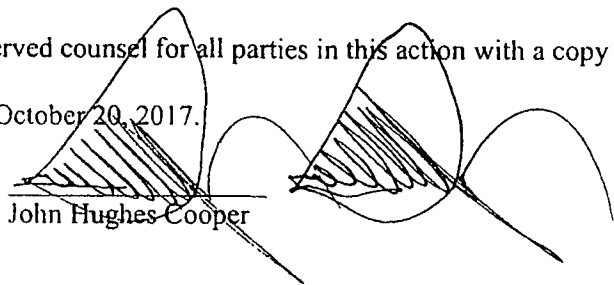
and

LISA FISHER, ESQUIRE (*Pro Hac Vice*)
P.O. Box 91112
Long Beach, CA 90809-1112
562-965-3267
lfisher6736@yahoo.com

ATTORNEYS FOR PLAINTIFFS,
BETTY FISHER AND
LISA FISHER, AS CONSERVATOR FOR
ALICE SHAW-BAKER

CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties in this action with a copy of the forgoing by email and first class mail on October 20, 2017.


John Hughes Cooper

FILED
2011 OCT 23 AM 8:37
JULIE A. HONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher, et al.,)
)
Plaintiffs,)

vs.)

Bessie Huckabee, et al.,)
)
Defendants,)

In the Matter of)
Alice Shaw-Baker.)
_____)

MOTION TO DISQUALIFY JUDGE HUGHSTON

FILED
OCT 23 AM 8:38
CLERK OF COURT
9

Plaintiffs filed this motion and the Rule 59 motion filed herewith at the request of the Court on 5 hours notice (see attached Exhibit) without statutory notices, as these motions involve substantial rights of Plaintiffs and are necessary to preserve Plaintiffs' rights and avoid waiver.

Plaintiffs want to prosecute this case, and they bring this motion in good faith to ensure that they are not prejudiced and that future appeals become unnecessary.

A. Judge Hughston must recuse himself or be disqualified as set forth herein.

The Code of Judicial Conduct provides:

1. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (b) the judge served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
 - ***
 - (iii) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the outcome of the proceeding;
 - (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Additionally, Judges should recuse themselves where questions of impartiality or impropriety are raised. *State v. Cheatham*, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002).

In this case, as stated above, Peter A. Kouten had *ex parte* communications with Judge Hughston. Peter A. Kouten is the primary witness for Defendants in this case. Peter A. Kouten is

now an Associate Judge of the Charleston County Probate Court. The Probate Court of Charleston has been disqualified from hearing the underlying probate case. Nevertheless, these prior communications with a witness who now is a judge in the same Court creates an actual ethical question. The underlying case was removed from the Probate Court, and Plaintiffs contend that the Supreme Court's decision to appoint a Special Judge from Beaufort County creates an inference that disqualification is necessary in this case. This coupled with the *ex parte* communication and standing as a judge mandates recusal, and/or disqualification in this case.

Submission of a proposed order without sending a copy to opposing counsel is an *ex parte* communication after the effective date of Rule 5(b)(3), SCRCP. *First Financial Ins. Co. V. Sea Island Sport Fishing Society, Inc.*, 327 S.C.12, 490 S.E. 2d 257 (1997). Peter A. Kouten's failure to serve plaintiffs with the *ex parte* proposed order violated Rule 5(b)(3), SCRCP, US Const. Amends V and XIV, § 1 (Due Process) and S.C. Const. Art I, § 3 (due process).

B. Statutory Stay of proceedings when matters are on appeal.

In this case, there is currently before the South Carolina Supreme Court a petition for writ of certiorari which implicates Bessie Huckabee, her powers and her standing (see Supreme Court, case Fisher v. Huckabee, Case no. 2017-000743).

The South Carolina Appellate Court rules set forth the general rules and procedures regarding automatic stays, exceptions to automatic stays, and motions to lift automatic stay. (See Rule 241, SCACR; see also *Piedmont Press Ass'n. v. Record Publ. Co.*, 156 S.C. 43, 12 S.E. 721(1930), staying appeal pending outcome of appeal in a related case).

The service of a notice of appeal in a civil case stays all matters decided in the appealed order, including the relief granted in the order.

As one case stated that a trial judge should grant a motion to stay when a failure to do so would put the moving party "between a rock and a hard place" at no fault of his own. (See *Talley v. John Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985)).

Plaintiffs respectfully request that the court consider this issue so plaintiffs are not denied their rights and put in the dilemma of having a judge hear this matter who was already involved in the case in such a way as to unfairly prejudice plaintiffs.

As stated below, Judge Hughston must be disqualified due to issues raised in an earlier ruling. His knowledge and actions involving *ex parte* communications of the order restraining Bessie Huckabee signed on June 9, 2009 create prejudice, wherein plaintiffs' acceptance of him as a trial judge will act as waiver.

Additionally, in light of the underlying pending appeal, this matter is stayed, and as such the trial cannot go forward.

All of these issues involve substantial rights which may be immediately appealed. (See *Price v. Peachtree Elec. Services, Inc.*, 396 S.C. 403, 721 S.E. 2d 461 (S.C. App.2011).)

Finally, Plaintiffs contend that issues necessary for a determination of the Removal of Bessie

Huckabee are still before the S.C. Supreme Court, in *Fisher v. Huckabee*, Case No. 2017-000743. In that case, whether the appointment of a Special Fiduciary and the failure of Bessie Huckabee to obtain a Bond impact this case. It affects whether or not she has standing to appear in this case as personal representative, and may affect the orders that come down in this case.

These matters implicate the right and duty to file an immediate appeal under Section 14-3-330. (immediate appeals from orders granting, continuing, modifying, or refusing an injunction.)

For all of these reasons, this motion to disqualify Judge Hughston is required. Plaintiffs respectfully pray that the court grant the motion in its entirety, and respectfully disqualify Judge Hughston from hearing any further matter in this case.

C. Public Policy reasons mandating immediate appeal in this matter.

For public policy reasons, there are some instances where rulings must be appealed immediately or the right to appellate review of the ruling is lost. Historically, rulings must be appealed immediately or the right to appellate review of the ruling is lost. This rule has applied to two situations:

- (1) where the trial court's order deprives a party of a mode of trial to which the party is entitled as a matter of right; and
- (2) where the order disqualifies a party's trial counsel.

In this case, pursuant to S.C. Code Ann. § 14-3-330(2), when a trial court's order deprives a party of a mode of trial to which it is entitled to as a matter of right, such order is immediately appealable. *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81, Prod. Liab. Rep. (CCH) P 17994 (2008); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000); see also *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 315 S.C. 17, 431 S.E.2d 587 (1993) ("Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable.").

The right is lost where a plaintiff fails to seek review. *Edwards v. Timmons*, 297 S.C. 314, 377 S.E. 2d 97 (1988) (where appellant did not appeal the order referring matter to master in equity, she could not complain after final order that she was deprived of her right to a trial by jury); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (where appellant failed to timely appeal an order referring dispute to master in equity, appellant could not later complain that he had been entitled to a trial by jury).

The purpose of immediate appeal of a right to a particular mode of trial is to preserve a party's constitutional right to trial by jury which would otherwise be lost. The questions of an actual trial is intrinsic. Therefore, this court's decision not to change venue, and allow the matter to be heard by a Judge with prior knowledge and who engaged in ex parte communications with the primary witness in this case would impair plaintiffs' constitutional rights.

Plaintiffs could not anticipate that Judge Hughston would be the trial judge in this matter. Plaintiffs contend that the rules governing judicial disqualification require some delicacy, however their rights cannot be prejudiced by having a judge hear the matter who had *ex parte* communications with the primary witness in the underlay case, Peter A. Kouten who is now an associate probate judge. This coupled with the fact that the issues raised in the underlying appeal

before the Supreme Court regarding Bessie Huckabec and her powers are implicated by this case.

WHEREFORE, for the above reasons and those stated in the Rule 59 Motion filed herewith, Plaintiffs pray that these motions be granted in their entirety.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

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South Carolina Bar 1387

State Bar of Georgia 185986

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lfisher6736@yahoo.com

ATTORNEYS FOR PLAINTIFFS,

BETTY FISHER AND

LISA FISHER, AS CONSERVATOR FOR

ALICE SHAW-BAKER

CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties in this action with a copy of the forgoing by email and first class mail on October 20, 2017.

John Hughes Cooper

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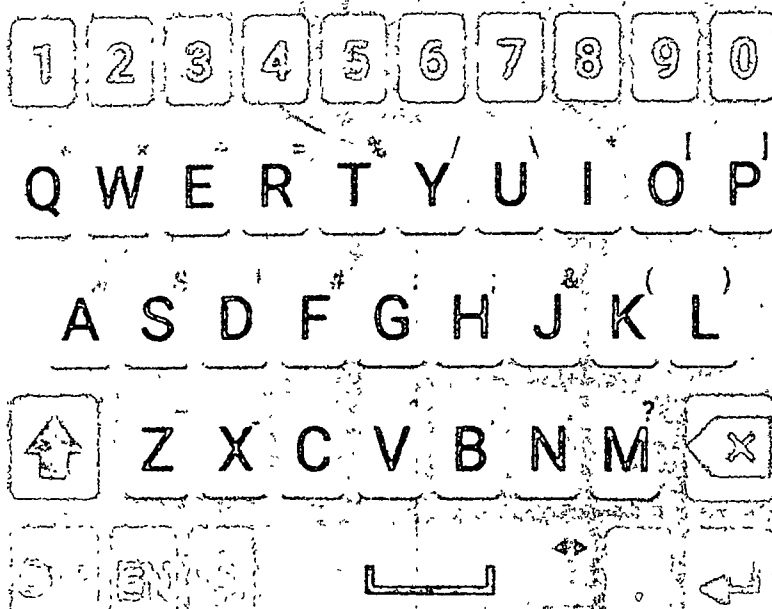
You are in the CP Docket Meeting Chat Room

Lfisher6736 joined.

W._Westbrook_Wills joined.

007940 joined.

Brian Kern joined.





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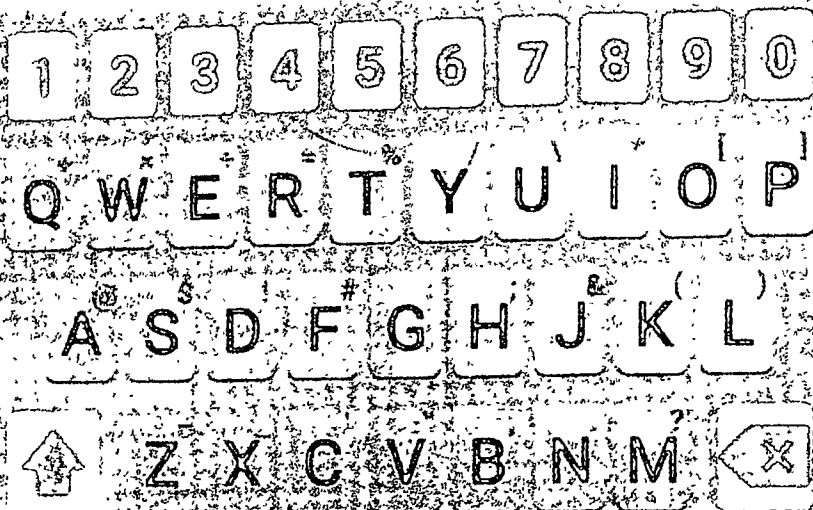


don: We will start the meeting in just a moment.

Manda joined.

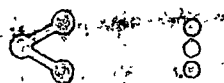
aandrews joined.

don: Judge Jefferson is about to take the bench so one more moment.



91% 6:46 AM

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don: Here we go

don: 09-3010 Baker v. Huckabee

Lfisher6736: This is Lisa Fisher. This is
on the shaw Baker vs Huckabee matter.
Trial in this case cannot proceed on
Monday. It is imperative that we file a
motion to alter/reconsider the motion to

transfer venue. Ahead to Dr...

1 2 3 4 5 6 7 8 9 0

Q W E R T Y U I O P

A S D F G H J K L

Z X C V B N M

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Monday. It is imperative that we file a motion to alter/reconsider the motion to transfer venue. Also due to Prior conduct in this case, we will file a motion to disqualify judge Hughston. If the Motions are not allowed to proceed, we will be filing an immediate notice of appeal due to the substantial prejudice and impairment of Rights in this case

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W. Westbrook Wills: Brook Wills here
for Defendnants

W. Westbrook Wills: Trial can go
forward

W. Westbrook Wills: Defendants ready

101227: Jessica Crowley here for
personal representative Bessie

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don: Judge Jefferson has said this is denied but you can file whatever you would like her to consider and the case will proceed forward on Monday. File your motions today and provide Judge Jefferson with a copy of the motion.

don: 1 for trial

W Westbrook Wills: Defendants ready -

1 2 3 4 5 6 7 8 9 0

don: 16-271 Reder v. Grimes

Lfisher6736: In that case, the the notice of appeal will be filed today.

Unfortunately the Court's decision not to hear the motion prior to trial impairs our rights.

007940: Justin McGee is for the Defendant in Reder v. Grimes

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don Ms. Fisher, please file your motion today and serve a copy on Judge Jefferson. She will contact the parties today.

W. Westbrook Wills: Thanks Don

101227: Thank you

don continued to allow for this to be

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101227: Thank you

don: continued to allow for this to be
reset.

W._Westbrook_Wills left.

don: 16-922 Sanchez v. Oberle

BrianKern: Defendant ready

1 2 3 4 5 6 7 8 9 0

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2009-CP-10-3010

Betty Fisher and Lisa Fisher.....Appellants

v.

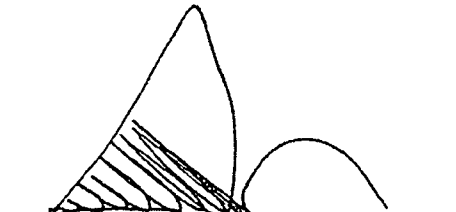
Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd.....Respondents

NOTICE OF APPEAL

Betty Fisher and Lisa Fisher appeal the interlocutory order of the Honorable Deadra L. Jefferson signed and filed October 19, 2017. Appellants received written notice of entry of this Order on October 19, 2017.

Betty Fisher and Lisa Fisher appeal the interlocutory order of the Honorable Deadra L. Jefferson signed ^{Oct. 20, 2017} and filed October 23, 2017. Appellants received written notice of entry of this Order on October 23, 2017.

October 23, 2017



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2009-CP-10-3010

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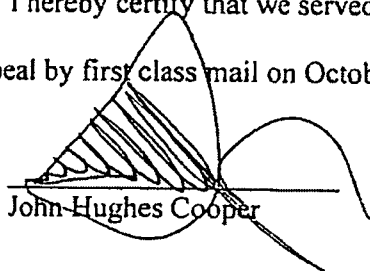
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CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties with a copy of the foregoing Notice of Appeal by first class mail on October 23, 2017.


John Hughes Cooper

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher et al.,)
)
Plaintiffs,)
)
)
vs.)
)
Bessie Huckabee et al.,)
)
Defendants,)
)
In the Matter of)
Alice Shaw-Baker.)
_____)

**PLAINTIFFS' MOTION TO AMEND
COMPLAINT TO CONFORM TO EVIDENCE AT
TRIAL**

COMES NOW the Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") do hereby respectfully move this Court for an Order allowing Plaintiffs to amend their complaint to conform to evidence raised at trial. These issues were raised by the implied consent of the parties and raised by the testimony and evidence.

Plaintiffs further request that the amendment of the pleadings are to include a cause of action seeking Declaratory Judgment regarding reformation of the purported 2001 Will of Alice Shaw Baker. Under the current state of the law, "the will, even if unambiguous, to conform the terms to the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement."

Plaintiffs seek to include the action based on the law in S.C. Code § 62-2-601 which provides in pertinent part:

(A) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

(B) Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform the terms to the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement.

As Counsel has argued throughout this case and the testimony of Kay Slade establishes, the evidence establishes 1) revocation of the will, 2) the copy of the will revoked by Alice Shaw Baker was the only Will, and 3) that the will offered by Defendants includes a contrary intention in the will that the assets be used for the care of her dogs and as Kay Slade testified be used to purchase land for the protection of animals. This is further supported by the excluded evidence from ING, PEBA, and NCIS. It is further supported by the testimony of John Smoak, Candace Rickborn, and Carol Linville. Also, Lisa Fisher was precluded from testifying on this issue.

Rule 15 SCRPC, which governs amendment of pleadings, strongly favors amendments and the court is encouraged to freely grant leave to amend. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005).

It is well established that a motion to amend a pleading is addressed to the sound discretion of the trial judge. *Duncan v. CRS Sirrine Eng 'rs*, 337 S.C. 537, 524 S.E.2d 115 (Ct. App. 1999); See *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (Courts have wide latitude in amending pleadings).

With regard to the language in Rule 15 that envisions prejudice to the adverse party, the

prejudice the rule envisages is a “lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004).

Plaintiffs assert that no prejudice as envisioned by Rule 15 SCRCP will result if the Court should grant Plaintiffs leave to amend the Amended Complaint.

Defendants have been aware of Plaintiffs’ assertion that the original will was not proper, because the monies were not to go to Kay Slade directly but were to be used for the non-existent dog rescues.

Plaintiffs assert that knew or should have known about these causes of action. Amending the plaintiffs Complaint to conform to the evidence and that which will supplement the second phase of the litigation is right and proper, and will not prejudice defendants.

STATUTORY AUTHORITY

Rule 15 (b), Amendments to Conform to the Evidence:

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall upon motion grant a continuance reasonably necessary to enable the objecting party to meet such

evidence. Upon allowing any such amendment or evidence the Court shall state in the record the reason or reasons for allowing the amendment or evidence. In the event the Court should try issues not raised by the pleadings, it shall state in the record all such issues tried and the reason therefor.

1.Note:

This Rule 15(b) broadens the court's power to allow amendments to conform the pleadings to the evidence under Code § 15-13-920; but this is necessary if the philosophy of the Rules, that the pleadings must state the issues, is to be consistent. The Rule also circumscribes the use of amendment at late stages in a trial by requiring the court to grant continuance of the trial as necessary, and stating in the record the reasons for allowing the amendment.

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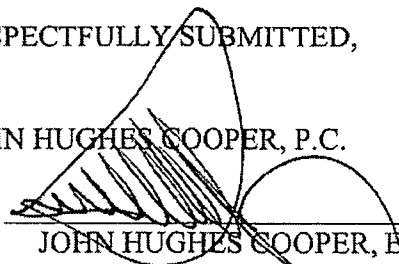
CONCLUSION

As set forth herein, Plaintiffs ask the court to grant this motion in its entirety.

RESPECTFULLY SUBMITTED,

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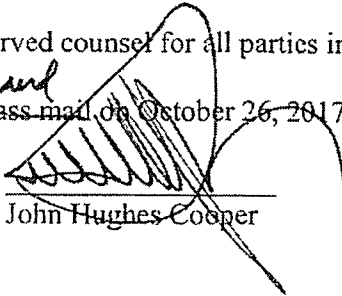
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ATTORNEYS FOR PLAINTIFFS,
BETTY FISHER AND
LISA FISHER, AS CONSERVATOR FOR
ALICE SHAW-BAKER

CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties in this action with a copy of the
forgoing ^{by hand} ~~by email and first class mail~~ on October 26, 2017.


John Hughes Cooper

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher et al.,)
)
Plaintiffs,)
)
vs.)
)
Bessie Huckabee et al.,)
)
Defendants,)
)
In the Matter of)
Alice Shaw-Baker.)
_____)

PLAINTIFFS' MOTIONS FOR THE FOLLOWING:

- 1) **ORDER FOR DATE CERTAIN TO HEAR SEVERED TRIAL ON OTHER CAUSES OF ACTION;**
- 2) **ORDER GRANTING NEW TRIAL**
- 3) **ORDER TO RECONSIDER, ALTER, AMEND ITS DENIAL OF PLAINTIFFS' MOTION TO AMEND ITS COMPLAINT TO CONFORM TO EVIDENCE TO REFORM THE WILL PURSUANT TO S.C. Code § 62-2-601**

COMES NOW the Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") do hereby respectfully move this Court for the following orders:

- 1) **Order for Date Certain to Hear Severed Trial on Constructive Trust, Unjust Enrichment, Promissory Estoppel, Petition to Remove Bessie Huckabee, and Appoint Betty Fisher .**

This court on its own motion, bifurcated the issues on the Shaw Baker Verified Complaint regarding the Causes of action for Constructive Trust, Unjust Enrichment, Promissory Estoppel, Petition to Remove Bessie Huckabee, and Appointment of Betty Fisher.

Plaintiffs' have not had their Trial on these causes of action, and seeks a date certain on the Trial. Lisa Fisher is an attorney in Good Standing in California and has trials in other matter, so she must have a date certain to ensure her availability. Lisa Fisher again asserts a request for compliance with

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JULIE J. ANDERSON
CLERK OF COURT

the American Disability Act to ensure that she can arrange for transportation for Plaintiff Betty Fisher, whose presence is necessary for trial.

This court had authority to grant separate trials on any claim pursuant to Rule 42, SCRPC. This court had the power to create manageable trials or to try the issues in a more efficient order. (See *Giles v. Parker*, 304 S.C. 69, 75, n. 1, 403 S.E.2d 130, 133 n.1 (Ct. App.1991) [approving bifurcated trial].) Further, it is well settled that there is not requirement that the same jury hear the separate issues. (See *Fortune v. Gibson*, 304 S.C. 69, 403 S.E. 2d 674 (Ct. App.1991).)

For all these reasons, plaintiffs request is within this Court's authority.

2) Order Granting a New Trial on the Case, Judgement of October 26, 2017

Plaintiffs also seek new trial pursuant to Rule 59, SCRPC. The court has power to order a new trial whenever necessary to prevent injustice. (See Flanagan, James F., South Carolina Civil Procedure, Third Edition, p. 484) In this case as outlined herein, Plaintiffs contend that the grounds for new trial are summarized to include:

- (a) Judicial errors, in the admission and exclusion of evidence.
- (b) Misconduct of counsel;
- (c) verdict against the weight of the evidence.

These errors are more fully set forth in the motion and affidavit.

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3) **Order to Reconsider Alter, Amend its Order pursuant to Rule 59 which Denied Plaintiffs's Motion to Amend its Complaint to Conform to Evidence to Reform the Will Pursuant to S.C. Code § 62-2-601**

Plaintiffs reiterate their Motion to Amend their Complaint to Conform to Evidence to Reform the Will. From day one, this case has been about restoring Alice Shaw Baker's estate to animal charities, instead the trial was turned into a prejudicial machination that seemed to say "Plaintiffs are doing this for money." Yet, their complaint did not say that, the pretrial discovery did not say that, and the evidence excluded did not say that. The evidence available at trial was that of a woman who committed her entire life to animals, and Defendants' distorted view of her is plastered on the wall as a voiceless "hard" woman who had no family—none of which is true. Amendment of the Complaint to Conform to Evidence (along with the other motions that are part of this new trial motion) would help create the correct picture of Alice Shaw Baker, create an atmosphere of a fair trial, and allow plaintiffs to assert their actions as intended.

These motions are based on this memorandum, the affidavit of Lisa Fisher, and the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Revocation /Will contest of Alice Shaw Baker's will was the only cause of action this court allowed to proceed in this bifurcated trial. This court had made a determination that the case was "too old" and trial was going to take place whether a statutory automatic stay was in place or not— despite repeated allegations of prejudice.

Plaintiffs' efforts to show the true motivation for Alice Shaw Baker's decision to revoke was made into the only forum available, based on the trial court's orders, to obtain the findings the court would allow, but not necessarily which demonstrated the truth as alleged in the Complaint which should have controlled this case.

As alleged, and as argued before this Honorable court, Alice Shaw Baker revoked a copy of her will. This will was the only will in her possession, and the only means for her to set forth her intent. She was not privy to her documents which had been taken away from her. This creates its own legal question which could not be answered in the method permitted at trial: If the original will is NOT available to revoke, and the copy is revoked, does that create the presumption that defendants must prove by clear and convincing evidence that the will was not revoked? No, this natural argument could not be decided, because the trial court limited the action to one of revocation/will contest, and prevented to another day all of the arguments that Alice Shaw Baker established a confidential relationship with Defendants mandating their compliance with her trust instructions.

Nevertheless, the court preserved the bifurcated issues for another day. Plaintiffs' seek a date certain on these other causes of action. Plaintiffs remain in a legal limbo as the court merely heard the first part of the case, and assumed that the closing chastisement of the court that the "case is too old" would cause plaintiffs to bury their head in the sand and go to the burial ground of defeat.

This was the only shape the court permitted, a case where the decedent's words have no meaning. This is contrary to the rules of evidence which permits under S.C.R. Evid. Rule 803(3) and Rule 804 (a)(4), Alice Shaw Baker's voice and intent must be heard to overcome the confusion of the jury who heard only argument that plaintiffs were to get the money. ¹

As this motion demonstrates: 1) a Date certain is necessary for the other causes of action; 2) new trial must be granted as outlined in affidavit and this motion to prevent prejudicial error and the 3) court must reconsider its decision to deny plaintiffs motions to amend the complaint to conform to proof at trial and allow argument based on reformation of the will.

II.

A NEW TRIAL IS WARRANTED WHERE EVIDENTIARY RULINGS, JURY CHARGES AND ERRORS AT LAW INTERFERED WITH A FAIR TRIAL FOR PLAINTIFFS.

Pursuant to Rule 59 (d), SCRPC, a civil trial court may order a new trial within 10 days of the entry of judgment for "any reason for which [the trial court] might have granted a new trial on motion of a party."

At the time trial started, Plaintiffs had filed their Notice of Appeal due to Judge Jefferson's ruling on their Motion to Transfer Venue. Plaintiff Betty Fisher had not traveled to Charleston, because

· Additionally, the court precluded testimony by Lisa Fisher based on the Deadman's Stature, however the statute does not apply when the witness' interest will not be affected. (See *Estes v. Ruff*, 267 S.C. 396, 228 S.E. 2d 671 (1976).) *The witness' interest in not affected when he or she has no interest other than in a representative capacity and that interest is not subject to change by the outcome.* (See *Havird v. Schissell*, 252 S.C. 404, 166 S.E. 2d 801 (1969); *Ex Parte Newton*, 183 S.C. 379, 191 S.E. 59 (1937), emphasis added.)

of this important motion which Plaintiffs believe dealt with substantial rights and required immediate appeal. This court stated that it was going forward with trial, despite Plaintiffs' assertion of automatic stay. (See Rule 241, SCACR) The Court of Appeal did not grant Plaintiffs' Writ of Supersedeas, instead dismissing the appeal. However, in the interim, plaintiffs' requested that the matter be trailed as a reasonable accommodation under the ADA to assist Plaintiff Betty Fisher to attend trial. The Court denied this request on two occasions. Plaintiffs assert this was error and deprived them of a fair trial, and lead to prejudice in front of the jury.

Additionally, this court bifurcated the trial to hear only actions that the court related to the revocation of the will. Plaintiff does not believe that this court decided the issues of Constructive Trust, Unjust Enrichment, Promissory Estoppel, Petition to Remove Bessie Huckabee, and Appointment of Betty Fisher. These causes of action were to be heard another time. Plaintiffs do not waive their request for trial on this matter, and ask for it to be set on a date certain.

As set forth herein, Plaintiffs contend that verdict is against the weight of the evidence, and was based on the improper exclusion of evidence, consideration of improper evidence ,including the 2009 probate order, and improper and incomplete jury charges. Plaintiffs reiterate that the probate court was limited to the following types of orders re Conservatorship, under Section 62-5-408. To the extent that order exceeded the court's jurisdiction, "A void judgment does not create any binding obligation." Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861.

The erroneous rulings at trial relating to evidentiary matters, misconduct of counsel, and closing arguments, each of which alone was significant enough to have affected the jury's decision making process to Plaintiffs' prejudice, including but not limited to the following:

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- a) **Failure to provide reasonable accommodation to allow Betty Fisher to appear, request for 1 to 2 day accommodation and/or to appear on the following Monday October 30, 2017;**

It is the policy of the State of South Carolina to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life in the State. (See South Carolina Code Laws § 43-33-10).²

It is also unlawful for a person or his agent to deny or interfere with the admittance to or enjoyment of public facilities and/or the rights of a disabled person. (see South Carolina Code Laws § 43-33-20, 43-33-20, 4433-530, 43-33-560)

Plaintiff Betty Fisher was out of state at the beginning of trial, based on the expected compliance of the law governing the automatic stay. Upon request, this court did not provide her with time to arrive despite notice that she needed some accommodation to travel to court.

No party would be prejudice by this accommodation, and without it, Defendant was able to argue that Plaintiff Betty Fisher did not care about the proceedings to the jury. This was a prejudicial reference, and was contrary to the law regarding accommodation and participation at trial.

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² At the time that the court proceeded to trial, Plaintiffs had filed a notice of appeal on the issue of Change of Venue. The automatic stay applied pursuant. Adherence with the law would have provided sufficient time to allow Betty Fisher the ability to attend trial without any need for application of the ADA, however this Court did not obey the automatic stay. The Court of Appeals subsequent dismissal of the appeal does not justify this trial court's refusal to abide by the automatic appeal, because Plaintiffs had a good faith belief that substantial rights were involved mandating immediate appeal.

- b) The court's failure to recuse itself based on prior ex parte communication, advocacy on the part of Respondents, prejudicial comments during trial which created a hostile environment for plaintiffs, comments implicating the competency of counsel;**

The Code of Judicial Conduct, Rule 501, SCACR provides that the court should "abstain from public comment about any pending or impending j court proceedings, and require similar abstention from court personnel subject to judicial direction and control." (Canons 3(B) (6).)

The Code requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. (Cannon 2, Rule 501, SCACR; *Simpson v. Simpson*, 377 S.C. 519, 660 S.E. 2d 274 (Ct. App. 2008) In this case, when the court has a persona bias or prejudice concerning a party (favorable or unfavorable). (See Canon 3(E) (1)(a) to (b), Rule 501, SCACR.)

In this instant case, Plaintiffs complained about the ex parte communication with Defendants, during previous proceedings. However, as trial proceeded, other statements were made and rulings which demonstrated an advocacy on behalf of the Defendants, these included introducing the Will for Defendants, obtaining the court clerk to verify the admission of the will, making comments about counsel and the age of the case.

Additionally, Plaintiffs complained that the order of 2009 Alice Shaw Baker's capacity was not controlling. The court in *Gaddy v. Douglass*, 359 S.C. 329, 597 S.E. 2d , 2004 held that when party "fails to plead the matter of testamentary capacity in the contest of the purported revocation of the 1988 Will, we find it was error for the trial court to address and decide the issue, especially in light of Appellants' objection at the commencement of the trial to the trial court's consideration of the matter." Therefore, the court reversed.

Here, Plaintiffs complain that the original Petition for conservatorship/guardianship did not seek any authority to prevent Alice Shaw Baker from revoking her will, that it is contrary to public policy to

preclude a conservatee that right when it was not raised at trial, and that Betty Fisher has a right to raise and contest said finding.³

Moreover, in light of the fact that the underlying order was not requested in the conservatorship, that the underlying order stated that the conservatorship was a "limited" conservatorship, that the order did not include any limitation in the order, nor any evidence that the court required additional testing, the probate court accepted the nomination of Alice Shaw Baker, the question of the validity of the underlying order in excess of the court's jurisdiction, all support Plaintiffs assertion that "a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record." (See *Mallett v. Mallett*, 323 S.C. 141, 43 S.E. 2e 804 (Ct. App. 1996).)

This court's actions raise questions of actual prejudice and demonstrate favoritism to Defendants.

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³ Under 62-5-304, it states:
"The Court shall exercise the authority conferred in this part so as to encourage the development of maximum self-reliance and independence of the incapacitated person's mental and adaptive limitations or the conditions warranting the procedure.

(c)The court at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person may limit the powers of a guardian otherwise conferred by this article an create a limited guardianship. **A limitation on the statutory power of a guardian of an incapacitated person must be endorsed on the guardian's letters or, in the case of the guardian by parental or spousal appointment, must be reflected in letter issued at the time a limitation is imposed...**"

The letters of conservatorship did not include any such finding, nor does the record reflect that Alice Shaw Baker received any actual notice of any order preventing her from revoking a will. Betty Fisher was not a party to the underlying case.

c) Improper Exclusion of Evidence as Stated herein, and Improper Consideration of the 2009 order and records in the conservatorship cases.

It is well settled that the trial judge is never permitted to second-guess the jury in their fact finding responsibilities unless compelling reasons justify invading the jury's province. (See *Watson v. Ford Motor Co*, 389 S.C. 434, 699 S.E. 2d 169 (2010).)

As gatekeeper, the trial court is required to make certain preliminary findings regarding admissibility requirements, such as qualification of experts, reliability of the substance of the testimony, and substantial similarity of alleged similar incidents before a jury may hear the evidence. If these preliminary requirements are not met as a matter of law, the trial court may not permit the jury to consider the evidence. (See *Watson, supra.*)

In this case, the trial court precluded evidence which would have assisted Plaintiffs in establishing the intent of Alice Shaw Baker, including but not limited to:

- (1) The court's failure to allow the introduction of my testimony regarding Alice Shaw Baker's statements before and while defacing and tearing copy of will based on the Dead Man's Statute, when the testimony should have been admissible as to capacity, state of mind, and intent (which is a statutory element) and the fact that Lisa Fisher was appearing in a representative capacity;⁴**

⁴ Other legal authority further supports Plaintiffs' reading that Lisa Fisher's testimony was wrongfully excluded with regard to Alice Shaw Baker's communication. Although some evidence may be excluded by operation of the Dead Man's Statute, it may not only be relevant to the issues, but crucial. It may be the only evidence that would permit a fair determination of the case." (Sanders, Alex. *Trial Handbook for South Carolina Lawyers*, § 22.4)d

The court in *McBeth v. Bishop*, 278 S.C. 443, 298 S.E.2d 441 (1982) held that testimony incompetent under Dead Man's Statute is admissible if no objection is made on that ground.

Moreover, if testimony which is incompetent under the Dead Man's Statute is given without objection, it is error to later strike it upon motion of counsel. (See *Stark v. Hopson*, 22 S.C. 42 (1884); *U.S. Fire Ins. Co. v. Macloskie*, 320 S.C. 459, 465 S.E. 2d 759 (Ct. App. 1995)

- (2) **Exclusion of expected testimony of Dr. Waid due to unavailability at trial due to his vacation in Europe, and trailing the case to allow him to testify on Monday, October 30, 2017; (See Rule 803 and 804)**
- (3) **Exclusion of evidence of Alice Shaw Baker's intent to benefit animal charities (Carol Linville, deposition testimony of John David Smoak, III, ING records, PEBA testimony and records);⁵**

The Dead Man's Statute is an exception to the general rule of witness competency, it requires a restrictive reading.

The interest of a witness should be present, certain, and vested, not uncertain and contingent. (See *Sanders v. Bagwell*, 37 S.C.145, 15 S.E. 714 (1892). It must be held by the witness in an individual, not representative capacity (See *Devereux v. McCrady*, 46 S.C. 133, 24 S.E. 77 (1896).)

An attorney who prepares a decedent's will is not precluded by the Dead Man's Statute from testifying as to communications and transactions. (See *Havird v. Schussell*, 252 S.C. 404, 166 S.E. 2d 801 (1969).)

An executor who files a disclaimer can properly testify as to transactions with the testator. (See *Long v. Conroy*, 246 S.C. 225, 143 S.E. 2d 459 (1965).)

The Court in *McLauchlin v. Gressette*, 224 S.C. 296, 79 S.E. 2d 149 held that it was not incompetent for nephews to testify, despite the fact that the beneficiaries of the residuary estate. The Court determined that a witness is disqualified only when it is possible that the interests of the witness may be affected by the "direct legal operation and effect of the judgment." (*Id.*)

The Dead Man's Statute's effect to exclude testimony is disfavored. (See *Brooks v. Kay*, 339 S.C. 49, 530 S.E. 2d 120 (2000).) In this case, the issue of the Dead Man's Statute was asserted by the Court, and not defendants. It was error to prevent plaintiff Lisa Fisher to testify to the conversations and discussions with the decedent Alice Shaw Baker.

⁵ The court excluded evidence related to ING and PEBA and NLIC based on the fact that they were not properly authenticated. However, there is authority that a document can be established by a party's production of its documents from its custody. (See *United States v. Brown*, 688 F.2d 1112, 1115-16 (7th Cir. 1982).)

In this case, all of the documents related to the ING, PEBA, and NIC. were produced by prior parties to the action, and as such these documents executed and completed by Alice Shaw Baker with secondary notations supporting the conclusion that her estate was left to animal charities are essential to plaintiffs' case. Moreover, the records of ING, PEBA and NIC. were *again* authenticated by the deposition testimony. All of these records were essential to Plaintiffs' case, and there is no doubt that they were Alice's records.

Plaintiffs substantially complied with Rule, 32, SCRPC for introduction of the depositions of John Smoak, however the court precluded the use of them at trial due to the court's consistent opposition to allowing any testimony related to the animal charities.

- (4) **Exclusion of evidence related to Dr. Waid's report which was part of the judicial record in the underlying conservatorship case;**

While the Court permitted the order of the probate court which precluded Alice Shaw Baker from making or revoking a will, the court did not permit any report considered in support of said order. (See Rue 201)

- (5) **Exclusion of Plaintiffs' photographic evidence based upon relevance;**

As stated herein, evidence of Alice Shaw Baker's intentions and life related to her dogs was relevant to the issues set forth at trial and to prove Plaintiffs' complain in its entirety.

- (6) **Exclusion of evidence related to Alice Shaw Baker's motive for revoking the will, including but not limited to any discussion related to her past history of caring for animals.**

See section 5.

- d) **Improper Jury Charges Prevented Plaintiffs from a Fair Trial and Require Reversal.**

It is well settled that "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." (*See State v. Martinson*, 388 S.C. 469, 478, 697 S.E. 2d 578, 583 (2010)[internal citations omitted]) The law to be charged must be determined from the evidence presented at trial." (*See State v. Cole*, 338 S.C. 97, 101, 525 S.E. 2d 511, 512

There is no doubt and no prejudice to Defendants to allow plaintiffs to proceed based on their theory of Alice's desires concerning Animal charities. Plaintiffs further sought to amend the complaint to conform to evidence. This entire case is predicated on the theory that Alice Shaw Baker wanted her monies to go to animal charities, and as such the denial of evidence that demonstrated these gifts is prejudicial.

(2000).a party. Also, the Supreme Court reversed a case , because the jury instructions n the case had the potential to confuse the jury. (See *Berberich v. Jack*, 392 S.C. 278, 709 S.E. 2d 607 (2011).)

An erroneous jury instruction results in reversal when it causes prejudice to a party. The charges requested by plaintiffs were necessary to ensure that the jury was not confused as to the authority of the probate court, the right of a conservatee to execute a will, the import of the letters not including a limitation on Alice Shaw Baker, the correct mental capacity of an individual to sign a will, and the court's decision to charge the jury regarding Dr. Waid's failure to appear.

As such, reversal is mandated regarding the following jury charges.

- (1) Failure to charge the jury with regard to the ability of a conservatee to make a will/revoke a will;⁶
- (2) Failure to charge jury that a Prior adjudication of an individual's incompetence does not conclusively bind the trial court in another action where the person's competency is directly at issue. (*Church v. Trotter*, 278 S.C. 504, 506, 299 S.E.2d 332, 333 (1983).)
- (3) Improper charge to the jury over Plaintiffs' objections based on mental capacity; refusal to charge lesser capacity needed to make or revoke a will;
- (4) Improper charge to the jury over Plaintiffs' objections based on mental capacity; refusal to charge lesser capacity needed to make or revoke a will, as compared with capacity to contract;

⁶ One of the Charges requested by plaintiffs:

"A person is not incompetent to make a will because he has been adjudicated to be of unsound mind, or insane, or has been confined in an institution for the insane. This is true where a person has been adjudicated to be incapable of managing his property, or handling his affairs, whether the adjudication of incompetency precedes or follows the execution of the will. It is also true where a guardian or conservator of one's person or estate has been appointed, in the absence of a controlling statute, and unless the order appointing the guardian is based on an express finding of some mental defect. (*In re Estate of Weeks*, 329 S.C. 251 (1997), 495 S.E. 2d 454.)

- (5) Improper Jury Charge without allocating time to object, commenting upon failure to call Dr. Waid.

e) The effect of Other Rulings Interfered with Plaintiffs' right to a Fair Trial, and Mandate the Grant of this Motion:

- 1) Judge Jefferson's failure to transfer venue based on Attorney Peter Kouten's position as judge and the Supreme court's decision to disqualify the entire Charleston Court from hearing the probate matters.
- 2) Failure to grant Plaintiffs' motion to Amend Complaint to include Cause of action for Reformation;
- 3) Refusal to grant Plaintiffs' motion based upon Dr. Waid's report, to lift the provisions of the Probate Court order pertaining to the prohibition of revoking the will;.
- 4) Efforts to act as advocate for Defendants including Judge Hughston stating that he was requesting the conservatorship case. It is unclear whether the conservatorship case was ever reviewed by Judge Hughston, or if the judge used this information as part of his basis for informing the jury that Judge Curry had a basis for her determination that Alice Shaw Baker could not revoke her will.

- 5) Judge Hughston comments to the jury that the case was too old, that the court's do not generally take this long to resolve the matter, and in effect chastising plaintiffs and counsel at the conclusion of trial.
- 6) The court instructed the jury regarding Dr. Waid's failure to appear without giving counsel an opportunity to object.
- 7) The court instructed the jury regarding the probate court's authority to limit the rights of Alice Shaw Baker and that there was good cause for its determination.
- 8) In an effort to prevent plaintiffs and counsel from making proper objections, the court asked the clerk to research "abuse of process". Plaintiffs believe that the court made this request contrary to the law and when no evidence existed that Plaintiffs or counsel were abusing the process of this court. ⁷

The tort of abuse of process consists of two elements: an ulterior purpose and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." (*Swicegood v. Lott*, 379 S.C. 346, 32, 665 S.E. 2d 211, 214 (2008).) There can be no facts which would justify any allegation against plaintiff that there is an ulterior purpose in this case, nor that Plaintiffs are using process in a "non-proper" manner. Attempting to imply that using the appellate process is wrongful is contrary to the process itself.

Here, the court on two attempts raised the issue of "abuse of process", claimed lack of "credibility" for asserting legal theories, informed the jury that the case was "too old", and giving the jury an instruction without allowing objection, all creating a hostile environment to assert plaintiffs rights. As the court in *Danley Williams v. Moore*, 400 S.C. 90, 733 S.E. 2d 224 (Ct. App. 2012) explained that although these issues must be raised when first become known. However, the court stated "where the tone and tenor of the trial judge's remarks are such that any objection would have been futile." (*Id.*, emphasis added). Moreover, any reference to an attorney's competence are improper and constitute reversible error upon a showing of prejudice to a defendant. The court in *State v. Pace*, 316 S.C. 71, 447 S.E. 2d 186 (1994) found that the judge's remarks (regarding a nice girl/pretty girl) tended to impugn the credibility of counsel and to diminish her and her defense of the appellant in the eyes of the jury.

In another case, the court held that the court's interruption of counsel or witnesses,

- 9) Failure to consider the mini-trial brief on the issue of the language in the Order Appointing Lisa Fisher as Conservator and Guardian on Revocation of Alice Shaw Baker's will and the implications of the void order.

There were erroneous rulings during the court of the trial related to evidentiary matters and closing arguments which combined to influence the jury's decision making process to Plaintiffs' prejudice and also when taken individually or cumulatively were significant enough to have affected the jury's decision making process and resulted in the contrary verdict.

III.

PURSUANT TO LAW GOVERNING MOTIONS TO ALTER, AMEND, AND RECONSIDER UNDER RULE 59 (e), PLAINTIFF REQUESTS THE COURT RECONSIDER PLAINTIFFS MOTION TO AMEND THEIR COMPLAINT TO CONFORM TO PROOF AT TRIAL

Plaintiffs further request that the Court grant their request to amend of the pleadings are to include a cause of action seeking Declaratory Judgment regarding reformation of the purported 2001 Will of Alice Shaw Baker under S.C. Code § 62-2-601.

unsolicited comments, interjected his opinion, and arbitrarily limited cross examination of the witnesses had a "cumulative effect of the lack of latitude the judge allowed in the defense of the witnesses which unfairly prejudiced the defense.

Finally, the court has held that a judge should be careful not to give the jury an instruction which tenders an issue not presented or supported by the evidence, stating that "even a slight remark, apparently innocent in its language, may, when uttered by the judge, have a decided weight in shaping the jury's opinion. (See *State v. Mollison*, 319 S.C. 41, 459 S.E. 2d 88 (Cdt. App.1995).

In this case, Judge Hughston stated that he was requesting the conservatorship case. It is unclear whether the case was ever reviewed by Judge Hughston, or if the judge used this information as part of his basis for informing the jury that Judge Curry had a basis for her determination that Alice Shaw Baker could not revoke her will.

This court did not rule on the appropriateness of amending the complaint to conform to proof related to Alice Shaw Baker's intentions. Grant of this Motion is required to prevent further injustice in this trial, and to ensure that Alice Shaw Baker's desires are respected.

As Counsel has argued throughout this case and the testimony of Kay Slade establishes, the evidence establishes 1) revocation of the will, 2) the copy of the will revoked by Alice Shaw Baker was the only Will, and 3) that the will by Defendants includes a contrary intention in the will that the assets be used for the care of her dogs and as Kay Slade testified be used to purchase land for the protection of animals. This is further supported by the excluded evidence from ING, PEBA, and NCIS. It is further supported by the testimony of John Smoak, Candace Rickborn, and Carol Linville. Also, Lisa Fisher was precluded from testifying on this issue.

Rule 15 SCRPC, which governs amendment of pleadings, strongly favors amendments and the court is encouraged to freely grant leave to amend. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005).

Therefore, Plaintiffs respectfully request that the court reconsider Plaintiffs' motion to amend.

IV.

REMEDY SOUGHT

Plaintiffs respectfully submit this motion and pray that the Court grant their motion in its entirety.

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RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:


JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

shiplaw@jhcooper.com

JOHN TOWNSEND COOPER, Esquire

Federal Court ID 10172

South Carolina Bar 76087

1476 Ben Sawyer Blvd., Suite 11

Mt. Pleasant, SC 29464

843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE (*Pro Hac Vice*)

P.O. Box 91112

Long Beach, CA 90809-1112

562-965-3267

lfisher6736@yahoo.com

ATTORNEYS FOR PLAINTIFFS,

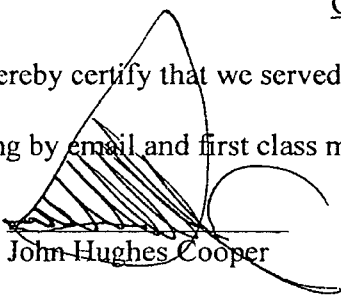
BETTY FISHER AND

LISA FISHER, AS CONSERVATOR FOR

ALICE SHAW-BAKER

CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties in this action with a copy of the forgoing by email and first class mail on November 3, 2017.


John Hughes Cooper

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiffs,

v.

BESSIE HUCKABEE, et al.,

Defendants.

In the Matter of the Estate of
Alice Shaw-Baker.
Charleston County Probate
No.: 2009-ES-10-0378

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-10-3010

**DEFENDANTS' POST-TRIAL
MOTIONS AND INCORPORATED
MEMORANDUM OF LAW**

FILED
2017 NOV -6 PM 4:44
CLERK OF COURT

COMES NOW the Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue, pursuant to S.C. Code Ann. §§ 15-36-10 and 62-3-111, and within 10-days following the verdict by the Jury and entry of the Court's Order of Judgment against Plaintiffs Betty Fisher and Lisa Fisher and in favor of Defendants, and hereby submit their Post-Trial Motions and Incorporated Memorandum of Law respectfully requesting the Court award Defendants attorney's fees and impose such other sanctions as the Court deems appropriate for frivolous litigation on the following grounds:

1) Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher, admitted *pro hac vice*, initiated and continued the above-captioned civil action in bad faith, and for purposes other than securing the adjudication of the claims upon which the action is based;

2) Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher, initiated and continued their lawsuit based on claims and facts no reasonable attorney in the same

circumstances would believe to be warranted under existing law, and would not believe a good faith argument exists for modification or reversal of existing law;

3) Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher, initiated and continued the action, including filing of pleadings and appeals the purpose of which, among others, was to create unnecessary delay, and harass and injure Defendants;

4) In order to effect the above, Plaintiffs, and their attorney John Hughes Cooper and Lisa Fisher, riddled the proceedings with frivolous arguments and pleadings that no reasonable attorney in the same circumstances would believe were warranted under the existing law and facts of the case, or that a good faith argument could be made under the circumstances based on the same;

5) Throughout the case, Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher, used Court processes and appeals in bad faith to cause unreasonable delay and avoid the proper adjudication of the true issues in the case;

6) Plaintiffs have not been successful with any of the appeals they have brought in this and related matters;

7) Plaintiff Lisa Fisher, with the knowledge and participation of her attorneys John Hughes Cooper and Lisa Fisher, acted unethically, and in direct contravention of the Court's orders and her fiduciary responsibilities in her previous role as guardian and conservator for Alice Shaw-Baker by refusing to provide the Court accountings and spending estate money without authorization after the Court removed her from that role;

8) As a result of the foregoing, Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher were stubbornly litigious and caused substantial and unnecessary delay in securing the adjudication on the merits of their meritless claims;

9) After delaying the adjudication on the merits of the will contest for nearly 8 years, Plaintiff Betty Fisher did not appear at trial; and

10) Plaintiffs, and their attorneys John Hughes Cooper and Lisa Fisher, unnecessarily complicated and prolonged the trial of the underlying action by continuously attempting to present totally irrelevant evidence and testimony to the Court and the jury, which resulted in substantially increased attorney's fees for Defendants.

INTRODUCTION

Alice Shaw-Baker died testate in February of 2009, leaving her Estate to her three best friends of over 40 years. Plaintiffs, who were distant and estranged family members, one of whom had never even met Alice-Shaw Baker prior to her incapacity, brought the present action to contest the validity of Ms. Shaw-Baker's last will from May of 2001. Despite knowing Defendants were named beneficiaries in Ms. Shaw-Baker's 2001 will, and in each of her several previous wills dating back to 1993, and with full knowledge the Probate Court for Charleston County had specifically deemed Ms. Shaw-Baker incapacitated and ordered that she not modify or revoke her existing will (for her protection), Plaintiffs' action alleges eleven causes of action against Defendants including claims that the will was not validly executed, that the will was procured by undue influence and fraud, that Defendants knew of a subsequent will, and that Ms. Shaw-Baker revoked her will (orally). Then, over the following 8 years, Plaintiffs used every tactic imaginable, in bad faith, to forestall the adjudication on the merits of the will contest, the very adjudication which they sought in the first place. Such abusive tactics included, without limitation, a) specifically requesting the Court appoint a special fiduciary to receive the assets of the Estate pending the resolution of the will contest, and then immediately appealing the Court's appointment of that special fiduciary, b) complaining that Peter Kouten had a conflict of interest

in representing Defendants and then moving to disqualify new counsel when Mr. Kouten, out of an abundance of caution, sought separate representation for them (Plaintiffs arguing the certificate of service on new counsel's notice of appearance was defective), c) insisting on a nine-day date certain trial, and then announcing they were not ready proceed at two separate call of the cases on the fallacious argument that issues on appeal prevented the trial from going forward, d) filing a motion to transfer venue and stay all proceedings on the eve of the third specially set date certain for trial and then withdrawing the motion at the hearing of it (admitting their position was incorrect), and then moving for reconsideration when the Court denied the motion, and then filing a notice of appeal of the denial of reconsideration, e) filing a motion to disqualify Peter Kouten's replacement counsel essentially on the basis that they knew each other, and f) filing a last minute motion to disqualify Judge Hughston as trial judge on the argument that some 8 years earlier, Judge Hughston had received an e-mail from counsel for Defendants on which Plaintiffs were not immediately copied. Such tactics by Plaintiffs and their attorney served to delay the proper adjudication of the will contest so long that one of the named beneficiaries, Sandra Byrd, passed away before the case was ultimately resolved, and the will upheld.

When the case finally went to trial, despite Plaintiffs' best efforts to put it off again, Plaintiff Betty Fisher did not even show up. At the close of Plaintiffs' evidence they had effectively abandoned every one of their 11 causes of action, with the exception of one: that Alice Shaw-Baker revoked her will. Plaintiffs claimed, for the first time at trial (their pleadings only allege Ms. Shaw-Baker indicated orally that she wanted to revoke her will) that on or about January 1, 2009, Alice Shaw-Baker tore up a copy of her will with the express intention of revoking it. Plaintiffs advance that novel theory despite their absolute knowledge of the

Charleston County Probate Order entered in November of 2008 specifically prohibiting Ms. Shaw-Baker from revoking or modifying her will in any way. Plaintiff Lisa Fisher and counsel for Plaintiffs are both attorneys, and Lisa Fisher practices in the area of probate and conservatorships, and they both, presumably, understand and know the import of an order of the Court. Nevertheless, after 8 years of delay, Plaintiffs' only argument at trial to support invalidating the will was that Alice Shaw-Baker revoked her will after such time as she was deemed incapacitated by the Court to revoke her will. Of course, after the Court properly instructed the jury on the law regarding revocation of wills, they returned a verdict in favor of Defendants, upholding the will.

Plaintiffs' frivolous action, arguments, and delay tactics substantially and unreasonably prolonged the action, resulting in inordinate attorney's fees for Defendants totaling \$111,842.42. That amount is believed to represent over 50% of the entire Estate of Alice Shaw-Baker, and an amount Defendants needlessly incurred defending against Plaintiffs' frivolous and vexatious claims. Not only were Plaintiffs ultimately unsuccessful in proving the claims they vigorously and affirmatively asserted over 8 years, in the end they failed to even present any evidence whatsoever in support of them.

Defendants have been clearly damaged as a result of Plaintiffs' frivolous claims and stubborn litigiousness and respectfully request the Court award them the attorney's fees they needlessly incurred, and any other sanctions Court deems appropriate, pursuant to the following two statutes:

A. S.C. Code Ann, § 15-36-10 – South Carolina Frivolous Proceedings Sanctions Act

S.C. Code Ann. § 15-36-10, Frivolous Civil Proceedings Sanction Act (“FCPSA”) provides that “at the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.”

Under the FCPSA, an attorney or party shall be sanctioned for a frivolous claim or defense if the court finds the attorney or party failed to comply with one of the following conditions:

- a. a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- b. a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party;
- c. a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing the proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

See S.C. Code Ann. §15-6-10(C)(1). “Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in a frivolous claim or defense, the attorney or party, or pro se litigant shall not be sanctioned.” See S.C. Code Ann. §15-6-10(D).

Here, as detailed more fully above, Plaintiffs instigated and continued this civil action for a determination of the validity of Alice Shaw-Baker's will, which, if void for any of the multitude of reasons Plaintiffs claimed, would result in their receiving the Estate, as opposed to Defendants. Plaintiffs filed ancillary actions for which they had no standing except for in the event a jury determined Alice Shaw-Baker's will was invalid. Plaintiffs then embarked on a heyday of appeals related to the issue of their standing to bring any actions on behalf of Alice Shaw-Baker, which appeals they subsequently used to delay the trial of the will contest; the very adjudication of which would determine all other issues.

Under the facts and circumstances of the present case, as confirmed and attested to by the attached affidavit of Evan Smith, Esq., a reasonable attorney or party would believe Plaintiffs' claims were frivolous as not reasonably founded in fact or supported by law, and were interposed merely for delay or for a purpose other than securing the adjudication of the claims upon which the suit was based. [See Affidavit of Evan Smith, Esq. attached hereto as Exhibit "A"].

Plaintiffs' use of Court and appeals process as a means of delay, their incredible appeals of the relief the Court granted at their own request, the unjustifiable and unnecessary objection to substitute counsel for Defendants' and for the Estate, and desperate attempts to transfer venue and disqualify Judge Hughston, all constitute a frivolous abuse of court process, and in each instance were designed to create more delay, and put off the definitive adjudication of the singular real issue. Such frivolous maneuvers resulted in substantial extra expense to Defendants and under which circumstances it would be inequitable to make Defendants shoulder that burden.

Defendants respectfully move the Court for sanctions against Plaintiffs and attorney John Hughes Cooper under S.C. Code Ann. § 15-36-10 for frivolous litigation, including and award of Defendants' attorney's fees as set out in the accompanying affidavits of fees. [See Attorney's Fee Affidavit of Peter Kouten, attached hereto as Exhibit "B," Attorney's Fee Affidavit of W. Westbrook Wills III, attached hereto as Exhibit "C," and Attorney's Fee Affidavit of Jessica Crowley, attached hereto as Exhibit "D."

B. S.C. Code Ann, § 62-1-111 – Authority to Award Costs and Expenses

Defendants additionally and/or alternatively, respectfully move the Court for an award of attorney's fees pursuant to S.C. Code Ann, § 62-1-111. S.C. Code Ann, § 62-1-111 provides that in a formal proceeding, the Court "as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. For the same reasons as state above, Defendants submit that it is entitled as a matter of justice an equity, to an award of their attorney's fees under this applicable Probate Code section, and respectfully requests the Court award such attorney's fees as set out in the attached attorney's fee affidavits.

Dated this 6th day of November 2017

Respectfully submitted,

LAW OFFICE OF
W. WESTBROOK WILLS III



W. Westbrook Wills III
P.O. Box 822
Folly Beach, SC 29439
Tel. (843)-805-6300
wwills@wwillslaw.com
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)

Plaintiff,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate)
No.: 2009-ES-10-0378)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-10-3010

CERTIFICATE OF SERVICE

BY

JULIE A. WILSON
CLERK OF COURT

2017 NOV -6 PM 4:44

I certify that on this date I served a copy of the foregoing Post-Trial Motions and Incorporated Memorandum of Law on each party or counsel of record via United States Mail with sufficient postage to the following addresses:

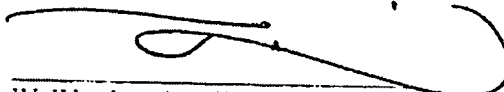
Hon. Mary Frances Jowers
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Lisa Fisher, Esq.
c/o/ John Hughes Cooper
(at Attorney Cooper's address)

John Hughes Cooper, Esq.
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464

Jessica Crowley
Crowley Law Firm
PO Box 30198
Charleston, SC 29417

Dated: November 6, 2017
Folly Beach, South Carolina


W. Westbrook Wills III

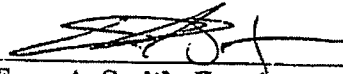
6. Plaintiffs, Lisa Fisher, as Conservator for Alice Shaw-Baker, and Betty Fisher, by and through their attorneys, John Hughes Cooper, Esquire, and Lisa Fisher, Esquire, admitted *pro hac vice*, filed Verified Complaint (Jury Trial Demanded) on April 27, 2009 contesting the Last Will and Testament of Alice Shaw-Baker alleging thirteen causes of action to include: Undue Influence, Fraud, Improper Execution of the Last Will and Testament of Alice Shaw-Baker, and Revocation of the Last Will and Testament of Alice Shaw-Baker, among others.
7. In Plaintiffs' Complaint, it is alleged that Alice Shaw-Baker "instructed her Conservator and Guardian, Lisa Fisher, to revoke Ms. Shaw-Baker's May 21, 2001 Will." (Plaintiff's Complaint ¶ 83).
8. Although Plaintiffs requested jury trial in this matter in 2009, no trial on the merits was had until October 23, 2017, due to Plaintiffs' continued appeals and delays.
9. Upon information and belief, Plaintiffs' sole argument at trial was that Alice Shaw-Baker revoked her Last Will and Testament on January 1, 2009, in the presence of Conservator, Lisa Fisher, Esquire, by tearing up a copy of said will. Plaintiffs failed to call any witnesses to corroborate this account, nor did they offer any evidence to substantiate this account. The sole evidence presented by Plaintiffs was testimony by Lisa Fisher.
10. Upon information and belief, Plaintiff Betty Fisher, intestate heir of Alice Shaw-Baker, failed to appear for the trial.
11. Based on my review of the file in the Estate of Alice Shaw-Baker, 2009-CP-10-3010, Matter of Alice Shaw-Baker, 2008-CP-10-088, and the related appeals and

motions, as well as my experience as an attorney who practices probate law, it is my opinion that a reasonable attorney in the same circumstances would believe that under the facts, his claim in this matter was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law.

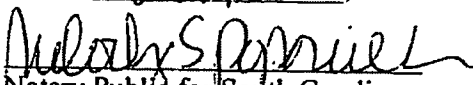
12. Based on my review of the file in the Estate of Alice Shaw-Baker, 2009-CP-10-3010, Matter of Alice Shaw-Baker, 2008-CP-10-088, and the related appeals and motions, as well as my experience as an attorney who practices probate law, it is my opinion that a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; and that a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.
13. It is my opinion, as a probate attorney, that the Plaintiffs in the above matters have made frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts.
14. Therefore, and based on the foregoing, it is my opinion that the actions brought by the Plaintiffs, Betty Fisher and Lisa Fisher, by and through their attorneys, John Hughes Cooper and Lisa Fisher, were frivolous.

(Signature of affiant to follow)

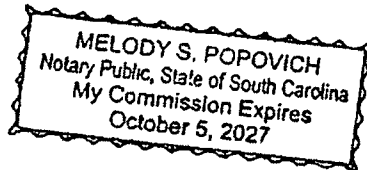
RESPECTFULLY SUBMITTED,


Evan A. Smith, Esquire

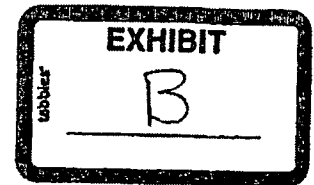
SWORN to before me this 6th
day of November, 2017


Notary Public for South Carolina

My Commission Expires: 10-5-2027



)
)



Re: The Matter of Alice Shaw-Baker
2009-CP-10-3010

Affidavit of Attorney

PERSONALLY APPEARED before me, Peter A. Kouten, Esquire, who being duly sworn deposes and says:

1. I was previously attorney and counselor for Bessie Huckabec, as Personal Representative for the Estate of Alice Shaw-Baker, Respondent, and Bessie Huckabec, Kay Slade, and Sandra Bird, Respondents in the above action the Matter of Alice Shaw-Baker.
2. This case is an estate action wherein Petitioners Betty Fisher and Lisa Fisher, individually and Lisa Fisher, as Conservator, acted in disputing the Personal Representatives duty to marshal assets and who, inter alia, disputed the validity of Decedent's Last Will and Testament in Charleston County, South Carolina. Further, the Petitioners brought actions against the Respondents alleging physical abuse of the Decedent. The Petitioners have pursued no less than five appeals to the South Carolina Court of Appeals and the Supreme Court of South Carolina and have not prevailed on any substantive matters save remand on the issue of conservator fees.
3. That an Exhibit to this Affidavit, which is a listing of my billing in this matter, as well as the costs incurred and reflects the attorney's fees actually incurred through the date of this Affidavit. These fees total \$78,872.43 in connection with this action. The hourly rate charged was \$175.00 per hour.
4. The Supreme Court has set forth the factors to be considered in a grant of attorney's fees. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:
 - a. Nature, Extent and Difficulty of the Legal Services Rendered. This case involved issues of estate administration and probate law. Accordingly, the factual and legal issues presented required the extent of the work performed necessary to adequately prepare.
 - b) Time and Labor Necessarily Devoted to the Case. No less than 421.3 hours were devoted to the case by my firm. This is reflected through the facts stated earlier, as well as from the listing of services performed in the Exhibit. Accordingly, the time and labor devoted to this case were necessary to properly prepare for this case.
 - c) Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina and I am a member of the Charleston County Bar Association and the

American Bar Association. Approximately 90% of my practice consists of Probate matters, including commitment representation, special administrator appointments, probating estates, and contested and uncontested Guardianship and Conservatorships. Accordingly, I submit that I have a high professional standing in general and in this area of practice.

d) Contingency of Compensation. Compensation in this case is based on the hourly rate of \$175.00 per hour.

e) Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Charleston area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Charleston area, from \$125.00 to \$300.00 per hour. As stated earlier, my hourly rate is within this range in this case. Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.

f) Beneficial Results Obtained. This attorney obtained beneficial results for the ward and interested parties. Accordingly, it is submitted that beneficial results were obtained by this firm on client's behalf.

6. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, Peter A. Kouten, Esquire, is entitled to \$78,872.43 in attorney's fees and costs.

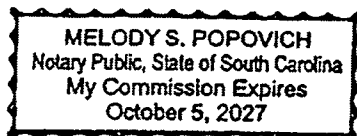
SWORN to before me this 2nd
day of November, 2017.

Melody S. Popovich

Notary Public for South Carolina

My Commission Expires: 10/5/2027

Peter A. Kouten
Peter A. Kouten, Esquire



Kouten Law Firm, LLC
 PO Box 340
 Johns Island, SC 29457

Invoice submitted to:
 Bessie Wyndham Huckabee
 5319 McRoy Street
 North Charleston SC 29418
 USA

February 01, 2010

Invoice #9023

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
2/27/2009 Phone Call from Bessie, regarding death of Alice. She's seeking representation for PR & help probating the Estate.	0.40 175.00/hr	70.00
Phone Call to John Hughes Cooper, regarding original will and death certificate.	0.70 175.00/hr	122.50
3/2/2009 Visit to SC Vital Records for 5 copies of death certificate.	0.60 175.00/hr	105.00
Meet to sign retainer agreement & discuss Estate matters.	1.10 175.00/hr	192.50
3/9/2009 Phone call to BH, regarding funeral service.	0.20 175.00/hr	35.00
3/14/2009 Telephone call with Lisa Fisher. Brief conversation re: assets of estate and her turning them over. Informed me that she would not without Court Order. Informed me that she has Attorney. John Hughes Cooper.	0.20 175.00/hr	35.00
Research tax filings for personal and real property. Records reflect ownership of car and house	0.60 175.00/hr	105.00
3/15/2009 Draft Petition and Proposed order for Removal of Conservator	2.20 175.00/hr	385.00
3/16/2009 Conference with client to sign Petition to Discharge Conservator	0.30 175.00/hr	52.50

Kouten Law Firm, LLC
 PO Box 340
 Johns Island, SC 29457

Invoice submitted to:
 Bessie Wyndham Huckabee
 5319 McRoy Street
 North Charleston SC 29418
 USA

November 01, 2010

Invoice #9020

Professional Services

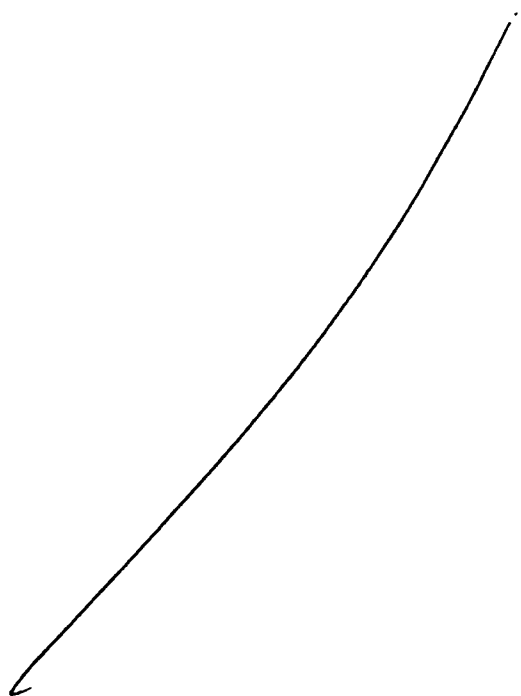
	<u>Hrs/Rate</u>	<u>Amount</u>
3/14/2009 Research tax filings for personal and real property. Records reflect ownership of car and house	0.60 175.00/hr	105.00
Telephone call with Lisa Fisher. Brief conversation re: assets of estate and her turning them over. Informed me that she would not without Court Order. Informed me that she has Attorney. John Hughes Cooper	0.20 175.00/hr	35.00
3/15/2009 Draft Petition and Proposed order for Removal of Conservator	2.20 175.00/hr	385.00
3/16/2009 Conference with client to sign Petition to Discharge Conservator	0.30 175.00/hr	52.50
Interview by phone w/ beneficiary Sandra Byrd. She has received info to Heirs	0.20 175.00/hr	35.00
3/18/2009 Conference with Kay Passailaguere: prior wills and codicils. She will email or fax tomorrow. Conversations re: bequests of house whether to sell house. Candy staying at house	0.40 175.00/hr	70.00
3/19/2009 Review after receipt prior will of ASB	0.20 175.00/hr	35.00
Telephone call with opposing Attorney re forward of prior will	0.30 175.00/hr	52.50
3/25/2009 Phone call from client RE: STATUS. Discussed Telephone call to client concerning JHC issues. Awaiting return call from attorney JHC	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
3/26/2009 Telephone call with opposing Attorney re: Lisa wants [REDACTED] [REDACTED]. Will get with Bessie and Kay to discuss. They threatened will contest based on what Alice wanted to do. They will get us rough estate numbers by Monday	0.80 175.00/hr	140.00
Legal Research for will contest based on specific bequests. SC Probate case law search.	2.60 175.00/hr	455.00
4/2/2009 Files summons and petition with probate court	0.60 175.00/hr	105.00
Preparation of notice for hearing	0.20 175.00/hr	35.00
Serve Summons and Petition on interested parties via US Post, copy and prepare doc's	0.30 175.00/hr	52.50
4/6/2009 email receipt and review and reply email re: SC retirement. copy to Kay and Bessie	0.30 175.00/hr	52.50
4/3/2009 Telephone call with opposing Attorney. Seeking agreements to how money will be spent. No to all requests of Lisa Fisher.	0.80 175.00/hr	140.00
4/13/2009 Receive and review letter from insurance company re JHC letter to insurance company.	0.40 175.00/hr	70.00
Phone opposing counsel re: letter from insurance company re JHC letter to insurance company.	0.20 175.00/hr	35.00
Phone call and conference with Michele at National Life. Faxed them copies of death cert, petitions pending in ct, Bessie's apptment cert	0.70 175.00/hr	122.50
4/24/2009 Phone call from client re; hearing. Who needs to be there. Caregivers want to attend. Bessie and Kay will attend.	0.40 175.00/hr	70.00
sent letter to PR containing publication notice and letter from insurance company	0.40 175.00/hr	70.00
4/13/2009 Receive and review email Kay re: letter from National Insurance.	0.30 175.00/hr	52.50
Phone call to National insurance re: John Cooper letter seeking insurance company to hold life insurance proceeds. Request what they need to allow disbursement.	0.50 175.00/hr	87.50

	<u>Hrs/Rate</u>	<u>Amount</u>
4/13/2009 Draft letter to National insurance re: John Cooper letter seeking insurance company to hold life insurance proceeds. Provided Bessies appointment cert, Petitions in CCPC stating the actual controversy. Specified that disbursement should be made unless Cooper seeks court order	0.80 175.00/hr	140.00
Telephone call to Bessie re: National insurance issue. re: John Cooper letter seeking insurance company to hold life insurance proceeds.	0.20 175.00/hr	35.00
email to Kay re: National insurance issue.	0.10 175.00/hr	17.50
4/17/2009 Received and reviewed letter from National insurance stating they would disburse life insurance	0.30 175.00/hr	52.50
4/29/2009 Rec'd phone call from Sandra Byrd re: letter from Lisa Fisher stating estate issues, undue influence on Alice in procurement of W and T	0.30 175.00/hr	52.50
Receive and review Summons and Complaint from John Hughes Cooper	1.30 175.00/hr	227.50
Receive and review email from Kay Pass. Return email re: meeting.	0.20 175.00/hr	35.00
Phone call from Kay re: summons and complaint	0.30 175.00/hr	52.50
Phone call to client re: journals, TRO, Jane has a copy of Lisa's tr to Doris. Fight this.	0.40 175.00/hr	70.00
5/4/2009 Conference with clients Kay, Bessie and Sandra.	3.60 175.00/hr	630.00
Draft Motion for TRO	1.20 175.00/hr	210.00
Research statutes and case law	2.20 175.00/hr	385.00
5/5/2009 Phone call attny Mitchum re association in this matter. He agreed to attend hearing and assist in litigation	0.40 175.00/hr	70.00
Research estate of John Lucas, relative of Lisa Fisher, re GC action	0.60 175.00/hr	105.00
Preparation for hearing, review motion, Preparation and assembly of direct Bessie, cross-examination of Lisa Fisher, opening and closing argument, research statute and case law.	6.20 175.00/hr	1,085.00

	<u>Hrs/Rate</u>	<u>Amount</u>
5/6/2009 Conferencew/ Bessie and possible witnesses pre-hearing	1.00 175.00/hr	175.00
Hearing/ conferencew/ judge. Ruling in our favor- removal of LF as conservator	1.20 175.00/hr	210.00
Return call opposing counsel	175.00/hr	NO CHARGE
Rec'd call Attorney Cooper discussed Mondays hearing, possible terms of settlement, negotiations as to PR, Special Administrator and possible consent to terms	1.40 175.00/hr	245.00
Draft Order of removal of Conservator Forward draft to Attny Cooper for review.	1.10 175.00/hr	192.50
5/9/2009 Research TRO caselaw	3.20 175.00/hr	560.00
5/10/2009 Trial preparation for TRO and Removal to Circuit Court	2.40 175.00/hr	420.00
5/11/2009 Hearing for TRO and Removal to Circuit Court	2.20 175.00/hr	385.00
deliver Order to Court and receive signed Orders, certified	0.40 175.00/hr	70.00
5/12/2009 Telephone call with opposing Attorney re: removal and TRO. Indicate that Bessie will open an estate account to receive proceeds of estate from conservator.	0.40 175.00/hr	70.00
5/13/2009 Phone call to client re opening estate account.	0.20 175.00/hr	35.00
5/18/2009 Receive and review Motion for Temp Injunction	1.20 175.00/hr	210.00
Research/ hearing Prep for Motion for Temp Injunction	2.20 175.00/hr	385.00
review record at RMC POA book R267 P092	0.60 175.00/hr	105.00
5/20/2009 Draft memo, research caselaw and forward memo to court	6.20 175.00/hr	1,085.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
5/26/2009 Receive and review Lisa Fisher application for temporary admission to practice law in SC	0.30 175.00/hr	52.50
Receive and review Kay Passailaigue email re life insurance proceeds	0.20 175.00/hr	35.00
Receive and review CCPC Order granting Lisa Fisher extension for 90 dys	0.20 175.00/hr	35.00
5/28/2009 Draft and file Motion to Reconsider and Motion for Modification of Temporary Injunction	1.60 175.00/hr	280.00
Copy and Deliver by mail Motions to all interested parties	0.40 175.00/hr	70.00
Copy and Deliver by mail notice of hearing to all interested parties	0.40 175.00/hr	70.00
6/1/2009 Draft answer to Petition	1.80 175.00/hr	315.00
Draft Memorandum to court	1.10 175.00/hr	192.50
6/7/2009 review file for motion to reconsider	1.40 175.00/hr	245.00
6/8/2009 Hearing on Motion to reconsider	2.20 175.00/hr	385.00
Draft proposed order and submit to court	0.80 175.00/hr	140.00
6/12/2009 Receive and review Court Order for Modification	0.40 175.00/hr	70.00
Copy, prepare and draft cover letters to all parties the Court Order for Modification)	1.60 175.00/hr	280.00
6/14/2009 Correspondence letter Bessie, Kay and Sandra re: next steps, Certs of Appt, Bond, Fed ID and Bank acct, secure the house)	0.80 175.00/hr	140.00
File for extension to deliver Inventory and Appraisement to CCPC	0.40 175.00/hr	70.00
6/15/2009 File with IRS for estate EIN Number	0.60 175.00/hr	105.00

	<u>Hrs/Rate</u>	<u>Amount</u>
6/15/2009 Phone call to Bessie re meeting to open bank acct.	0.20 175.00/hr	35.00
6/18/2009 Meeting w/ Bessie to open estate account	1.20 175.00/hr	210.00
6/19/2009 Draft memo opposing Lisa Fishers Prølac Vice Application	1.20 175.00/hr	210.00
Draft and deliver Motion to Reconsider Prølac Vice Application	1.60 175.00/hr	280.00
6/23/2009 Receive and review Appeal of TRO Reconsideration	0.30 175.00/hr	52.50
Receive and review Motion to Set Aside Order of Informal Appointment	0.60 175.00/hr	105.00
6/26/2009 Copy and deliver to all parties Motion to Reconsider Prølac Vice Appointment	0.40 175.00/hr	70.00
7/1/2009 Phone call from client re: bond issues and bond procurement	0.40 175.00/hr	70.00
7/7/2009 Phone call from client re: denial of bond procurement	0.40 175.00/hr	70.00
Phone call from client re: denial of bond procurement	0.40 175.00/hr	70.00
7/15/2009 rec'd funds from Wachovia. Deposit into estate acct	0.40 175.00/hr	70.00
Subpeona's from John Hughes Cooper for estate of ASB	0.50 175.00/hr	87.50
7/22/2009 Phone call from Mac Gibson re GC fees for Lisa Fisher	0.50 175.00/hr	87.50
rec'd and reviewed Petition for Attorneys fees of Lisa Fisher	0.70 175.00/hr	122.50
phone call to CCPC re fees of Lisa Fisher. Please allow for hearing.	0.40 175.00/hr	70.00
7/23/2009 Received and reviewed additional subpeona's from John Hughes Cooper for estate of ASB	0.50 175.00/hr	87.50

	<u>Hrs/Rate</u>	<u>Amount</u>
7/24/2009 draft letter to Bessie, Kay and Sandra readditional subpoena's from John Hughes Cooper for estate of ASB. Make copies and forward to all.	0.40 175.00/hr	70.00
7/25/2009 Research case law on compensation for Guardians and Conservators and reasonableness standard	2.20 175.00/hr	385.00
8/5/2009 Receive and review email Kay Pass	0.20 175.00/hr	35.00
Return email Kay Pass copy to Bessie re: Animal Society	0.20 175.00/hr	35.00
8/10/2009 phone call Fred Baker, attny for Pet Helpers, Motley Rice, re subpoena from John Hughes Cooper.	0.40 175.00/hr	70.00
8/14/2009 Meeting w/ Bessie to procure bond per court order	0.80 175.00/hr	140.00
letter to Bessie, Kay and Sandra containing JHC interogs, requests to produce, Status of case, future meeting	0.60 175.00/hr	105.00
Review Lisa fisher's accounting of services rendered as guardian and conservator. Notes on accounting.	0.50 175.00/hr	87.50
Received and review Consent Orders from defendants National Life and ING seeking right to deposit funds with court and dismiss actions against them.	1.00 175.00/hr	175.00
Correspondence to Bessie, Kay and Re: Consent Orders from defendants National Life and ING seeking right to deposit funds with court and dismiss actions against them. Copy and forward Consents to clients.	0.60 175.00/hr	105.00
Sign consent, draft cover letter and forward to Defendants National Life and ING.	0.40 175.00/hr	70.00
8/26/2009 Draft Motion for Appt SA	1.20 175.00/hr	210.00
Phone call Bessie Huckabee re: can't get Bonded and Motion for Appt SA	0.20 175.00/hr	35.00
Receive and review notice for deposition of John Smoak from JHC	0.20 175.00/hr	35.00
Draft Motion to Appt SA to CCPC	1.20 175.00/hr	210.00
7/31/2009 Telephone call with opposing Attorney re SA appt	0.40 175.00/hr	70.00

	<u>Hrs/Rate</u>	<u>Amount</u>
7/31/2009 Telephone call with Bea Whitten re: appt SA, she would consent to appt	0.40 175.00/hr	70.00
Letters to Bessie, Kay and Sandra re: depositions	0.60 175.00/hr	105.00
9/9/2009 Receive and review Amended deposition dates and cert.	0.30 175.00/hr	52.50
Receive and review creditors Claim	0.30 175.00/hr	52.50
Phone call Cooper re: creditors Claim, Spec Admin, Depositions	0.30 175.00/hr	52.50
Phone call Cooper re: creditors Claim, Spec Admin, Depositions	1.20 175.00/hr	210.00
9/14/2009 To Sandra Bird, regarding rescheduling of deposition.	0.30 175.00/hr	52.50
Phone call to J. Cooper, regarding deposition	0.20 175.00/hr	35.00
Received and reviewed Denise's 1st Interrogs.	1.40 175.00/hr	245.00
9/17/2009 Deposition of John Smoak, regarding John.	1.50 175.00/hr	262.50
Meeting regarding appointment of Special Administrator; progress/interpleader	0.60 175.00/hr	105.00
9/21/2009 Receive and review state budget, interpleader, Ltr of consent request	0.40 175.00/hr	70.00
Sign consent & copy all parties with same.	0.20 175.00/hr	35.00
2/27/2009 Phone Call from Bessie, regarding death of Alice. She's seeking representation for PR & help probating the Estate.	0.40 175.00/hr	70.00
Phone Call to John Hughes Cooper, regarding original will and death certificate.	0.70 175.00/hr	122.50
3/2/2009 Meet to sign retainer agreement & discuss Estate matters.	1.10 175.00/hr	192.50

	<u>Hrs/Rate</u>	<u>Amount</u>
3/2/2009 Visit to SC Vital Records for 6 copies of death certificate.	0.60 175.00/hr	105.00
3/9/2009 Phone call to BH, regarding funeral service.	0.20 175.00/hr	35.00
10/2/2009 Research discovery questions, filings, answers by all Defendants	3.60 175.00/hr	630.00
10/1/2009 Call to circuit court re: Motion to Reconsider Probate Vice	0.20 175.00/hr	35.00
Call from circuit court re: Motion to Reconsider Probate Vice	0.20 175.00/hr	35.00
10/9/2009 Draft Motion to Disqualify Counsel	1.20 175.00/hr	210.00
Draft Motion to Disqualify	0.60 175.00/hr	105.00
10/12/2009 Call JHC re: filing Motion to Disqualify	0.20 175.00/hr	35.00
File with court Motion to Disqualify	0.40 175.00/hr	70.00
10/13/2009 Deliver Will copies to JHC	0.20 175.00/hr	35.00
10/14/2009 Call and confirm depositions to Sandra and Kay	0.40 175.00/hr	70.00
10/15/2009 Deposition of Sandra Bird and Kay Pass preparation and attendance	8.20 175.00/hr	1,435.00
10/16/2009 Deposition of Bessie Huckabee preparation and attendance	4.80 175.00/hr	840.00
10/19/2009 Receive and review email Kay, several photos	0.20 175.00/hr	35.00
10/22/2009 Confer w/ JHC re: Compliance letter. Draft letter to Court re: state of litigation, draft extension and file, copy to HC and Bessie Huckabee	0.80 175.00/hr	140.00
10/21/2009 Send email to Bessie, Kay and Sandra re: any questions they may have for Lisa and Betty	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
10/26/2009 Draft Supplemental Answer to September 2, 2009 Discovery Request	0.80 175.00/hr	140.00
10/28/2009 Finalized discovery requests for Lisa and Betty Fisher	2.10 175.00/hr	367.50
Call to Kay to sign discovery requests for Lisa and Betty Fisher	0.20 175.00/hr	35.00
Call to Bessie to sign discovery requests for Lisa and Betty Fisher	0.20 175.00/hr	35.00
11/2/2009 Receive and review ltr JHC re: Supplement to Sept 2 discovery ltr dated 10/28	0.20 175.00/hr	35.00
11/4/2009 Receive and review deposition transcripts for Bessie, Kay and Sandra	1.40 175.00/hr	245.00
Receive and review transcripts for October 28 hearing appointing Lisa Fisher	2.20 175.00/hr	385.00
Research for JHC outstanding issues of Rule 60b4 motion and Removal of PR	1.50 175.00/hr	262.50
11/5/2009 Review and print case law on execution of will and Removal of PR	0.80 175.00/hr	140.00
11/6/2009 Research interlocutory appeals	0.20 175.00/hr	35.00
11/9/2009 Research attestation clauses and will execution case law	0.40 175.00/hr	70.00
11/14/2009 Research will contest case law and file review.	2.20 175.00/hr	385.00
11/19/2009 Receive and review Plaintiff's brief, research appeal brief and process.	0.70 175.00/hr	122.50
11/30/2009 Review Probate Court file and copy clocked Application for Appointment	0.60 175.00/hr	105.00
12/1/2009 Preparation of pleadings Memo in favor of disqualifying counsel, copy to all parties and file with court	1.60 175.00/hr	280.00
12/2/2009 Preparation for hearing	0.80 175.00/hr	140.00

	<u>Hrs/Rate</u>	<u>Amount</u>
12/2/2009 Hearing for disqualification of counsel	2.70 175.00/hr	472.50
12/3/2009 Ltr JHC re: my copy of ltr to court reporter not received. Please forward	0.20 175.00/hr	35.00
12/11/2009 Review Brief of Appellants	2.20 175.00/hr	385.00
Research Brief for Respondent	1.80 175.00/hr	315.00
12/21/2009 L to Bessie with Respondent's Motion to Dismiss	0.20 175.00/hr	35.00
12/17/2009 L to CCCC re caption carbon copy Cooper/Huckabee, AG	0.40 175.00/hr	70.00
L Bessie re caption	0.20 175.00/hr	35.00
Draft, File, and Serve - Motion to Dismiss Appeal	2.60 175.00/hr	455.00
12/23/2009 Receive and review transcript of hearing. Draft letter to Court Reporter/ payment	0.80 175.00/hr	140.00
Review caregivers journals and take notes. Copy journals for JHC.	2.20 175.00/hr	385.00
1/4/2010 Receive and review letter from Lisa Fisher re CCCC's caption in the estate matter.	0.30 175.00/hr	52.50
12/28/2009 Research all wills and devises in each	2.20 175.00/hr	385.00
Research all doctors listed in the G/C file	2.50 175.00/hr	437.50
1/4/2010 Receive and review letter from JHC re: Motion to Dismiss extension	0.30 175.00/hr	52.50
Receive and review letter from JHC re: Motion to Dismiss extension reply from SC Appeals Court	0.20 175.00/hr	35.00
1/5/2010 Research subpoena statutes regarding JHC duty to provide responses to me.	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
1/5/2010 Draft letter JHC duty to provide responses to subpoenas	0.30 175.00/hr	52.50
1/12/2010 Receive and review interrogatory responses	1.60 175.00/hr	280.00
Receive and review reply to Motion to Dismiss appeal.	0.40 175.00/hr	70.00
1/14/2010 Receive and review final briefs for appeal ???	0.60 175.00/hr	105.00
1/19/2010 Receive and review letter from SC Ct of Appeals re: Cooper and Penny improper case caption	0.20 175.00/hr	35.00
Letter to SC Ct of Appeals re: intent not to file additional responsive pleadings re: motion to dismiss.	0.20 175.00/hr	35.00
2/3/2010 Rec'd letter SC Ct of Appeals re: motion to dismiss denied.	0.20 175.00/hr	35.00
Letter to Bessie re: Motion to Dismiss denial; Conference with client concerning: Kay and Sandra	0.50 175.00/hr	87.50
2/9/2010 Telephone call with opposing Attorney re: 1. 1099 for caregivers Jan 2009, 2. date for Will Contest hearing?, 3. Any additional depositions they have planned?, 4. Responses to subpoenas?	0.50 175.00/hr	87.50
2/22/2010 Draft Motion for Extension to file final brief	0.80 175.00/hr	140.00
Conference with Attny Mike Mitchum re: his acts as SA for estate of [REDACTED] His interaction w/ LF and JHC. Contact w/ Alice and Eliz Spencer during that timeframe. Who did Alice interact w/. Woman's Guild Blessed Sacrament.	0.40 175.00/hr	70.00
2/23/2010 Research National Life File. Call to NLIC re: 3 missing doc's seek deliver of said missing doc's.	0.70 175.00/hr	122.50
2/24/2010 Letter to JHC re: subpoena responses. Second request.	0.20 175.00/hr	35.00
Review file and organize for removal hearing	0.30 175.00/hr	52.50
2/8/2010 Review file and hearing transcript	1.10 175.00/hr	192.50

	<u>Hrs/Rate</u>	<u>Amount</u>
2/8/2010 call to Bessie re progress	0.20 175.00/hr	35.00
call to Kay re progress	0.20 175.00/hr	35.00
3/8/2010 Draft Motion to Supplement Record on Appeal. copy motions for Appeals Court and all parties.	1.20 175.00/hr	210.00
Draft letter and mail to National Life Insurance for missing documents received from JHC	0.30 175.00/hr	52.50
3/10/2010 Call to Will witness Ms. Waters. Call to Will witness Mbladwen. General procedures of execution. Willingness to testify if necessary. Copy will, create binder for trial.	0.90 175.00/hr	157.50
3/23/2010 Letter to JHC re: we will not reply to his return re: Motion to Append Record. Copy to Ct App. By mail and fax	0.40 175.00/hr	70.00
3/24/2010 Review Final Brief for Ct of Appeals. Draft Appendix to Record on Appeal	3.80 175.00/hr	665.00
4/2/2010 Receive and review via email from JHC affidavit of Carol Linville	0.30 175.00/hr	52.50
Receive and review from JHC Subpoena to Wells Fargo re: acct transfer by Bessie Huckabee.	0.20 175.00/hr	35.00
4/13/2010 Review file and draft for Court of Appeals	1.10 175.00/hr	192.50
4/9/2010 Copy and bind Final Brief and Appendix Court of Appeals	2.80 175.00/hr	490.00
5/3/2010 Research issues on fraud, HCPOA delegation of duty. Durable POA never exercised authority as agent. Print cases and review Petition.	1.50 175.00/hr	262.50
5/4/2010 Research Guardian and Conservator fees. Industry standard. Review case law and recent workshops/ studies requirements.	1.10 175.00/hr	192.50
5/5/2010 File extension in CCPC for estate documents	0.30 175.00/hr	52.50
5/7/2010 Phone call from client re filing Motion for Extension. Discussed Appeal issues. Waiting on Court's decision.	0.40 175.00/hr	70.00
5/6/2010 Review CCPC file for G&C. Copy executed court orders for G&C. Research defense for Removal of PR. File extension copy to JHC, BH, CD	1.00 175.00/hr	175.00

	<u>Hrs/Rate</u>	<u>Amount</u>
6/1/2010 Receive and review proposed scheduling order HC and CD. Telephone call to client concerning scheduling clerk CCCC. Scheduling Order not necessary. EM Jowers and JHC re will not consent. R&R Jowers EM re scheduling order. She appears to be opposed as issues are on appeal.	0.60 175.00/hr	105.00
6/2/2010 Research background ASB friends. Witness contact Charlestowne Veterinary Clinic re: ASB capacity. Telephone call to client concerning Ms. Mitchum re ASB capacity.	1.00 175.00/hr	175.00
6/7/2010 Ms. Mitchum call: Blessed Sacrament Church Woman's Club	0.40 175.00/hr	70.00
6/9/2010 Letter to Ms Mitchum re: Thank You. Follow up and witness testimony.	0.20 175.00/hr	35.00
8/11/2010 Review file. Motion for Extension. LF turn over assets. Research financial intermediary when app ct rules. Deposition questions for Lisa.	0.80 175.00/hr	140.00
For professional services rendered	182.80	\$31,990.00
Additional Charges .		
4/2/2009 Delivery Cost and postage		44.50
3/10/2009 Estate opening filing fee		25.00
creditor's notice publication in West Ashley paper		30.00
6/26/2009 Postage delivery of Pro Hac Vice Reconsideration Motion		8.80
Photocopies of Pro Hac Vice Reconsideration Motion		12.50
8/14/2009 Postage delivery of discovery requests		8.80
8/15/2009 Postage delivery of Consents to clients and Defendants		8.80
8/26/2009 Motion to appoint SA filing fee		25.00
Postage delivery of Motion to Appt SA to clients and Defendants		22.50
3/2/2009 Death Certificate Fee for original & copies (5 total).		21.00
10/13/2009 Motion to Disqualify filing fee		25.00
11/30/2009 Photocopy clocked Application for Appointment		2.00

Bessie Wyndham Huckabee

Page 15

	<u>Amount</u>
12/17/2009 8.80	8.80
12/23/2009 Fees for transcript	28.00
2/22/2010 Photocopies of motion and postage to Appeals Ct and all parties	32.00
4/9/2010 Postage, preparation and packaging Final Brief and Appendix Court of Appeals	188.35
Total additional charges	<u>\$491.05</u>
Total amount of this bill	<u>\$32,481.05</u>
Accounts receivable transactions	
4/7/2009 Invoice No. 403	\$1,455.00
4/7/2009 Invoice due	(\$1,455.00)
Balance due	<u>\$32,481.05</u>

Kouten Law Firm, LLC
 PO Box 340
 Johns Island, SC 29457

Invoice submitted to:
 Bessie Wyndham Huckabee
 5319 McRoy Street
 North Charleston SC 29418
 USA

September 30, 2011

Invoice #9078

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
12/7/2010 Rec'd and Review JHC ltr re subpoena for bank records. Review file. Draft Defendant's 2nd request for Production of Documents	1.20 175.00/hr	210.00
12/23/2010 Rec'd and Review letter re: notice of hearing SC Ct. of Appeals. Reply cc: JHS.	0.40 175.00/hr	70.00
1/18/2011 Receive and review Proposed Motion to Remove Counsel from JHC	0.40 175.00/hr	70.00
1/24/2011 Review and research Motion to Remove Counsel. Telephone call to client concerning Bessie, Kay and Sandra re: Motion and hearing Rec'd notice of hearing. Research removal case law.	2.40 175.00/hr	420.00
1/31/2011 Draft Motion to Dismiss and Memorandum of Law.	4.80 175.00/hr	840.00
2/1/2011 Draft Return of Motion to Removal of Counsel. Copy and forward to Court of Appeals.	8.20 175.00/hr	1,435.00
2/9/2011 Receive and review Lisa Fishers Reply to Return.	0.20 175.00/hr	35.00
Receive and review notice from Court of Appeals that hearing is cancelled.	0.20 175.00/hr	35.00
3/21/2011 Receive and review Motion to Remove Counsel from JHC	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
3/23/2011 Letter to Bessie re Order on Motion to Remove Counsel - Court DENIED. Mail copy of Order. Copy to Kay and Sandra. Draft letter to Charleston County Probate Court re: Lisa has not filed an accounting in 12 years.	0.60 175.00/hr	105.00
4/6/2011 File extension to administer estate due to litigation by Lisa. Copy to JHC.	0.20 175.00/hr	35.00
4/20/2011 Received Court of Appeals Order. AFFIRMED. Read Order. Mail copy to Bessie, Kay and Sandra.	0.80 175.00/hr	140.00
4/21/2011 review Charleston County Probate Court file- guardianship conservatorship and estate division. Make copies of documents in file. Research Motion for Release of Assets/ Motion to Appoint Financial Intermediary.	1.40 175.00/hr	245.00
4/25/2011 Call to JHC. They will seek Reconsideration. I told him we want to set up depositions of Lisa and her mother, set a scheduling order with the court re Alice's will.	0.30 175.00/hr	52.50
4/26/2011 Call to Attny Mitchum re: Sasso	0.20 175.00/hr	35.00
5/3/2011 Meeting w/ Bessie re: Bond. Meeting w/ probate clerk re: updated Certificates of Appointment. She wants bond of Bessie pre Order. probate Clerk asked for Petitions to Ct of Appeals and Order	1.20 175.00/hr	210.00
5/5/2011 Received and reviewed from JHC Appellate Petition for Rehearing. review Appellate Court Rules re: Return from Respondent- not required unless sought by Ct of Appeals	1.40 175.00/hr	245.00
5/18/2011 File Motion for Special Fiduciary Chas Co. Probate Court re estate funds.	0.50 175.00/hr	87.50
6/6/2011 Receive and review JHC response to Motion for Special Fiduciary.	0.20 175.00/hr	35.00
6/9/2011 Review file Probate Court. Copy accountings.	0.20 175.00/hr	35.00
6/21/2011 Call from Fred Baker w/ Motley Rice re: progress of Will Contest. (attorney for SPCA)	0.20 175.00/hr	35.00
6/30/2011 Rec'd from CCPC Notice of Hearing re Motion for Special Fiduciary Ltr Bessie. Forward notice of Hearing to JHC, CD, and Bessie	0.30 175.00/hr	52.50
7/7/2011 Rec'd from JHC Writ for Certiorari to SC Supreme Court. Review lower court orders. review return procedures for SC Sup Ct. Copy to Bessie and Kay.	2.20 175.00/hr	385.00

	<u>Hrs/Rate</u>	<u>Amount</u>
7/19/2011 Letter to Bessie, Sandra and Kay re Supreme Court copy of Petition	0.30 175.00/hr	52.50
7/28/2011 Draft Answer to Supreme Court	2.20 175.00/hr	385.00
8/2/2011 Draft Return to Supreme Court and deliver to Court. Copy to JHC, CD, Mary Jowers. Copy BH, SB and KP.	2.20 175.00/hr	385.00
8/16/2011 Review file and prepare for hearing to Appt Special Fiduciary.	1.40 175.00/hr	245.00
8/17/2011 Hearing for Motion to Appt Special Fiduciary.	1.90 175.00/hr	332.50
8/19/2011 Draft proposed Order Appt Special Fiduciary. Forward copy to JHC.	1.20 175.00/hr	210.00
8/30/2011 rec'd JHC response to proposed Order Appt Special Fiduciary. Reply to his letter. Copy to Bessie.	0.60 175.00/hr	105.00
9/6/2011 rec'd JHC proposed Order Appt Special Fiduciary.	0.20 175.00/hr	35.00
9/7/2011 Letter JHC re his proposed Order Appt Special Fiduciary Will he sign a consent order to his version?	0.20 175.00/hr	35.00
9/14/2011 JHC will not Consent. Ltr to Probate Court with Bessie's version of proposed Order Appt Special Fiduciary attached. Copy to JHC and Bessie.	0.30 175.00/hr	52.50
9/29/2011 rec'd signed Order from Probate Court for Appt Special Fiduciary. Copy to JHC and Bessie.	0.20 175.00/hr	35.00
For professional services rendered	<u>38.40</u>	<u>\$6,720.00</u>
Additional Charges :		
2/1/2011 Copy, Preparation and assembly of and postage for reply.		42.50
8/2/2011 Copies and postage for Return filing SC Supreme Court		54.00
Total additional charges		<u>\$96.50</u>
Total amount of this bill		<u>\$6,816.50</u>
Previous balance		\$33,146.05

Bessie Wyndham Huckabee

Page 4

Amount

Balance due

\$39,962.55

THE KOUTEN LAW FIRM, LLC

PO Box 340
JOHNS ISLAND, SOUTH CAROLINA 29457
TEL: (843) 670-3919
FAX: (843) 559-4102

Invoice submitted to:
Estate of Alice Shaw-Baker

Bessie Wyndham Huckabee
5319 McRoy Street
North Charleston, SC 29418

January 15, 2012

Invoice # 12078

Balance forward		\$39,962.55
10/3/2011	Rec'd Ct Order appt Special Fiduciary Ltr JHC. Ltr H Harvey Copy Bessie	0.5
10/13/2011	rec'd and Review Motion JHC. re reconsideration of SF Appt	2.1
10/13/2011	File Motion for Extension Copy client, JHC	0.2
11/3/2011	Review file. Message JHC re Motion. Meet w/ HH and JR Copy file for HH.	2.2
11/14/2011	Call to JHC re set hearing on will contest. Wants to wait til after appeal	0.2
11/17/2011	Ltr JHC re seeking hearing on Will Contest. Copy to clients	0.3
11/28/2011	Rec'd from JHC Notice of Intent to Appeal (2nd appeal)	0.2
For professional services rendered @175/hr	5.7	\$997.50
11/3/2011 Copy costs and postage		\$35.50
Total additional charges		\$35.50
Total amount of this bill		\$1,033.00
Balance Due Through Dec. 31, 2011		\$40,995.55

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

Balance Due from previous Invoice #12078 dated January 15, 2012

\$40,995.55

ASB	1/9/2012	Call to JHC re appeals	0.9	
ASB	1/9/2012	Prelim drafts of Brief of Respondents	1.4	
ASB	1/10/2012	Review Briefs of Betty and Lisa appealing Special Fiduciary Order	0.6	
ASB	1/11/2012	Ltr JHC re ltr to ct reporter. Cc HH, JR, Attny General and clients.	0.2	
ASB	1/18/2012	Pay invoice William Roberts court reporter for hearing date 8/17/11 ck 1279	0.1	\$ 139.06
ASB	1/18/2012	Rec'd JHC Notice of Filing Transcript for Appeal	0.2	
ASB	2/14/2012	Motion for Extension and Proof of Delivery file with court. Copy to JHC.	0.2	
ASB	2/23/2012	Ltr to JHC re bring will contest or I will seek hearing via motion. Rec'd ltr protective order HH	0.2	
ASB	7/16/2012	Call to Heyward Harvey re Appeal of Fiduciary ASB Hasn't heard anything.	0.2	
ASB	7/18/2012	Draft (3) Orders Dismissing Appeals for lack of filing Motion for Hearing	1.1	
ASB	7/18/2012	Review open Complaints and appeals. Review probate and GC file	1.8	
ASB	8/1/2012	Rec'd Denial of Writ from SC Sup Ct. Copies to all with letter. [REDACTED] all issues and close estate	0.3	
ASB	8/1/2012	Rec'd from Cooper Objections to Dismissing Appeal. Review Objections	0.6	
ASB	8/23/2012	Draft and file motion for extension in estate	0.2	
ASB	9/10/2012	Review CCPC GC file for for final Accounting Draft IGA Call to Bessie. Mail for review.	2.6	
ASB	9/11/2012	Rec'd Consent Scheduling Order JHC. Signed and returned. Call from Bessie re IGA, signed copy	0.4	
ASB	9/14/2012	File IGA with Circuit Court. CC cover letter to BH, JHC, CO, Henry McMaster	0.3	
ASB	9/18/2012	Rec'd signed Consent Order Forward copy w/ letter to Bessie.	0.2	
ASB	11/28/2012	Motions hearings on Motion to Dismiss and SJ Also hearing on Disq of Counsel	2.8	
ASB	12/7/2012	Rec'd Supplemental Memorandum and reviewed same regarding jurisdiction and right to bring action	1.1	
ASB	12/13/2012	Call to SS to discuss ABS issues and seek counsel on same	0.4	
ASB	7/19/2012	Cvr ltrs re Dismissal of actions. Call to JHC re Motion for Hearing. File Motion for Hearing. Serve parties. Copies and postage file fee	1.4	\$ 42.00

Services Rendered 18@ \$175/hr \$3,150 and \$181.06 Court Costs, claims and expenses

\$3,331.06

Total Due prior invoice

\$40,995.55

Total Due to date

\$44,326.61

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

Client:

Estate of Alice Shaw-Baker

Invoice Date:

May 20, 2013

Balance Due prior invoice (Through 2011).	\$40,995.55
Balance due this invoice (Through 2012).	\$3,331.06
Invoice for Petition to Remove PR (Dismissed)	\$1,775.00
Total Balance due through Dec. 31, 2012	\$46,101.61

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

December 31, 2013

Balance Due from previous Invoice through 2012

\$46,661.61

5/21/2013	Ltr to Bessie and Kay with invoice to date and letter from Court re dismissals	0.3	
5/23/2013	EM form Kay re Candy. Check circuit court- no reply to discrepancy in email. Sent HIPPA Med record req Roper/ St Francis	0.8	
6/5/2013	Ltr to Bessie, Kay and Sandra re Motion to Reconsider	0.3	
6/10/2013	Rec'd Cover letter Motion to Reconsider from JHC	0.2	
6/10/2013	Call from Bessie. She and Kay are meeting with Brook Wills 2 pm on Wednesday. They will park here and walk over.	0.2	
6/12/2013	Review file. Copies for Attorney Wills. Meet with Bessie and Kay w/ Brook Wills	2.9	\$88.50
6/20/2013	Rec'd Med records. Review. Ltr to Bessie re cost of records.	1.1	
7/11/2013	Call from Brook Wills. He will be at hearing. He is representing all 3.	0.2	
7/31/2013	Call to Wills re retainer agreement. Discuss motion hearing	0.3	
8/6/2013	Meet w/ Brook Wills re hearing. Hearing can't til September 2.	1.5	
8/12/2013	Call from Brook Wills, Esq re meeting with JHC, background, his apptment	0.5	
8/13/2013	Call from Brook re his meeting with JHC. Call to Kelsey re brief all cases	1.4	
8/21/2013	Review invoice and file. Pay invoice for medical records.	0.2	\$407.80
Services rendered 9.9 @ \$175/hr			\$1,732.50
Costs			\$496.30
Total due prior invoice			\$46,661.61
Total due to date			\$48,890.41

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

Client:

Estate of Alice Shaw-Baker

Invoice Date:

December 31, 2013

Services rendered 9.9 @ \$175/hr	\$1,732.50
Costs	\$496.30
Total due prior invoice	<u>\$46,661.61</u>
Total due to date	\$48,890.41

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to
Bessie Huckabee
North Charleston, SC 29415

Estate of Alice Shaw-Baker
2009-ES-10

Balance Due from previous Invoice through 2012 \$46,101.61

ASB	2/19/2013	Ltr to [REDACTED] with ASB Brief	03
ASB	3/11/2013	File Motion for Extension ASB Call to JHC re scheduling order	04
ASB	3/12/2013	Motion for Extension to file closing documents	03
ASB	5/9/2013	Rec'd settlement agreement from JHC Ltr to Bessie Sandra and Kay Meet with Bessie and Kay Propose Brock Wills as counsel for beneficiaries	08
ASB	5/13/2013	Yes Review progress	11
ASB	5/15/2012	Ltr to Bessie Kay Sandra re Attorney Wills. Co Brock Wills	03
Services rendered 3.2 @ \$175/hr			\$560.00
Total due prior invoice			\$46,101.61
Total due to date			\$46,661.61

Please forward the below portion of invoice with return payment

Please forward payment to:
KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Client: Estate of Alice Shaw-Baker
Invoice Date: May 20 2013

Balance Due prior invoice (Through 2011)	\$46,101.61
Balance due this invoice (Through 2012)	\$560.00
Total Balance due through May 20 2013	\$46,661.61

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

December 31, 2014

Balance Due from previous Invoice through 2013

\$48,890.41

1/3/2014	Call from Brook Wills re SJ and bifurcation	0.2
1/6/2014	Call to Brook Wills re Motion continuance to Feb 10th roster. JHC protected and Motions hearings re-scheduled.	0.3
1/14/2014	Call from Brook re seeking hearing date. I was not included in email. Brook forwarded to me	0.2
1/15/2014	Rec'd email re reset hearing and request for final hearing date.	0.2
1/18/2014	Rec'd new hearing dates for Motion to Strike and Motion for Bifurcation. Can these be heard on the same day?	0.2
1/23/2014	Received Notice of Appeal from JHC	0.2
1/28/2014	Call to JHC re appeals, motion to bifurcate and appeal of 2012-1332. EM Bessie, BW. Call to Mary Frances Jowers	0.6
2/6/2014	Rec'd and review Brief of JHC. Call to JHC. Withdraw motion to bifurcate. EM parties re withdrawal.	0.4
2/6/2014	Draft and file formal Withdrawal of Motion	0.5
2/7/2014	Call from Brook Wills re progress. EM Kay and Bessie re Dismissal of motion in 09-3010	0.6
2/24/2014	Rec'd Motion to Reconsider. Ltr to Bessie, Kay and Sandra. Cc Brook Wills, Esq. Review Motion. Calendar call to Court	0.7
3/6/2014	Check Circuit Court regarding appeals. Check probate court file. Copy the transcript. Call to JHC re process of appeals	1.9
3/7/2014	Draft and file letters of appearance in three appeals from the CCPC. Copy to Jowers, JHC	0.4
3/17/2014	Review appeals and returned filings. Review court's online records. These are incorrect. Meet w/ Clerk of Court.	1.5
3/20/2014	Rec'd Statutory Compliance Letter. Draft and file Motion for Extension	0.3
3/20/2014	Meet w/ Chas County Clerk of Court. Several misfilings in 2011-7819 and 7821. What is holding up these appeals?	0.6
3/25/2014	Rec'd Notice from SC Ct of Appeals that Lisa Fisher pro hac vice application is granted	0.2
3/26/2014	Appeal hearings rescheduled for June roster	0.2
5/7/2014	Rec'd notice that the appeals hearings will be heard on June 23, 2014 at 9:30 am. EM Brook Wills. EM JHC confirm rec't	0.3

5/21/2014	Rec'd from CCCC notice that JHC seeks continuance of Appeals based on federal ct hearing. Check w/ Brock Wills re does he?	0.3	
6/12/2014	Rec'd Notice of Appeal Order from 2009 CP-10-3010. Call to JHC Did not receive Orders referenced in Appeal	0.3	
6/23/2014	Draft and serve Initial Response to Appeal Initial Brief re 2012-1332 cc Brock Wills	4.2	
7/15/2014	Prep for Appeals hearings	1.2	
7/16/2014	Prep for hearing Meet with Brock Wills, [REDACTED] Heyward Harvey Appeals hearings	2.8	
7/18/2014	Review complaint original and forward to Brock Wills LM JR re open Spec Fiduc Acct	0.4	
7/21/2014	Meet with [REDACTED] re opening estate account	0.2	
7/29/2014	Rec'd and copy to file ltr from SC Court of Appeals re filing Reply Brief	0.2	
8/14/2014	Call JHC to confer Review motion for hearing File and deliver to all parties cc Bessie Filing fee	0.2	\$25.00
8/14/2014	JCH Motion for Hearing	1.0	
9/6/2014	Review Record on Appeal Final Brief and Draft and forward Final Respondent's Brief Copies and Postage	4.0	\$100.00
9/9/2014	JCH print Orders freezing assets. ltr to [REDACTED]	0.7	
9/16/2014	Call from HH re EIN Call to Bessie re estate en Does she still get bank statements? EM [REDACTED] and HH	0.4	
10/2/2014	Rec'd and copy to file Notice of Appeal for 3 appeals from conservatorship appeals to CCCC	0.4	
10/9/2014	Draft and file Motion for Extension	0.2	
10/20/2014	Call to JHC re continuance of motion for hearing. Call to SC Court of Appeals re caption. Ltr to all parties with caption change	1.1	
10/21/2014	Draft and file with Court of Appeals caption correction and Certificate of Counsel	0.6	
10/22/2014	Call from Brock Wills re Motion for Hearing He is protected from 11/10-11/15 Calendar reset hearing	0.3	
Services rendered 29.0 @ \$175/hr		\$5,075.00	
Costs		\$125.00	
Total due prior invoice		\$48,890.41	
Total due to date		\$54,090.41	

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

Client:

Estate of Alice Shaw-Baker

Invoice Date:

December 31, 2014

Services rendered 29.0 @ \$175/hr	\$5,075.00
Costs	\$125.00
Total due prior invoice	<u>\$48,890.41</u>
Total due to date	\$54,090.41

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

December 31, 2015

Balance Due from previous Invoice through 2014

\$54,090.41

1/12/2015	Rec'd Order for extension of initial brief filing by Appellants These are for 3 conservatorship appeals	0.3	
2/4/2015	EM from Chas Ct re Motion for case 3010 The case is on appeal. Cannot schedule yet Reply to all.	0.2	
3/24/2015	Rec'd notice of hearing for Motion EM re action is under appeal. Please reschedule.	0.2	
4/6/2015	Rec'd 3 Orders from SC Ct App re Extension for initial brief. Copy to file.	0.2	
4/21/2015	Rec'd Order for Extension.	0.2	
5/5/2015	JCH rec notice from Ct of Appeals	0.2	
5/8/2015	JCH draft Motion for Ext on 3 appeals cases, (3) CL to Ct App	1.5	
5/8/2015	Motion for Ext to file initial Respondent's Brief.	0.4	\$75.00
6/5/2015	Prep Respondent's Brief and Designation of Matter for Appeal 2014-002034	4.5	
6/8/2015	Prep Respondent's Brief and Designation of Matter for Appeal 2014-002020	4.5	
6/9/2015	Prep Respondent's Brief and Designation of Matter for Appeal 2014-002028	4.5	
6/11/2015	Copy and file Respondent's Initial Brief. Serve of Counsel for Appellant Postage and copies	0.4	\$22.00
6/11/2015	Copy and file Respondent's Initial Brief. Serve of Counsel for Appellant. Postage and copies	0.4	\$22.00
6/11/2015	Copy and file Respondent's Initial Brief. Serve of Counsel for Appellant. Postage and copies	0.4	\$22.00
6/11/2015	final review of initial brief 2014-2020. Print Final Draft copies	1.2	\$18.00
6/11/2015	final review of initial brief 2014-2028 Print Final Draft copies	1.2	\$18.00
6/11/2015	final review of initial brief 2014-2034. Print Final Draft copies	1.2	\$18.00
6/18/2015	Call from SC Court of Appeals re sending docs under separate cover Resend 2028 and 2034	0.6	\$22.00
6/25/2015	Rec'd Order from Extension to File Appellant's Initial Reply Brief 14-2020	0.2	
6/25/2015	Rec'd Order from Extension to File Appellant's Initial Reply Brief 14-2028	0.2	

6/25/2015	Rec'd Order from Extension to File Appellant's Initial Reply Brief 14-2034	0.2	
6/29/2015	JCH Motion to Dismiss 2014-000175; review case, locate exhibits, review rules of Court	1.5	
7/13/2015	Rec'd Ltr SC Ct of Appeals re oral arguments in October 2015 Reply with conflicts.	0.2	
7/20/2015	Call to JHC re oral arguments. Mail ltr SC Ct APP re oral arguments Call to Brook Wills.	0.4	
7/20/2015	JCH ltr to Ct App re 000175 availability dates	0.3	
8/3/2015	2014-1267 Rec'd ltr cc from SC Ct App re missing Proof of Service Petition for Rehearing Ltr addressed to JHC	0.2	
8/3/2015	2014-1267 Rec'd ltr cc from SC Ct App re Rec'd Petition for Rehearing	0.2	
8/3/2015	2014-2020 Rec'd Motion for Extension to file and serve record on appeal until ct rules on Motion to Strike Copy to File.	0.2	
8/4/2015	2014-1267 Rec'd Proof of Service Petition for Rehearing Copy to file	0.2	
8/4/2015	2014-2028 Rec'd Motion for Extension to file and serve record on appeal until ct rules on Motion to Strike. Copy to File	0.2	
8/4/2015	2014-2034 Rec'd Motion for Extension to file and serve record on appeal until ct rules on Motion to Strike Copy to File	0.2	
8/4/2015	Draft Return for 2014-1267 Petition for Rehearing	3.9	
8/5/2015	Compleat final Return draft and make copies	2.8	\$22.00
8/6/2015	2014-2020 Draft Motion to File Out of Time and Motion to Amend Consolidated Matter Copies, postage and filing fees x 3	1.2	\$60.00
8/6/2015	2014-2028 Draft Motion to File Out of Time and Motion to Amend Consolidated Matter. Copies, postage and filing fees x 3	1.2	\$60.00
8/6/2015	2014-2034 Draft Motion to File Out of Time and Motion to Amend Consolidated Matter Copies, postage and filing fees x 3	1.2	\$60.00
8/6/2015	Call to Brook Wills. Copy and Mail Original and six copies to Ct App Serve parties. Copies and postage	0.6	\$85.00
8/17/2015	2014-1267 Rec'd Wills Return to Petition for Rehearing Review and file.	0.7	
8/25/2015	Motion for Extension Draft and file	0.3	
9/4/2015	Rec'd JHC Acknowledgement of hearing Call to Atty Wills. He received and will respond.	0.3	
9/4/2015	Rec'd Notice of Oral Argument. Respond w Acknowledgement ad availability Cc parties, CCPC to reschedule hearing	0.9	
9/14/2015	Rec'd Ct App return of Acknowledgement. Copy to file	0.2	
9/21/2015	Rec'd Ct App Order Denying Rehearing of the 2014-1267 case Copy to File.	0.2	
9/21/2015	Rec'd letter from SC Ct App w/ Order Dismissing 2014-1267. Copy to file.	0.2	
9/28/2015	Draft Motion for Fees and file	1.2	\$25.00
9/30/2015	Review file for Appeal 14-2020	0.2	
9/30/2015	Review file for Appeal 14-2028	0.2	
9/30/2015	Review file for Appeal 14-2034	0.2	
10/6/2015	JCH file court app documents 2014-175	0.4	

10/8/2015	Review file Ct App 14-175. Create hearing notebooks. Review pleadings. Prep for hearing.	3.1	
10/8/2015	JCH organize court app and lower court docs 2014-175	0.4	
10/12/2015	2014-175 Call from Brook Wills re hearing. Review of case material.	2.9	
10/13/2015	Prep for Ct App oral argument	5.8	
10/14/2015	Oral Argument at Ct Appeals. Travel 4 hours incl	5.6	
10/20/2015	Rec'd EM re Writ for Cert 14-1267. Copy 267 pages and open file. Copy costs.	-	\$133.50
10/22/2015	14-2034 Rec'd Order re GRANT to amend designation. Copy to file. Call to Bessie	0.3	
10/22/2015	14-2028 Rec'd Order re GRANT to amend designation. Copy to file. Call to Bessie	0.3	
10/22/2015	14-2020 Rec'd Order re GRANT to amend designation. Copy to file. Call to Bessie	0.3	
10/27/2015	14-2020 Call to CT App re filing amended Designation	0.2	
10/27/2015	14-2028 Call to CT App re filing amended Designation	0.2	
10/27/2015	14-2034 Call to CT App re filing amended Designation	0.2	
12/9/2015	Rec'd Order 14-175 from Ct App Affirmed. Call Brook Wills Bessie, JHC, Kay Mail copy to KP, BH and John for Sandra.	1.1	
12/18/2015	Draft and File Motion for Cost 14-0175	-	\$25.00
Services rendered 62.6 @\$175/hr		\$10,955.00	
Costs		\$687.50	
Total due prior invoice		\$54,090.41	
Total due to date		\$65,732.91	

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

Client:

Estate of Alice Shaw-Baker

Invoice Date:

December 31, 2015

Services rendered 62.6 @\$175/hr	\$10,955.00
Costs	\$687.50
Total due prior invoice	\$54,090.41
Total due to date	\$65,732.91

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

December 31, 2016

Balance Due from previous Invoice through 2015

\$65,732.91

1/14/2016	Rec'd ltr CCPC re status of the estate. Reply ltr re continued litigation.	0.3	
1/25/2016	Rec'd Order for Extension CCPC for estate. Copy to file	0.2	
5/8/2016	EM from CCCC re our case in next on the roster. We will continue due to appeal to SC Sup Ct	0.2	
5/9/2016	EM from Kay re progress. Reply- still a petition for cert outstanding. Call to Brook re Kay's call.	0.3	
5/12/2016	EM from Brook re should depose Lisa and Betty. Reply re cost of depositions.	0.2	
8/1/2016	Call from Brook Wills re Will Contest and appeals hearing. Discuss depositions of Lisa dn her mother.	0.4	
8/19/2016	Ltr to CCPC re Motion for Extension. Pending Litigation.	0.2	
8/19/2016	Call to Brook Wills re setting hearing date. Call to JHC re depositions of Lisa Fisher and her mom.	0.3	
8/30/2016	Rec'd Motion for Reconsideration of Fees to KLF. Call JHC re Appeal Hearing and Depositions of his clients.	0.2	
12/20/2016	JCH review transcript record and file to create summary of case	1.5	
1/25/2016	14-175 Rec'd Order from SC Ct of Appeals re rehearing. DENIED.	0.2	
12/19/2016	Rec'd Notice of Deposition from JHC. Call to JHC. Call to Brook Wills.	0.6	
12/20/2016	File review. Prep for hearing. Review GC hearing transcript.	2.1	
12/28/2016	Rec'd Order Ct App re found in our favor. Remand re fees. Copy and scan Order to file. EM to Brook Wills	0.4	
12/28/2016	Call to Brook Wills re depositions and prep for hearing. Depose Lisa Fisher/ Betty.	0.3	
9/14/2016	Ltr to Bessie Huckabee and Kay Pass re moving forward and meeting.	0.2	
9/6/2016	Rec'd EM JHC re Amended Scheduling Order. Call from Atty Wills. Open County file and print Scheduling Order. EM to Brook Wills	0.6	
9/6/2016	EM to WW JHC MFJ with Scheduling Order and original Summons and Complaint	0.3	
9/8/2016	EM from WW re Scheduling Order and hearing date January. Call to WW leave message		
9/9/2016	Respond to Oral Argument ltr from SC Ct App. Copy to file, copy JHC. 12 copies x .50	0.2	\$6.00

9/14/2016	Rec'd Application for Pro hac Vice for Lisa Fisher to argue at Ct App for conservatorship Order appeal(s)	0.2	
9/21/2016	Rec'd from SC Ct App Returned and clocked Oral Argument reply regarding availability Copy to file.	0.2	
9/30/2016	Prep for hearing. Review file	1.0	
9/9/2016	Respond to Oral Argument ltr from SC Ct App. Copy to file. copy JHC 12 copies x 50	0.2	\$6.00
9/14/2016	Rec'd Application for Pro hac Vice for Lisa Fisher to argue at Ct App for conservatorship Order appeal(s)	0.2	
9/21/2016	Rec'd from SC Ct App Returned and clocked Oral Argument reply regarding availability Copy to file	0.2	
9/30/2016	Prep for hearing. Review file	1.1	
9/9/2016	Respond to Oral Argument ltr from SC Ct App. Copy to file. copy JHC 12 copies x 50	0.2	\$6.00
9/14/2016	Rec'd Application for Pro hac Vice for Lisa Fisher to argue at Ct App for conservatorship Order appeal(s)	0.2	
9/21/2016	Rec'd from SC Ct App Returned and clocked Oral Argument reply regarding availability. Copy to file	0.2	
9/30/2016	Prep for hearing Review file	1.0	
6/20/2016	Renew Motion for Costs to SC Ct App. CC JHC, WWW	0.3	
6/27/2016	Rec'd remitter. Copy to file	0.2	
6/20/2016	Rec'd request for available dates from SC Ct App for Oral Arguments. Reply with dates free per the request copies 8x .5= 4.00	0.2	\$4.00
6/23/2016	Rec'd JHC reply to SC CT APP re hearing availability Copy to file.	0.2	
6/20/2016	Rec'd request for available dates from SC Ct App for Oral Arguments. Reply with dates free per the request copies 8x .5= 4.00	0.2	\$4.00
6/23/2016	Rec'd JHC reply to SC CT APP re hearing availability. Copy to file.	0.2	
6/20/2016	Rec'd request for available dates from SC Ct App for Oral Arguments Reply with dates free per the request copies 8x .5= 4.00	0.2	\$4.00
6/23/2016	Rec'd JHC reply to SC CT APP re hearing availability Copy to file.	0.2	
9/14/2016	Check CCPC file for recent accountings to the Court since the last accounting filing. No accountings filed	0.2	
		0.2	
Services rendered 15.3 @ \$175/hr		\$2,677.50	
Costs		\$30.00	
Total due prior invoice		\$65,732.91	
Total due to date		\$68,440.41	

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

Client:

Estate of Alice Shaw-Baker

Invoice Date:

December 31, 2016

Services rendered 15.3 @ \$175/hr	\$2,677.50
Costs	\$30.00
Total due prior invoice	<u>\$65,732.91</u>
Total due to date	\$68,440.41

KOUTEN LAW FIRM, LLC
PO Box 340
JOHNS ISLAND, SC 29457

Invoice Submitted to:
 Bessie Huckabee
 North Charleston, SC 29415

Estate of Alice Shaw-Baker
 2009-ES-10-

October 31, 2017

Balance Due from previous Invoice through 2016

\$68,440.41

3/14/2017	Review case law on PR's, standing, wrongful death	2.1	
2/15/2017	Conference call with Judge re moving forward	1.1	
2/15/2017	Notes on conference call Call to Brook Wills re moving forward	0.4	
3/2/2017	Review med records and determine exhibit pages Copy each. All records to notebook.	1.4	
3/7/2017	Search all cases from Fisher Sup Ct Brief. Copy to drive and review. Notes on her cases	3.5	
3/9/2017	Copy scanned med records to permanent file	0.4	
5/11/2017	Ltr to all/ email re substitution of Counsel.	0.2	
3/16/2017	Review Cert Brief. Our initial Motion for Summary Judgment.	5.8	
3/17/2017	Work on Initial Reply Brief	1.1	
5/25/2017	Meet with WWW re ASB case matters and moving forward.	3.1	
1/4/2017	Rec'd Petition for Rehearing Review and copy to file and forward copy to Brook Wills	0.6	
1/6/2017	Rec'd ltr SC Ct of Appeals re Notice of Petition for Rehearing.	0.2	
1/11/2017	Draft and file Return to Petition for Rehearing. Call to Kay Call to Bessie. Copies and postage. \$70 copies; \$8 postage	5.5	\$78.00
1/13/2017	EM Brook Wills re Roster Meeting EM with Pet for Rehearing and Return 14-2020	0.4	
1/20/2017	Rec'd from SC Ct App filed copy of Return to Petition for Rehearing Copy to file	0.2	
1/20/2017	Rec'd ORDER SC Sup Ct They have granted writ of certiorari in the Case # 2012-1332. Copy to file	0.2	
6/1/2017	Review Sup Ct Rules.	0.2	
6/1/2017	Rec'd Order from Sup Ct re motion Copy to file.	0.2	
10/11/2017	Draft and file second amended motion	2.2	\$25.00
6/1/2017	Rec'd Reply to Return Review and copy to file.	0.8	

2/15/2017	Rec'd from JHC Motion for Extension to file brief. Call to JHC to discuss Cert and what is needed. Check CCPC file re accountings. There have been no accountings filed since 2010. Call JHC re accountings. Additional discovery	0.4	
2/15/2017		0.7	
4/3/2017	Draft and file Motion for Accounting. File substitution of counsel. Serve on JHC. Conference call Brook Wills and JHC re moving forward. JHC wants to continue. We have no choice due to attorney rep issue.	1.5	\$25.00
2/20/2017	Conference call Judge Jefferson re stay hearing until appeal is complete. Rec'd Consent Order JHC.	0.4	
2/21/2017	Sign and return. Copy to file.	0.6	
4/3/2017	Substitution of Counsel doc drafted and meet with Bessie to sign. File with CCPC. Call from Brook Wills re reply. No mention of substitution of counsel. Will review all prior orders and briefs and scan to BW 5.	0.4	\$25.00
3/6/2017		0.5	
3/6/2017	Download Cert docs and briefs. Read briefs. EM Brook Wills re standing issues.	0.5	
3/27/2017	Call to Brook Wills re sign response.	0.2	
3/27/2017	Work on final draft of Response. Draft and file Motion to Strike.	3.2	\$25.00
3/28/2017	Work on questions presented by Fisher for reply brief.	6.5	
3/29/2017	Complete Initial Brief Draft.	2.7	
4/1/2017	copy and mail Initial Brief of Respondents. Copy cost 20 copies x 30 pages x .50 = \$300 plus postage \$13.91.	1.1	\$313.91
4/13/2017	Call to Sup Ct re Brief. Change Case number to correct case number. Ltr to Sup Ct and cc Petitioner's atty.	0.3	
4/27/2017	Review Rule on Return to Petition.	0.2	
4/29/2017	Draft Return and mail to JHC and SC Sup Ct. Copies 62. and postage \$8.11.	4.8	\$70.11
2/2/2017	Plp for meeting. Meet with Brook Wills, Bessie and Kay re upcoming hearing. I will need to assign atty for PR due to judgeship.	2.1	
2/2/2017	Review file at CCPC. TRD of PR, Creditor's claim for fees, motion to appt Special Administrator. Copy and copy to file.	0.6	
2/14/2017	Call from Chandra w/ Judge Jefferson. Status conference set. Call to Brook Wills re status.	0.3	
Services rendered 56.4 @ \$175/hr		\$9,870.00	
Costs		\$562.02	
Total due prior invoice		\$68,440.41	
Total due to date		\$78,872.43	

Please forward the below portion of invoice with return payment

Please forward payment to:

KOUTEN LAW FIRM, LLC

PO Box 340

JOHNS ISLAND, SC 29457

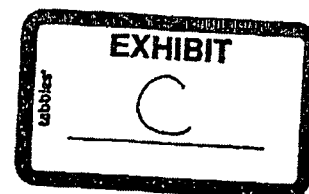
Client:

Estate of Alice Shaw-Baker

Invoice Date:

October 31, 2017

Services rendered 56.4 @ \$175/hr	\$9,870.00
Costs	\$562.02
Total due prior invoice	<u>\$68,440.41</u>
Total due to date	\$78,872.43



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

BETTY FISHER and LISA FISHER,)

CASE NO.: 09-CP-10-3010

Plaintiffs,)

v.)

ATTORNEY'S FEES AFFIDAVIT
OF
W. WESTBROOK WILLS III

BESSIE HUCKABEE, et al.,)

Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate)
No.: 2009-ES-10-0378)

PERSONALLY APPEARED before me W. Westbrook Wills III, who, being
first duly sworn, deposes and says as follows:

1. I am the attorney for Thomas R. Campbell, the Plaintiff in the above captioned matter.
2. I was admitted to the South Carolina Bar in 2007 and since that time have been engaged in the private practice of law. Since March of 2010 I have practiced in Charleston with the firms Austin, Fowler & Wills, L.L.P. and the Law Office of W. Westbrook Wills III.
3. I am an active member of the South Carolina and Charleston Bars, and the Georgia Bar. I am engaged in practice in the State and Federal Courts of Georgia and South Carolina with approximately 90% of my practice devoted to civil litigation.

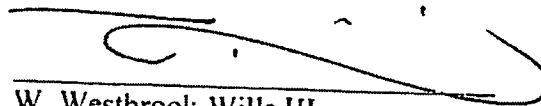
4. That I incorporate herein Rule 32, Rules of Practice of the South Carolina Supreme Court, which contains the Canons of Professional Ethics and further calls the attention of the Court to the holdings in Glasscock v. Glasscock, 304 S.C. 158, 403 S.E. 2d 313 (1991) and Epperly v. Epperly, 440 S.E.2d 884 (1994) concerning the factors and criteria which should be considered in the awarding and setting of attorney's fees.

I rely on the discretion of this Court in the determining the reasonableness of the amount of the fees, based upon the Court's file, the Court's knowledge of the litigation between these parties, the time necessarily expended, the result accomplished, and the fees customarily charged in this area for similar legal services.

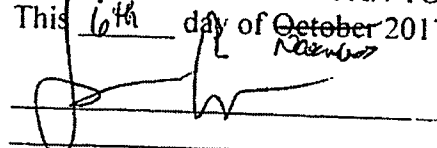
5. That my client has had a need for the current representation.
7. That am informed and believe an award of legal fees and costs is appropriate and warranted in this matter in accordance with S.C. Code Ann. §§ 15-36-10 and 62-1-111.
8. That the time spent in preparing and trying the case, as set forth more fully hereinafter, was necessary for the defense of Plaintiffs' claims.
9. That my rate for legal services is \$225.00 per hour. To date, on behalf of Defendants, I have expended 94:17 hours, as reflected in the attached itemization.
10. That based upon the time necessarily devoted to this case and the other criteria which have been held to be relevant in the setting of attorney's fees and costs of suit, I, on behalf of my clients, request this Court review the file herein, together with this Affidavit, and award attorney's fees in favor of the undersigned or his clients, Bessie Huckabee and Kay Passailaigue in the amount of **\$22,697.50**, as indicated in the attached

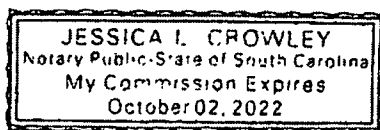
fee itemization, or a sum which this Court determines to be reasonable to compensate Defendants for my attorney's fees incurred as a result of defending this action, and that Plaintiffs be required to pay the same within a reasonable time as determined by this Court.

FURTHER THE AFFIANT SAYETH NOT!


W. Westbrook Wills III
Attorney for Defendants

SUBSCRIBED and SWORN TO before me
This 6th day of ~~October~~ ^{November} 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 10/2/2022



ITEMIZATION OF FEES
OF
W. WESTBROOK WILLS III

Page 1 of 3

Project Name: Fisher v. Huckabee, et al. CA No.: 09-CP-10-3010		Project No: 260		
Date	Task	Rate	Time	Fee
10/14/13	Hearing 1: Substitution of counsel	175.00	01:00	175.00
1/6/16	Roster meeting status conference	225.00	01:00	225.00
12/29/16	Deposition Jacobs and Parker	225.00	01:15	281.25
2/2/17	Meeting with Atty Kouten re trial, bifurcation, date certain	225.00	00:45	168.75
2/2/17	Research burden of proof will contest	225.00	00:25	93.75
2/15/17	Roster meeting/status conference	225.00	01:00	225.00
2/15/17	Meeting at Koutens and w/chents	225.00	01:30	337.50
2/15/17	Telephone status conference with Judge Jefferson	225.00	01:00	225.00
2/15/17	Review all appellate opinions and appeals	225.00	01:00	225.00
2/16/17	Phone status conference with Judge Jefferson	225.00	00:30	112.50
2/17/17	Conf call attys Cooper, Kouten and Judge Jefferson re status and trial, date certain, outstanding matters	225.00	00:30	112.50
2/21/17	Report back to Judge Jefferson re trial, witnesses, date certain, and outstanding issues	225.00	00:20	75.00
2/22/17	Phone status conference with Judge Jefferson's clerk Chaundra	225.00	00:15	56.25
2/23/17	Review of Consent motion to stay case	225.00	00:06	22.50
2/23/17	Phone call Kouten re Consent stay	225.00	00:17	63.75
3/2/17	Phone conversation with J. H. Cooper	225.00	00:15	56.25
3/6/17	Phone Conference Kouten re consent motion to stay (Cooper)	225.00	00:12	45.00
5/8/17	Teview consent order to stay trial pending appeal from J.H.C.	225.00	00:15	56.25
5/12/17	Roster: Possible trial	225.00	00:15	56.25
5/22/17	Meeting atty. Kouten re issues remaining on appeal and scheduling trial	225.00	00:45	168.75
6/15/17	Review Supreme Court briefs for -1330 and phone conversation with JC Crowley	225.00	00:33	123.75
7/6/17	Draft Motion for Summary Judgment	225.00	00:36	135.00

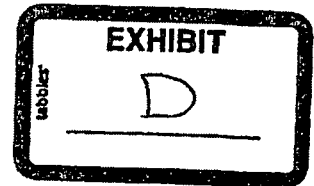
Project Name: Fisher v. Huckabee, et al.		Project No: 260		
10/9/17	Review Lisa Fisher's Motion to Change Venue; Vacate Date of Trial: Staying All Hearings and Affidavit	225.00	01:12	270.00
10/9/17	Review prior pleadings and orders for determination of true issues	225.00	00:42	157.50
10/11/17	Prepare for Trial and issue sorting; strategy	225.00	01:47	401.25
10/12/17	research law on transfer of venue	225.00	01:00	225.00
10/13/17	Phone conference with Judge Jefferson	225.00	00:25	93.75
10/15/17	Affidavits Budman and JoAnne	225.00	00:38	142.50
10/17/17	Phone conference with Judge Fulp	225.00	00:25	93.75
10/17/17	Review of pleadings in other appellate cases; phone conference with Judge Jefferson; prepare motion response venue; s.j ; cord. affidavits	225.00	04:42	1,057.50
10/17/17	Draft memo in opp. to venue and memo in supp. s.j	225.00	02:23	536.25
10/18/17	COnTinue to draft and revise memo	225.00	02:04	465.00
10/18/17	Prepare for Oral Argument at Sup. Ct.	225.00	00:26	97.50
10/18/17	Phone conf. Kay	225.00	01:08	255.00
10/18/17	Trial preparation: Objections; update discovery	225.00	02:23	536.25
10/19/17	Supreme Court Oral Argument	225.00	06:00	1,350.00
10/19/17	Review Order on transfer of Venue; coordinate witnesses; read work product notes on witnesses	225.00	07:17	1,638.75
10/21/17	Trial Prep; Exhibits; meet with witnesses	225.00	09:00	2,025.00
10/22/17	Continued trial prep. organize trial binder, exhibits, legal motions: examination	225.00	10:06	2,272.50
10/23/17	trial and after trial prep	225.00	12:00	2,700.00
10/25/17	trial and after trial prep	225.00	10:00	2,250.00
10/25/17	trial and after trial prep closing; motions. req. to charge	225.00	09:00	2,025.00
10/25/17	Trial day 4	225.00	04:00	900.00
11/2/17	Draft Port Trial Motion for Fees	225.00	00:14	52.50
11/20/17	Follow up conf. call with attys Cooper and Kouten re Judge Jefferson's questions and poss. consent	225.00	00:30	112.50
Time		101:06		

Project Name: Fisher v. Huckabee	Project No: 260
Total	\$22,697.50

Total time

Total..... 101:06:00
\$22,697.50





Re: In The Estate of Alice Shaw Baker
2009-CP-10-3010

Affidavit of Attorney

PERSONALLY APPEARED before me, Jessica L. Crowley, Esquire, who being duly sworn deposes and says:

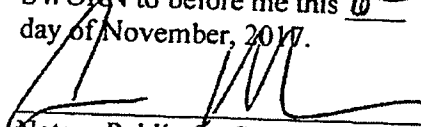
1. I am the attorney for Defendant, Bessie Huckabee, Personal Representative in the above referenced matter.
2. This case is an action for Contest of the Last Will and Testament of Alice Shaw Baker, in the above matter, which has been pending in the Circuit Court since 2009. During the intervening years, Plaintiffs have, inter alia, disputed the validity of the Last Will and Testament of Alice Shaw Baker, sought multiple appeals, filed multiple motions in multiple courts, and have failed to prevail on any substantive matter.
3. That fees total \$10,272.50 in connection with this action. The hourly rate charged was \$175.00 per hour.
4. The Supreme Court has set forth the factors to be considered in a grant of attorney's fees in *Glasscock v. Glasscock*, 304 S.C. 158 (1991), concerning the law in setting reasonable attorney's fees. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:
 - a) Nature, Extent and Difficulty of the Legal Services Rendered. This case involved issues of probate law. Accordingly, the factual and legal issues presented required the extent of the work performed necessary to adequately prepare.
 - b) Time and Labor Necessarily Devoted to the Case. No less than 58.7 hours were devoted to the case by my firm. This is reflected through the facts stated earlier, as well as from the listing of services performed in the Exhibit. Accordingly, the time and labor devoted to this case were necessary to properly prepare for this case.
 - c) Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina and I am a member of the Charleston County Bar Association and the American Bar Association. Approximately 90% of my practice consists of Probate matters, including commitment representation, special administrator appointments, probating estates, and contested and uncontested Guardianship and Conservatorships. Accordingly, I submit that I have a high professional standing in general and in this area of practice.
 - d) Contingency of Compensation. Compensation in this case is based on the hourly rate of \$175.00 per hour.

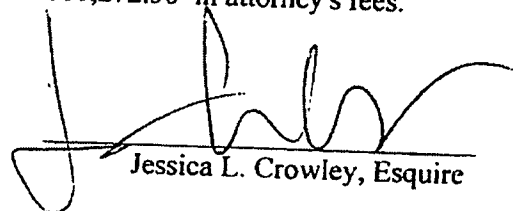
e) Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Charleston area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Charleston area, from \$120.00 to \$300.00 per hour. As stated earlier, my hourly rate is within this range in this case. Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.

f) Beneficial Results Obtained. This attorney has continued to obtain beneficial results for the Defendant and interested parties in this action. Accordingly, it is submitted that beneficial results have been obtained by this firm on client's behalf.

6. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, Jessica L. Crowley, Esquire, is entitled to \$10,272.50 in attorney's fees.

SWORN to before me this 6th
day of November, 2017.


Notary Public for South Carolina
My Commission Expires: 6/28/27


Jessica L. Crowley, Esquire

AMBREE MULLER
NOTARY PUBLIC- SOUTH CAROLINA
My Commission Expires June 28, 2027

CROWLEY LAW FIRM, LLC
PO Box 30189
CHARLESTON, SC 29417

Invoice Submitted to:
October 26, 2017
Lisa Fisher, Esquire and Betty Fisher
Client: Bessie Huckabee

Invoice #10Bak26

Date - Professional Services

	Hours
5/21/2017 meet with Brook to discuss next steps, review file, research case law	1.5
8/2/2017 meet with Brook to draft Mot for SJ, research case law	3.0
10/9/2017 TC to Wills re meet to plan, rec pleading, rec notice of status conference	0.5
10/10/2017 JLC EM from Brook re update, TC to Bessie re update	0.4
10/11/2017 JLC meet with Brook, review file, TC to Solomon re original will	4.0
10/12/2017 JLC to Soloman Budman to review LWAT of ASB	0.5
10/16/2017 JLC reply to JHC EM re consent to transfer	0.1
10/17/2017 JLC status conference with Judge Jefferson re Mot to Change venue, work on response to motion	2.5
10/18/2017 JLC to Budman office to pick up affidavits, file with CCPC, conference hearing with Judge Jefferson re motion	1.5
10/18/2017 JLC TC to client re trial next week, discuss trial prep	1.0
10/19/2017 JLC rec roster notice from CP, Em Ct re order on motion hearing	0.2
10/20/2017 JLC status conference re mot for reconsideration x2	0.5
10/21/2017 jlc work on trial prep, case research, meet with clients	8.0
10/23/2017 JLC prep for trial, trial, research on revocation, review files	12.0
10/24/2017 JLC prep for trial, trial, research	10.0
10/25/2017 JLC research law regarding revocation for jury charges, review depositions, review rules of evidence, trial, review SC Probate Code re P's Motion	9.0
10/26/2017 JLC trial	4.0

10/26/2017	Professional Services Rendered 58.7 @ \$175.00/hr	10,272.50	
	Costs		\$ 0.00
	Total This Invoice		\$10,272.50

Please forward payment with this lower portion to:

CROWLEY LAW FIRM, LLC
PO Box 30189
CHARLESTON, SC 29417

Client: Huckabee
Invoice Date: October 26, 2017
Previous Balance: \$0.00
Retainer Received: \$0.00
This Invoice: \$10,272.50
Balance Due: \$10,272.50

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher, and Lisa Fisher, as)
Conservator for Alice Shaw-Baker,)

Plaintiffs,)

vs.)

Bessie Huckabec, et al.,)

Defendants,)

In the Matter of)
Alice Shaw-Baker.)

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS' POST-TRIAL MOTIONS**

FILED
2017 DEC -6 PM 2:48
CLERK OF COURT
JULIE A. HARRIS

COME NOW Plaintiffs and counsel for Plaintiffs, and, pursuant to S.C. Code Ann. § 15-36-10(D), respond to Defendants' Post-Trial Motions. This Court should deny the Defendants' Post-Trial Motions in their entirety.

Pre-Trial and Trial Summary

On August 2 and August 4, 2017 Defendants filed Motions for Summary Judgment. On October 23, 2017, before commencement of the trial, the Court declined to hear Defendants' motions for summary judgment and proceeded with the jury trial. Upon Defendants' oral motion to bifurcate, the Court held a jury trial restricted to the issues surrounding the decedent's contested will.

During the trial, Defendants offered a 3 page will purportedly executed by Alice Shaw-Baker on May 21, 2001, as her last will and testament. Plaintiffs presented sworn testimony of Alice Shaw-Baker's then Conservator, Lisa Fisher, that on January 1, 2009 Alice Shaw-Baker, in the Conservator's presence defaced and then tore up a copy of her will, at the time intending to revoke her will. Plaintiffs also proffered the Affidavit of Donald J. Budman, Esquire and the Affidavit of Joanne Hadwin, both of the Solomari, Budman law firm of Charleston. These Affidavits had been procured by counsel for

Defendants and had been filed with the Court on the eve of trial. Each of these Affidavits was to the effect that the affiant had circumstantial evidence that the will attached to each Affidavit was a copy of the last will and testament of Alice Shaw-Baker. Attached to each of the Affidavits was a 2 page will. Plaintiffs cross-examined one or more of Defendants' witnesses about the discrepancy between the 3 page will and the 2 page wills.

On November 19, 2008, Lisa Fisher had been appointed Conservator for Alice Shaw-Baker. The Order appointing Conservator, entered into evidence at trial, provided, *inter alia*, "Neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will or execute a new will, unless specifically ordered by this Court. . . ." The Order further provided, "[A]s soon as can be arranged, Alice Shaw-Baker shall have a full neuropsychological evaluation by Randolph Waid, Ph.D., who shall report to the Court on Alice Shaw-Baker's mental condition." The Order provided further for a hearing after receipt of neuropsychological and medical reports.

Dr. Waid's report was submitted in January, 2009 and Alice Shaw-Baker died in February, 2009, before any hearing was requested or scheduled. Plaintiffs offered Dr. Waid's neuropsychological report into evidence at trial, but the report was excluded based upon objections by Defendants. Plaintiffs' motion to continue the trial until the following Monday, when Dr. Waid would be back from his trip to Europe was denied by the Court.

During the trial, the Court declined to grant Defendants' dispositive motions, and submitted the issues to the jury. The jury returned a verdict for the Defendants.

Procedural Posture

After entry of judgment, Defendants filed Defendants' Post-Trial Motions seeking sanctions and attorneys' fees and costs in accordance with the provisions of the Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(C) and costs and expenses, including reasonable attorneys' fees in accordance with S.C. Code Ann. § 62-1-111.

Applicable Law

S.C. Code Ann. § 15-36-10(C)

The Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(C) provides:

- (C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:
- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
 - (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
 - (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.
- (2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned. *Frivolous Proceedings Sanctions Act*, S.C. Code Ann. § 15-36-10(C).

Where a party survives a summary judgment motion, it is not subject to sanctions after a trial on the merits of the surviving claims. The theory being that if there is evidence worthy of submission to a jury, the claims cannot be frivolous within the meaning of the act. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997); *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999); *Swanson v. Stratos*, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002); *Southeastern Site Prep., LLC v. Atlantic Coast Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011).

S.C. Code Ann. § 15-36-10(D)

The Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(D) provides, *inter alia*:

A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court of party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. *Frivolous Proceedings Sanctions Act*, S.C. Code Ann. § 15-36-10(D).

S.C. Code Ann. § 15-36-10(E)

The Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(E) provides:

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(E).

S.C. Code Ann. § 15-36-10(F)

The Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(F) provides:

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(F).

S.C. Code Ann. § 62-1-111

S.C. Code Ann. § 62-1-111 provides:

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111.

The American Rule is that attorneys' fees are not recoverable in a civil matter absent a statutory or contractual provision. Although the language of Section 15-36-10 considered together with the

appellate cases decided and reported under Section 15-36-10 give guidance to the Bar and Bench with regard to the reasonable application of the statute, the same cannot be said for Section 62-1-111.

On its face, Section 62-1-111 is vague, invites arbitrary application, provides no guidance to Bar or Bench, and there appear to be no reported appellate cases interpreting same.

Argument

1. Because Plaintiffs survived a Motion for Summary Judgment, and because a Motion for Directed Verdict was refused at trial before the will contest was submitted to the jury, Plaintiffs' claim in the instant case cannot be said to be frivolous within the meaning of Section 15-36-10. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997); *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999); *Swanson v. Stralos*, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002); *Southeastern Site Prep., LLC v. Atlantic Coast Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011). The fact of a Defense verdict does not demonstrate a frivolous claim. On the contrary, the submission of the issue to the jury demonstrates that the claim was not frivolous.

2. Defendants' Post-Trial Motions make sweeping generalized allegations concerning Plaintiffs' actions in multiple Courts and in multiple actions and appeals, ranging to the South Carolina Court of Appeals, and the Supreme Court of South Carolina. The claims before those other Courts and in those other actions and appeals are beyond the scope of this Court's mandate under S.C. Code Ann. § 15-36-10(C)(1), which limits the trial judge's consideration to whether "the claim or defense was frivolous."

3. Defendants' Post-Trial Motions fail to comply with S.C. Code Ann. § 15-36-10(D), which requires that a "party proposing a sanction shall notify the court and all parties of the conduct constituting a violation of this section, and explain the basis for the potential sanction imposed." (Affid. Freeman, Exhibit A, para. 3). Defendants' Post-Trial Motions and the supporting Affidavit of Evan A. Smith, Esquire fail to state the specific conduct of Plaintiffs and their lawyers that purportedly constitute

a violation of the statute. The entirety of the Defendants' Post-Trial Motions is based, not upon specified factual contention supported by affidavit, transcript, or admissible evidence, but upon speculation and unsupported argument of counsel. Due Process and the language of this statute require notice of the specific conduct constituting a violation and an explanation of the basis of the claim. Defendants have failed on both counts.

4. Defendants' Post-Trial Motions are supported by certain sworn Affidavits which are of questionable reliability. As an example, the Affidavit of W. Westbrook Wills III, Esquire (Exhibit C to Defendants' Motions), in paragraph 1, states under oath incorrectly, "I am the attorney for Thomas R. Campbell, the Plaintiff in the above captioned matter." This statement is clearly incorrect. As another example, the Affidavit of Attorney Peter A. Kouten, Esquire with attached time and billing records (Exhibit B to Defendants' Motions) in support of his time and fees in the matter appears to contain at least 17 instances of double billing of time and fees. For example, without limitation, identical time and billing entries for 3/14/2009, 3/15/2009, and 3/16/2009 are shown on Invoice 9020 and also on Invoice 9023.

5. Under the circumstances of this case, Defendants have failed to demonstrate that Plaintiffs or their attorneys continued a frivolous claim by violating § 15-36-10(C)(1)(a), (b), or (c).

(a) A reasonable attorney would consider sworn eye witness testimony of a testator's revocation of her will as a good faith basis to contest the will. If the testimony is believed, the claim is clearly warranted. Certainly, it cannot be said to meet the "clearly not warranted" standard of § 15-36-10-(C)(1)(a). Affid. Freeman, Exhibit A, para. 6(a)).

(b) A reasonable attorney would believe that the continuation of a will contest based upon sworn testimony of a testator's revocation of her will to be a legitimate means to justice. If the testimony is believed by the jury, the claim is a legitimate means to relief for the attorney's clients based upon the

claim. It cannot be said to meet the "merely to harass or injure the other party" standard of § 15-36-10(C)(1)(b). Affid. Freeman, Exhibit A, para. 6(b)).

(c) A reasonable attorney would believe that a will contest based upon sworn testimony of a testator's revocation of her will to be reasonably founded in fact, not interposed merely for delay, and brought for the purpose of securing proper discovery, joinder of proposed parties, and adjudication of the claim upon which the proceedings are based. As set forth in the attached Affidavit of Fleet Freeman, Esquire, such a case is well founded in fact, is not interposed merely for delay, and is brought for a proper purpose. Such a will contest is not frivolous. Affid. Freeman, Exhibit A, para. 6(c)).

6. The Plaintiffs in the instant action have no previous violations of Section 15-36-10 and Counsel for Plaintiffs in the instant action have no previous violations of Section 15-36-10. Affid. Cooper, Exhibit B, para. 5; Affid. Fisher, Exhibit C, para. 5.

7. In the instant action, there has been no showing that justice and equity require any award of costs and expenses, or reasonable attorneys' fees.

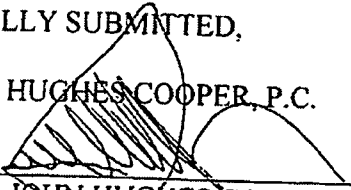
Conclusion

For the above stated reasons, Defendants' Post-Trial Motions should be denied.

WHEREFORE Plaintiffs pray for entry of an Order denying Defendants' Post-Trial Motions.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 
JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
shiplaw@jhcooper.com

JOHN TOWNSEND COOPER, Esquire
Federal Court ID 10172
South Carolina Bar 76087
1476 Ben Sawyer Blvd., Suite 11
Mt. Pleasant, SC 29464
843-883-9099; fax 843-883-9335

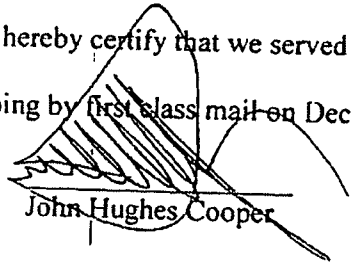
and

LISA FISHER, ESQUIRE (*Pro Hac Vice*)
P.O. Box 91112
Long Beach, CA 90809-1112
562-965-3267
lfisher6736@yahoo.com

ATTORNEYS FOR PLAINTIFFS,
BETTY FISHER AND
LISA FISHER, AS CONSERVATOR FOR
ALICE SHAW-BAKER

CERTIFICATE OF SERVICE

I hereby certify that we served counsel for all parties in this action with a copy of the
forgoing by first class mail on December 6, 2017.


John Hughes Cooper

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher, et al.,)
Plaintiffs,)

vs.)

Bessie Huckabee, et al.,)
Defendants,)

In the Matter of)
Alice Shaw-Baker.)

AFFIDAVIT OF FLEET FREEMAN, ESQUIRE

PERSONALLY APPEARED Fleet Freeman who, first being duly sworn, states as follows:

1. The undersigned, Fleet Freeman, attorney at law, has been asked to render an expert opinion on behalf of John Hughes Cooper and Lisa Fisher by responding to the affidavit of Evan A. Smith, Esq. opining that the plaintiffs and their attorneys, John Hughes Cooper, Esq. and Lisa Fisher, Esq., (admitted *pro hac vice*) engaged in frivolous litigation in Case No. 09-CP-10-3010. This Will Contest case was tried in the common pleas court for Charleston County in October, 2017, resulting in a jury verdict for the defendants.

2. I am over eighteen years of age and not under disability. My qualifications to render this opinion are set forth in the attached Curriculum Vitae outlining part of my educational and professional experience. I incorporate this CV as part of this affidavit. In preparing this affidavit I have reviewed extensive materials including the pleadings, memorandum and orders in connection with this case. I make this opinion based on my extensive experience as a trial lawyer and my understanding of the statutes, Rules of Civil Procedure, Rules of Professional Responsibility and case law pertaining to claims of frivolous conduct in connection with litigation and appeals in South Carolina. I hold my opinions set forth in this affidavit to a reasonable degree of certainty based on facts which I believe are undisputed and which I believe to be true.

3. The validity of decedent's Will was tried to a jury. I am informed that the claim of plaintiff and her counsel was that the decedent Alice Shaw-Baker tore up her Will with the intent to revoke it. Defendants appear to claim that under the facts of this case, no reasonable attorney

would have initiated or continued the legal proceedings. The sole issue in this case is the validity of the decedent's Will. The central issue was whether it was revoked by destruction by decedent. It is difficult to directly respond to defendants' motion because it fails to comply with the provisions of S.C. Code Ann. §15-36-10 (D), which provides that a "party proposing a sanction shall notify the court and all parties of the conduct constituting a violation of this section, and explain the basis for the potential sanction imposed". Defendants' counsel supports his motion by an affidavit of Evan A. Smith, Esquire, which along with the motion fails to state the conduct of plaintiffs and their lawyers that purportedly constitutes a violation of the statute. Rhetoric does not substitute for facts. What motions; what papers, documents; what arguments do defendants contend supports grounds for sanctions?

4. It is noteworthy that defendants do not disclose to the court they moved for a directed verdict at the end of the trial, which motion was denied. Two motions for summary judgment and motions for a directed verdict once denied or not granted, precludes a later motion for frivolous proceedings sanctions. Presumably, the trial judge would not have sent a case to the jury that was frivolous.

5. After review of the pleadings and orders in this case, I am of the opinion that the verified complaint was filed in good faith for the purpose of seeking relief; that the complaint seeks a proper remedy reasonably supported by the facts set forth in the complaint. Considering the facts as stated to be true, a reasonable attorney would believe that the claims were (a) warranted under existing law or a good faith or reasonable argument for an extension existing law and (b) the allegations were supported by the facts.

6. I am of the additional opinion that under the circumstances of this case, Defendants have failed to demonstrate that Plaintiffs or their attorneys continued a frivolous claim by violating § 15-36-10(C)(1)(a),(b), or (c).

(a) A reasonable attorney would consider sworn eye witness testimony of a testator's revocation of her will as a good faith basis to contest the will. If the testimony is believed, the claim is clearly warranted. Certainly, it cannot be said to meet the "clearly not warranted" standard of § 15-36-10(C)(1)(a).

(b) A reasonable attorney would believe that the continuation of a will contest based upon sworn testimony of a testator's revocation of her will to be a legitimate means to justice. If the testimony is believed by the jury, the claim is a legitimate means to relief for the attorney's clients based upon the claim. It cannot be said to meet the "merely to harass or injure the other party" standard of § 15-36-10(C)(1)(b).

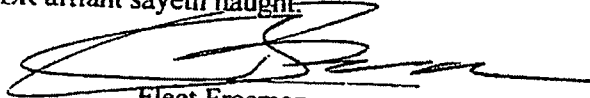
(c) A reasonable attorney would believe that a will contest based upon sworn testimony of a testator's revocation of her will to be reasonably founded in fact, not interposed merely for delay, and brought for the purpose of securing proper discovery, joinder of proposed parties, and adjudication of

the claim upon which the proceedings are based. Such a case is well founded in fact, is not interposed merely for delay, and is brought for a proper purpose. Such a will contest is not frivolous.

7. Accordingly, plaintiffs' counsel should not be sanctioned for zealously representing their clients.

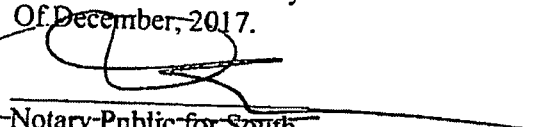
8. The facts contained in this affidavit are true and correct to the best of my knowledge and belief.

9. FURTHER affiant sayeth naught.


Fleet Freeman

Sworn to and subscribed
Before Me This 2nd Day
Of December, 2017.

(SEAL)


Notary-Public for South
Carolina; My Commission
Expires: 3/4/2021

**CURRICULUM VITAE
OF
FLEET FREEMAN**

Current Address: 1207 Wappetaw Place
Mount Pleasant, South Carolina
29464

Employment: Retired from active practice on April 1,
2017. Formerly, Partner in Law Firm of
Freeman & Santilli,
primarily a litigation practice with
emphasis on commercial, business tort,
probate and construction litigation, and
appeals.

Bar Admissions: Supreme Court of South Carolina: 1987
Supreme Court of Ohio: 1967
Federal Courts of Ohio: 1981
Federal Courts of South Carolina: 1987

**Previous Professional
Employment:** 1987-1991: Officer and partner in Law
Firm of Bernstein & Freeman, P.A. with
emphasis on commercial and tort
litigation

1967-1987: Partner in Law Firm of Leech,
Freeman, Scherbel, Hostetler, &
Peddicord; Coshocton, Ohio - senior
partner in charge of all civil litigation
in office

1975-1983: Elected Prosecuting Attorney,
Coshocton County, Ohio - Trial of major
criminal cases, legal counsel for all
elected officials and responsible for
overall administration of office

1967-1974: Assistant Prosecuting Attorney,
Coshocton County, Ohio - Trial of felony
criminal cases

Litigation Experience: Have handled and litigated nearly every

type of civil and criminal case. These cases include tort, malpractice, and complex commercial and business litigation in Common Pleas and Federal Courts. Also have handled civil and criminal appeals in the Supreme Court of the United States, Supreme Courts South Carolina and Ohio, and the Courts of Appeal in both Ohio and South Carolina

Professional Memberships:

American, Ohio State, South Carolina, and Charleston County Bar Associations; American Trial Lawyer's Association; Ohio Academy of Trial Lawyers; South Carolina Trial Lawyer's Association

Offices Held:

Ohio Prosecuting Attorneys Association, (President 1980); Coshocton County Bar Association, (President 1982); National District Attorneys Association, Director 1981

Education:

J.D., Capital University Law School, Columbus, Ohio 1967; Graduate, National College of District Attorneys, Houston, Texas 1970; B.A., Muskingum College 1963

Teaching Positions:

Instructor Ohio Prosecuting Attorneys Schools (1977-1982); Instructor Ohio Peace Officers Academy (1976-1985); Lecturer: Muskingum College (1980); Duquesne University Law School (1978); Co-author and lecturer NBI Personal Injury Litigation Practice Seminar (1991)

Honors:

AV Preeminent Rating by Martindale Hubbell

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Betty Fisher, et al.,)
Plaintiffs,)

vs.)

Bessie Huckabee, et al.,)

Defendants,)

In the Matter of)
Alice Shaw-Baker.)

AFFIDAVIT OF
JOHN HUGHES COOPER, ESQUIRE

PERSONALLY APPEARED John Hughes Cooper who, first being
duly sworn, states as follows:

1. My name is John Hughes Cooper, I am a citizen of South Carolina, over 18 years of age, of sound mind, and under no disability.
2. I make this affidavit based upon my own personal knowledge.
3. I have served as one of the attorneys for Plaintiffs in the above action since 2009.
4. I am a member in good standing of the following Bars and Courts:

State Bar of Georgia (1981) - all trial and appellate
Courts in Georgia



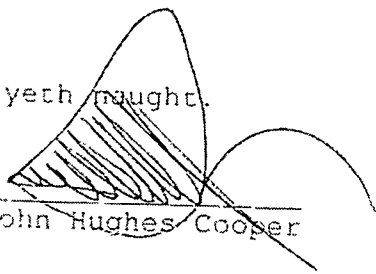
South Carolina Bar (1982) - all trial and appellate Courts
in South Carolina

U.S. District Court, District of South Carolina
U.S. District Court, Southern District of Georgia
U.S. Court of International Trade
U.S. Court of Federal Claims
U.S. Court of Appeals, Fourth Circuit
U.S. Court of Appeals, Eleventh Circuit
U.S. Court of Appeals, Federal Circuit
Supreme Court of the United States

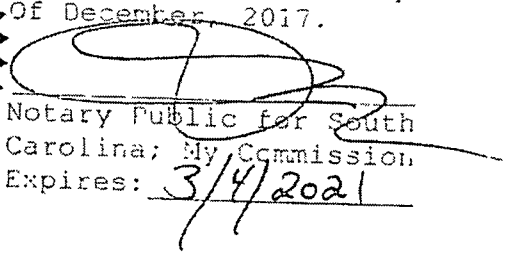
5. I have committed no violations of the provisions of S.C. Code
Ann. § 15-36-10.

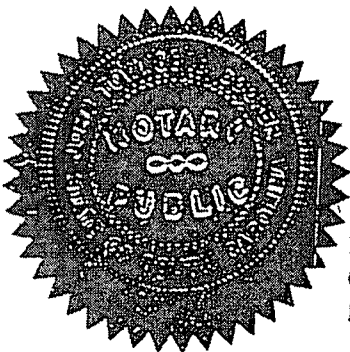
6. The above statements are true and correct under penalty of
perjury.

7. FURTHER affiant sayeth naught.


John Hughes Cooper

Sworn to and subscribed
Before Me This 6th Day
Of December, 2017.


Notary Public for South
Carolina; My Commission
Expires: 3/4/2021



AFFIDAVIT OF LISA FISHER

PERSONALLY APPEARED, Lisa Fisher, who, first being duly sworn, deposes and says:

1. My name is Lisa Fisher.
2. I am a citizen of the United States, over 18 years of age, and of sound mind.
3. The sources of my information and the grounds for my beliefs herein are my personal knowledge and the documents in my possession.
4. I am a licensed attorney in good standing in the State of California.
5. I am submitting this affidavit in opposition to the Post Trial motion by Defendants seeking sanctions against plaintiffs and attorneys alleging that we engaged in frivolous litigation in Case no. 2009-CP-10-3010. Neither my mother nor I have violated the provisions of S.C. Code Ann. § 15-36-10.
6. At all times, this litigation was brought in good faith and under the belief that the claims were clearly warranted. I further believed as the Guardian and Conservator of Alice Shaw Baker, my great aunt, that I had a duty to ensure proper delivery of the assets to the rightful beneficiaries and to seek to enforce her desire that the monies belonged to animal charities. In fact, the trial was bifurcated, and we are waiting for a date certain on the issue of the constructive trust.
7. At all times did I believe that I was acting in a manner that was legally and factually correct. I did not file or seek to prosecute the action to merely harass or injure the other parties.
8. All actions taken in the litigation were made to secure proper discovery, ensure proper procedural and substantive law, to ensure that no conflict of interest existed, and

that the law was followed at every juncture. This case and its prosecution was never made for delay, nor made for an improper purpose.

9. I am concerned about the statements set forth in the motion which are neither supported by affidavit or documentary evidence. Further, some of the allegations are not accurate representations of pleadings or occurrences. This brief affidavit addresses some of these inaccuracies.
10. Counsel claims that Plaintiffs requested "the Court appoint a special fiduciary to receive the assets of the Estate pending the resolution of the will contest, and then immediately appealing the Court's appointment of that special fiduciary..." This is not accurate. The appointment of a special fiduciary was the direct result of Bessie Huckabee's request in the probate court, despite the fact that the matter was removed to the circuit court. This matter is before the South Carolina Supreme Court, and is based on well settled trust law regarding the conservator's duties to preserve the assets pending determination of the proper person to take possession of assets. The Supreme Court has not yet ruled.
11. Counsel claims that it was bad faith to seek disqualification of Peter Kouten based on a conflict of interest in representing Defendants. However, Peter Kouten was court appointed counsel for Alice Snaw Baker, and under the legal authority in *Townsend v. Townsend*, this was a non-waivable conflict of interest. Additionally, Since Ms. Shaw Baker was deceased, she could not waive said defect, and Plaintiffs alleged he received confidential information from her which precluded his representation. Plaintiffs complained about this conduct from the beginning of the litigation, and it took years before Peter Kouten withdrew as counsel for Defendants, however he continued to represent Bessie Huckabee, as

personal representative. This continued to represent a conflict of interest. At trial, the testimony revealed that he violated the court order for injunction by securing an estate bank account without a bond. Plaintiffs believe this is a legally tenable argument that mandated continued objection as to avoid waiver.

12. Counsel complains it was in bad faith not to engage in trial at an earlier time, because there were appeals. I believe from review of South Carolina law that if the court proceeds to trial, when the appellate court has jurisdiction, that any orders obtained are void. Therefore, it was based on a good faith belief that plaintiffs would be jeopardizing any judgment in their favor.
13. Counsel complains that it was in bad faith to file "motion to transfer venue and stay all proceedings on the eve of the third specially set date certain for trial." Peter Kouten is an associate probate judge in the Charleston County Court. He has authority over the mental health court. In reviewing the Supreme Court's order that Judge Fulp was appointed as "special" probate judge, due to a conflict of interest, I believed that proceeding with trial in a court where Peter Kouten was known and where there was a finding of conflict of interest, that it would be prejudicial and would also waive any argument if not appealed.
14. Counsel complains that it was in bad faith to file a motion to disqualify Peter Kouten's replacement counsel essentially on the basis that they knew each other. However, this is not accurate. There is no evidence of screening by the attorneys and the receipt of information from Mr. Kouten should have been based on attorney client privilege. Jessica Crowley worked for Peter Kouten, she is not independent and the issue of this ethical violation

warranting disqualification is still proper legal argument. Mr. Wills' own billing records support my claim that he was never representing Defendants, but that it was a change of counsel in name only. His records indicate that he began representing defendants in October, 2013, however he did not appear on their behalf until January 2016.

15. Counsel claims that it was bad faith to file "a last minute motion to disqualify Judge Hughtston as trial judge on the argument that some 8 years earlier, Judge Hughtston had received an email from counsel for Defendants on which Plaintiffs were not immediately copied." This is not correct. This was an ex parte communication, and it was important not to waive that issue at trial. The referenced order gave the impression that it was drafted by the court and it reflected findings that were not made on the record. I believe that I had an obligation to preserve these issues on behalf of plaintiffs, due to serious questions in this case of favoritism toward Peter Kouten and his clients.
16. It is an unfair representation to claim that Plaintiff Betty Fisher did not show up. I was engaged in trial, and asked for an ADA accommodation to bring my mother to trial. If I had left trial, the matter would have been dismissed. The court already indicated that she would not be able to testify regarding conversations with Alice Shaw Baker due to the Dead Man's statute. This was a severe hardship, and I believe a violation of the law allowing reasonable accommodation. It was not meant to delay the case, and certainly was not meant to be frivolous.
17. Contrary to counsel's claim, the complaint was not so rigid as to not include claims for the destruction of the will. The language of the complaint was broad, moreover this claim was never brought at trial. If it had, I would have immediately have sought to amend the complaint on that issue, as I did with a request to reform the will. .

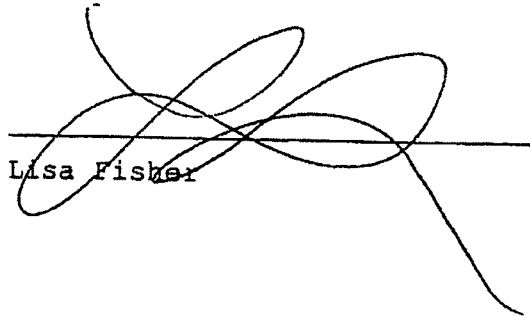
18. Also, I asserted what I believe was a proper argument with regard to Ms. Shaw Baker's revocation of the will contrary to the "Charleston County Probate Order entered in November of 2008 specifically prohibiting Ms. Shaw Baker from revoking or modifying her will in any way." The underlying petition for guardianship/conservatorship did not seek such relief. Alice Shaw Baker was not informed prior to trial, that this right was going to be taken from her, which is contrary to statutory and case law. Moreover, the 2008 order was ambiguous in light of the order for Ms. Shaw Baker to be examined by Dr. Waid. Again, I believe that this was a good faith or reasonable argument for extension, modification or reversal of existing law, and that this was not intended to delay, harass, or injure Defendants.
19. Also, in reviewing the billings, Attorney Kouten's billings are replete with double, triple billing, billing for ancillary and appellate matters, and billing to secure and protect the rights of all defendants, not merely Bessie Huckabee after he was substituted out. The billings redact information that is not protected by attorney client privilege.
20. I further object to the billings of W. Westbrook Wills and Jessica Crowley. Ms. Crowley indicated that she was not representing the Defendants, however her billings again support my position that she represented them all, just as Attorney Kouten had. She was involved in trial preparation and met "with clients." These are not minor issues. The integrity of the information obtained by court appointed counsel, here Peter Kouten, should have been preserved, and plaintiffs should not be sanctioned for seeking to protect these rights.

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21. I respectfully request that the court deny the motion in its entirety. I further ask the court to set the trial on the constructive trust matter for a date certain, upon hearing on our motion for new trial.

Further affiant sayeth naught.



Lisa Fisher

Long Beach, California

December 4, 2017

[See Attached Notarization]

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 4th day of December, 2017,

by Lisa Fisher

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature

A handwritten signature in black ink, appearing to be "Angel Sanchez", written over a horizontal line.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
BETTY FISHER and LISA FISHER,)
)
Plaintiffs,)
)
v.)
)
BESSIE HUCKABEE, et al.,)
)
Defendants.)
)
In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate)
No.: 2009-ES-10-0378)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-10-3010

**DEFENDANTS' NOTICE
OF RENEWED MOTION AND
RENEWED MOTION FOR
SUMMARY JUDGMENT**

FILED
2010 JAN -2 AM 11:01
CLERK OF COURT

TO: JOHN HUGHES COOPER, ESQ., COUNSEL FOR PLAINTIFFS

PLEASE TAKE NOTICE that in ten (10) days hereafter, or as soon thereafter as counsel may be heard, the Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue in the above styled action will move through the undersigned and pursuant to Rule 56, SCRPC for summary judgment in favor of each of them as to Plaintiffs' remaining causes of action¹ for constructive trust, unjust enrichment, promissory estoppel, petition to remove Bessie Huckabee and appointment of Betty Fisher, declaratory judgment regarding the validity of Alice Shaw-Baker's Will at issue in this

¹ Trial in the above-captioned action was set for date certain beginning on October 25, 2017. At the commencement of trial, Defendants' moved for a bifurcated trial to first determine the validity of the Will at issue in the matter, as that determination would be dispositive with regard to the totality of Plaintiffs' several other claims. Judge Hughston did bifurcate the issues, and proceeded with the trial of the validity of Will only.

matter, and the disposition of the non-probate assets of the Estate of Alice Shaw-Baker on the following grounds:

1) Following the October 23, 2017 trial on the merits of the validity of Alice Shaw-Baker's Will, the jury returned a verdict upholding the Will as valid. See Order of Judgment Entering Jury Verdict (filed October 26, 2017). By implication, the jury, therefore, found Alice Shaw-Baker died testate, Bessie Huckabee is properly named as Personal Representative of the Estate, and Defendants are the sole heirs under the Will.

2) It is undisputed that Plaintiff Betty Fisher was a would-be intestate heir of Alice Shaw-Baker's, but is not an heir under Alice Shaw-Baker's Will.

3) It is undisputed that Plaintiff Lisa Fisher is neither an intestate heir of Alice Shaw-Baker's, nor an heir under Alice Shaw-Baker's Will.

4) Plaintiffs have not and cannot come forward with any admissible evidence to create a question of material fact as to the valid formal execution of the Will as required under the provisions of S.C. Code § 62-2-502;

5) Plaintiffs have not and cannot come forward with any admissible evidence to create a question of material fact as to whether Alice Shaw-Baker revoked the Will;

6) Plaintiffs have not and cannot meet their burden of coming forward with specific evidence to demonstrate by unmistakably and convincingly that Alice Shaw-Baker was subjected to or influenced by undue influence in either making or executing the Will. See Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329 (2003)("Since the standard of proof in an undue influence case is unmistakable and

convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.”);

7) Because the jury has found that Alice Shaw-Baker's Will is valid, as a matter of law, Plaintiffs lack standing to assert each of their remaining causes of action, claims, and petitions. See Joseph v. S.C. Dep't of Labor, Licensing & Regulation, 417 S.C. 436, 449, 790 S.E.2d 763, 769 (2016)(fundamental prerequisite to institute an action is the requirement that the plaintiff have standing which is defined as a personal stake in the subject matter of a lawsuit.)

8) Plaintiffs' further lack standing to maintain a cause of action for constructive trust on behalf of and in the name of an unidentified third party, or parties (unspecified dog charities), See Joseph v. S.C. Dep't of Labor, Licensing & Regulation, 417 S.C. 436, 449, 790 S.E.2d 763, 769 (2016)(for standing, Plaintiff must have sustained an injury in-fact), and Plaintiffs abandoned their claim of fraud, and essential requirement for the imposition of a constructive trust, in the course of the trial of the Will contest, and therefore, as a matter of law, would be unable to establish the requirements for constructive trust. even were they to have standing to seek it.

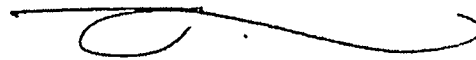
Defendants' Notice of Renewed Motion and Renewed Motion for Summary Judgment is based upon the October 26, 2017 jury verdict in the trial on the merits regarding the validity of Alice Shaw-Baker's Will, the pleadings, South Carolina Rules of Civil Procedure. the statutory and common law of South Carolina, and such further

authorities, affidavits, and memoranda as may be submitted to the Court prior to a hearing on this motion.

Dated this 29th day of December 2017.

Respectfully submitted,

LAW OFFICE OF
W. WESTBROOK WILLS III



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