

**LISA FISHER**

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**RECEIVED**

**AUG 09 2018**

**S.C. SUPREME COURT**

August 6, 2018

*Via US Mail and Fax:*

*Honorable Daniel E. Shearouse, Clerk of Court*  
South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**Re: *In re Ex Parte Fisher v. Huckabee***  
***Appellate Case No. 2018-001332***

To the Honorable Daniel E. Shearouse:

This correspondence is in reply to the letter of Jessica Crowley, received on Saturday August 4, 2018. Ms. Crowley's letter misrepresents the facts and is merely argument. This issue requires formal consideration by the court due to the serious and important issues raised by appeal.

As this court knows, arguments of counsel alone do not support evidentiary facts. As the court in *Trivelas v. S.C. Dept. Of Transportation*, 348 S.C. 125, 141, 558 S.E 2d 271, 279 (2001) explained, arguments of counsel are not evidence, and absent stipulation, they do not provide any factual basis. Moreover, "factual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists." (See *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E. 2d 180 (Ct. App. 1986).) Although this is not a summary judgment, the same rationale applies that an attorney's argument does not support evidentiary facts.

In this case, the arguments of Attorney Crowley do not even accurately represent the facts of this case. I am attaching the response filed in the magistrate's court which clearly states that Lisa Fisher is an interested party and that both she and Candace Rickborn have asserted that position throughout this litigation.<sup>1</sup>

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<sup>1</sup> In my faxed response, I am only including the response filed in the magistrates' court and not the exhibits. The exhibits will be included in the mailed copy of this response. Since there is no electronic means of filing, the faxed copy is merely to inform the court of the previously filed response and not inundate or overload the fax system.

*re: Reply to letter of August 4, 2018*

The *Statutory Request for Order to Show Cause Pursuant to S.C. Ann Code sct. 27-37-20; Motion to Dismiss or Alternatively, to hear Motion for Summary Judgment Due to Improper Defendant, Lack of Jurisdiction and Lack of Standing of Bessie Huckabee and Made Applicable under Rule 81; Affidavit of Candace Rickborn; Affidavit of Interested Person, Lisa Fisher, in Possession of Estate Property Pursuant to SC Ann. Code sct. 62-4-425(d)* was filed in the magistrates court on December 18, 2017 at 10:54 a.m.<sup>2</sup> (Attached hereto is a true and correct copy of said Response marked as Exhibit A)

In said request, Lisa Fisher answered and raised the issue of standing of Bessie Huckabee, the jurisdiction of the magistrate, and the duties of Lisa Fisher. Since the property was turned over by Lisa Fisher, with full knowledge of Bessie Huckabee, they can not continue to assert any liability by Candace Rickborn.

Attorney Crowley makes the disingenuous remark that:

"Ms. Fisher lives in California, has never had a personal interest in the estate real property, and has never lived in the property. Candace Rickborn is the individual who occupied the property without authorization of the Personal Representative of Mrs. Shaw Baker's estate, when Ms. Huckabee served a proper notice to vacate and thereafter commenced the action for ejectment "

Lisa Fisher had a personal interest in the estate as conservator and as the person in control of the real property. The issue of control over the property was not properly raised for 8 years by Bessie Huckabee in any action for ejectment, and her status as personal representative is still in dispute. Attorney Crowley knows that the property was not turned over by Candace Rickborn, who is an innocent party in this litigation, instead it was turned over by *Lisa Fisher* by order of this Supreme Court. The law governing ejectment raises a defense with regard to attorney fees and costs. Therefore, Lisa Fisher has a right and obligation to assert defenses to ensure that she is not liable for any duplicative judgment.

Without citing authority, Attorney Crowley states that: "There is no obligation on the part of Ms. Fisher to indemnify Ms. Rickborn in the event the latter is required to forfeit the appeal bond she was required to post as a condition for staying the home." This statement is made without any knowledge of any legal requirement owed to Ms. Rickborn as an agent for Lisa Fisher.

Finally, Ms. Fisher's motion to intervene on appeal was required, because she is the real party in interest who was in possession of the real property, and in fact was the person who turned over said property. Attorney Crowley's continuation of the ejectment litigation, despite knowledge that the issue of control was before the Supreme Court was and continues to be in bad faith. As set forth

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<sup>2</sup> Appellant apologizes for the heading errata, however the body of the documents sets forth clearly that Lisa Fisher took the position that the real property was in her possession and not Candace Rickborn's

*Lisa Fisher*  
*August 6, 2018*

*re: Reply to letter of August 4, 2018*

in my motion to consolidate, Attorney Crowley is already seeking attorney fees from Lisa Fisher and her effort to double dip in this case is unwarranted and illegal. Her action was only for ejectment, and she was therefore only entitled to possession. Lisa Fisher should not be made liable for fees, where she does not have an opportunity to respond.

There is nothing frivolous about asserting my right to avoid an additional judgment, especially where Attorney Crowley's continued efforts to seek monies from an innocent party is not based on law or the facts of this case. The only frivolous filing is that filed by Crowley who knew that Lisa Fisher was the proper party and filed this bogus litigation.

Alice Shaw Baker's estate was and is meant to benefit animal charities. Respondents' efforts to deprive her of her true intentions have caused suffering to Appellant and her family. Attorney Crowley's further attempts to punish Lisa Fisher for protecting Alice Shaw Baker's property are not proper. I respectfully ask the court to allow the appeal to proceed to ensure that no further duplicative judgement is obtained by Respondents.

Thank you for your assistance. As set forth below, we are serving this letter on all parties. My cell phone number is (562) 965-3267 if you have any questions.

Sincerely,

Lisa Fisher, Esq.

Enclosures

cc: Neil Thomson  
Jessica Crowley  
W. Westbrook Wills

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AUG 09 2018  
S.C. SUPREME COURT



contest and a constructive trust for the benefit of animal rescues and/or animal charities.

There is also a Petition for Certiorari currently before the South Carolina Supreme Court, Appellate Case no. 2017-000743. Until these issues are resolved and litigation is completed, title is disputed.

**2. Defendant Candace Rickborn Is an Improper Defendant.**

Bessie Huckabee and her counsel are aware that Candace Rickborn is caring for the property on behalf of Interested Party Lisa Fisher, the Conservator of the Estate of Alice Shaw Baker. Any orders regarding the property will ultimately be made by the probate court at the conclusion of the pending litigation.

At the request of the Conservator, Lisa Fisher, Defendant Candace Rickborn cares for the property to ensure that the property is properly maintained, save on storage costs, and not deemed abandoned and is protected while the Estate matter is involved in Litigation relating to a Constructive Trust alleging that the property is to be used for the benefit of animal rescue and/or animal charities. (Attached hereto is a true and correct copy of the docket for Estate of Alice Shaw Baker, Case no. 2009-CP-10-3010, marked as Exhibit A--said docket shows there are pending post-trial motions in the circuit court).

**3) This Court Lacks Jurisdiction to Make any Orders.**

Interested Party Lisa Fisher holds the property under S.C. Code Ann. § 62-5-425(D) until there is a determination of the appropriate person to whom the assets should be distributed. This matter is before the South Carolina Supreme Court, Appellate Case no. 2017-000743.

Therefore, this court does not have jurisdiction to make any orders related to the property while the Supreme Court is considering Interested Party Lisa Fisher's Petition for Writ of

Certiorari. (Attached hereto is a true and correct copy of the docket for the Supreme Court, Appellate Case no. 2017-000743, setting forth that the petition for writ of certiorari is still pending, marked as Exhibit B).

**4) Bessie Huckabee Does Not Have Standing.**

Bessie Huckabee does not have standing to pursue this action as she is not the landlord-lessor of the property. There has been no final determination of who is entitled to receive the Estate Property of Alice Shaw Baker, and as outlined in the Affidavit of Interested Party Lisa Fisher, Bessie Huckabee never complied with the Order to obtain a bond, therefore she is not legally entitled to hold any assets of Alice Shaw Baker. (Attached hereto is a true and correct copy of the order granting modification of temporary restraining order dated June 10, 2009 setting forth that Ms. Huckabee is required to have a bond to act as personal representative marked as Exhibit C.) Further, testimony at trial in the Estate matter by Bessie Huckabee indicated that she could not get a bond. (See Affidavit of Lisa Fisher, filed herewith).

**APPLICABLE LAW**

**A. This Court has Jurisdiction to Consider a Motion to Dismiss, or in the Alternative a Motion for Summary Judgment**

It is well settled that under Rule 81, SCRCP:

"These rules [SCRCP], or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. They 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."

See Rule 1, SCRCF (defining the scope of the South Carolina Rules of Civil Procedure) and Rule 56, SCRCF (providing the authority to grant summary judgment).

Additionally, Rule 2, SCRMC, provides:

"(a) If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in like situations but not inconsistent with these rules.

(b) Each magistrate may promulgate rules for the conduct of proceedings in his court which are not inconsistent with these rules and the South Carolina Code of Laws."

Further, South Carolina Bench Book for Magistrates and Municipal Court Judges discusses summary judgment, explaining:

"After the filing of a civil case and prior to the actual trial, you may occasionally receive a motion for summary judgment . . . . Rule 56, SCRCF, which is made applicable to magistrate's court by Rule 81, SCRCF, allows the plaintiff or defendant . . . [to] move with or without supporting affidavits for a summary judgment . . . . Summary judgment is proper when, after reviewing the motion, supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. . . . If, after a hearing, the court determines the summary judgment is appropriate, an order to that effect ending the case should be issued."

South Carolina Bench Book for Magistrates and Municipal Court Judges, II-19 to II-20 (2d ed. 1984), available at <http://www.sccourts.org/trial/magistrate/benchbook/HTML/CivilC.htm#C15> (emphasis in original).

So, this court may dismiss this action based on lack of jurisdiction, improper joinder of parties, and lack of standing.

**B. Any Dispute over Title or Authority to Administer the Estate is to be Determined in the Estate Matter, Bessie Huckabee is forum shopping.**

It is well settled that the South Carolina Probate Code confers exclusive original jurisdiction to the probate court over all subject matter related to estates of decedents. S.C. Code Ann. § 62-1-302(a)(1) (2009) (providing probate court has exclusive original jurisdiction over all subject matter related to "estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons").

An action requesting settlement of a claim owed by and to an estate must be originated in the probate court. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Thereafter, it may be removed to the circuit court within 10 days.

Resolution of the disputes regarding the property are still before the circuit court and the South Carolina Supreme Court. As outlined by Lisa Fisher, there are pending motions for new trial, and other post-trial motions in the Circuit Court (See also, Ex. A, Docket of circuit court), and the Petition for Certiorari is still pending. (See Ex. B, Docket of South Carolina Supreme Court).

Moreover, the property is occupied by Interested party Lisa Fisher, who holds it until there is a determination of the proper person to whom the property should be distributed. Defendant Candace Rickborn is not a proper defendant.

**C. Lisa Fisher is Prohibited from Transferring the property to anyone without proper Court Orders**

Due to the pending litigation and pursuant to her statutory duties under S.C. Code Ann. § 62-5-425(D), Lisa Fisher is required to maintain the property until ordered to distribute to

the appropriate person. Here, these matters are before the circuit court and the South Carolina Supreme Court.

Candace Rickborn is on the premises at the request of Lisa Fisher to protect the property, maintain it in good condition, and ensure that it maintains its property value. This court has no jurisdiction to make any orders regarding the property.

**D. This Court lacks Jurisdiction to Make any Orders when the Matter is Before the South Carolina Supreme Court**  
Pursuant to Rule 203, SCACR:

"Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (Rule 205, SCACR, emphasis added.)

Further, pursuant to S.C. Code Ann. § 62-1-308(c):

"When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken." (Emphasis added)

For all the reasons stated in here, Dismissal or grant of summary judgment is proper. This court does not have jurisdiction, nor does Bessie Huckabee have standing.

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  
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843-883-9099; fax 843-883-9335

ATTORNEY SPECIALLY APPEARING FOR DEFENDANT  
CANDACE RICKBORN and FOR INTERESTED PERSON  
LISA FISHER

December 15, 2017  
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

MAGISTRATE COURT  
CASE NO. 2017-CV-1010903280

Bessie Huckabee, )  
 )  
Plaintiff, )

**AFFIDAVIT OF CANDACE RICKBORN**

vs. )

**IN SUPPORT OF:**

Candace Rickborn, )  
 )  
Defendant, )

**STATUTORY REQUEST FOR ORDER TO SHOW  
CAUSE PURSUANT TO S.C. ANN. CODE § 27-37-20;  
MOTION TO DISMISS, OR ALTERNATIVELY,  
TO HEAR MOTION FOR SUMMARY JUDGMENT DUE  
TO IMPROPER DEFENDANT, LACK OF  
JURISDICTION AND LACK OF STANDING  
OF BESSIE HUCKABEE AND MADE APPLICABLE  
UNDER RULE 81**

In the Matter of )  
306 Cassina Rd. )  
Charleston S.C. 29407 )  
\_\_\_\_\_ )

**AFFIDAVIT OF CANDACE RICKBORN**

PERSONALLY APPEARED before me CANDACE RICKBORN who being first duly sworn, stated as follows:

1. I am over the age of eighteen and of sound mind. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I would competently do so.

2. I am a resident of Charleston County, a citizen of South Carolina. I file this request for the court to set this matter for hearing, grant the requested Motion to Dismiss, or the Motion for Summary Judgment, and I also demand a jury trial.

DEC 18 2017 AM 10:54

3. I was one of the caregivers for Alice Shaw Baker. After her death, Lisa Fisher requested that I care for Ms. Shaw Baker's home, real property located at 306 Cassina Road, Charleston, SC 29407. My responsibilities require me to inform her of the status of the property and ensure that the property is properly maintained.

4. Recently, Attorney Jessica Crowley and Attorney Westbrook Wills have come to the property and threatened me with police action if I did not vacate the property. I informed them that Lisa Fisher directed me to care for the property and they should speak to her.

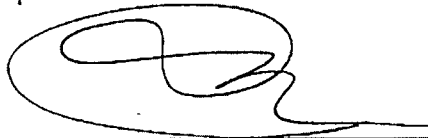
5. When I received the papers, they were merely placed on the side of the property on December 11, 2017. I was never personally served or received any documents by mail. I respectfully request the court dismiss this action.

FURTHER, AFFIANT SAYENT NAUGHT.

By:   
CANDACE RICKBORN

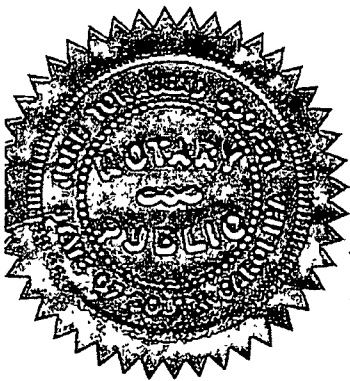
Subscribed and sworn to before me

This 18<sup>th</sup> day of December 2017.



Notary Public of South Carolina

My Commission Expires: 3-4-2021



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON ) MAGISTRATE COURT  
 )  
 ) CASE NO. 2017-CV-1010903280

Bessie Huckabee, )  
 )  
 Plaintiff, )

**AFFIDAVIT OF INTERESTED PERSON,  
 LISA FISHER**

**IN SUPPORT OF:**

vs. )

**STATUTORY REQUEST FOR ORDER TO SHOW  
 CAUSE PURSUANT TO S.C. ANN. CODE § 27-37-20;  
 MOTION TO DISMISS, OR ALTERNATIVELY,  
 TO HEAR MOTION FOR SUMMARY JUDGMENT DUE  
 TO IMPROPER DEFENDANT, LACK OF  
 JURISDICTION AND LACK OF STANDING  
 OF BESSIE HUCKABEE AND MADE APPLICABLE  
 UNDER RULE 81**

Candace Rickborn, )  
 )  
 Defendant, )

In the Matter of )  
 306 Cassina Rd. )  
 Charleston S.C 29407 )

**AFFIDAVIT OF INTERESTED PERSON LISA FISHER**

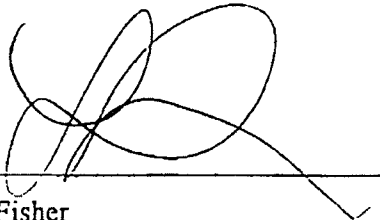
PERSONALLY APPEARED, Lisa Fisher, who, first being duly sworn, deposes and says:

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 Bessie Huckabee's Application for Ejectment and in support of Candace Rickborn's hearing to Show Cause on the Rule to Vacate re: Application for Ejectment regarding Alice Shaw Baker's real property located at 306 Cassina Rd., Charleston, SC.
6. I am the great niece and was the conservator and guardian for Alice Shaw-Baker. She was the owner of said property. She is now deceased. There is currently a will contest and litigation relating to a constructive trust for the benefit of animal charities and/or animal rescue in the Circuit Court. There was a trial on the bifurcated matter of the Will contest in October 2017. The bifurcated matter on the Constructive Trust has not yet been heard. There are currently pending post trial Motions for New Trial and for a date certain on the Constructive Trust matter. There are post trial motions by Bessie Huckabee and the other defendants in the will contest, under circuit Case no. 2009-CP-10-3010, as well. She is aware that the judgment is not final.
7. Bessie Huckabee and her counsel are aware that Candace Rickborn is caring for the property on my behalf. Any orders regarding the property will ultimately be made by the probate court at the conclusion of the pending litigation.
8. I have asked Candace Rickborn to care for the property to ensure that the property is properly maintained, to save on storage costs, and not have the property perceived as abandoned. This protects the property while the Estate matter is involved in this Litigation relating to a Constructive Trust alleging that the property is to be used for the benefit of animal rescue and/or animal charities. (Attached hereto is a true and correct copy of the docket for Estate of Alice Shaw Baker, Case no. 2009-CP-10-3010 , marked as Exhibit A--said docket shows there are pending post trial motions in the circuit court).
9. Pursuant to my duties, I hold the property under S.C. Code Ann. § 62-5-425(D) until there is a determination of the appropriate person to distribute the assets. This matter is before the South Carolina Supreme Court on a Petition for Writ of Certiorari, Case no. 2017-000743 (Attached hereto is a true and correct copy of the docket for the Supreme Court case no. 2017-000743, setting forth that the petition for writ of certiorari is still pending, marked as Exhibit B).

10. There has been no final determination of who is entitled to receive Alice Shaw-Baker's Estate Property of Alice Shaw Baker, and Bessie Huckabee has never complied with the Order to obtain a bond, therefore she is not legally entitled to hold any assets of Alice Shaw-Baker. (Attached hereto is a true and correct copy of the order granting modification of temporary restraining order dated June 10, 2009 setting forth that Ms. Huckabee is required to have a bond to act as personal representative marked as Exhibit C.)
11. Finally, testimony at trial in the Estate matter by Bessie Huckabee indicated that she could not get a bond. Therefore, she does not have standing to pursue this action. I am respectfully requesting that the court dismiss this action or grant summary judgment, set it for hearing, or grant Defendant Candace Rickborn's request for Jury Trial.

Further affiant sayeth naught.



Lisa Fisher

Long Beach, California

December 15, 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 15th 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.



Signature

A handwritten signature in black ink, appearing to read "Lisa Fisher", written over a horizontal line.

(seal)



**Julie J. Armstrong**  
Charleston County Clerk of Court

Charleston County  
Circuit Court Case Details  
Public Index

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Switch View

Alice Shaw Baker , plaintiff, et al VS Bessie Huckabee , defendant, et al					
Case Number:	2009CP1003010	Court Agency:	Common Pleas	Filed Date:	05/13/2009
Case Type:	Common Pleas	Case Sub Type:	Contract/General 130	File Type:	Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Jury Trial	Disposition Date:	10/26/2017	Disposition Judge:	Hughston, Thomas L
Original Source Doc:		Original Case #:			
Judgment Number:	2009CP1003010	Court Roster:			

Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
	Memo in opposition to defnts' post trial motions	Filing		12/06/2017-14:35		
	Remittitur From Court Of Appeals-appeal dismissed	Filing		11/16/2017-09:23		
Huckabee, Bessie	Motion/Motion Filing Fee	Filing		11/06/2017-16:46		
Huckabee, Bessie	Motion/Motion Filing Fee	Filing		11/06/2017-16:41		
Wills, Warren W. III	Certain Defnt's Post Trial Motions & Memo of Law, cert/srv	Motion		11/06/2017-12:50		
Crowley, Jessica Lynn	Defnts Motion for Order Dissolving TRO	Motion		11/06/2017-12:45		
Cooper, John Hughes	Pltff's Motion for Date Certain, New Trial, Reconsider, cert	Motion		11/03/2017-12:39		
Shaw Baker, Alice	Affidavit of Lisa Fisher in support of Pltff's Motlons	Filing		11/03/2017-12:38		
Fisher, Betty	Motion/Motion Filing Fee	Filing		11/03/2017-11:03		
	Order/Jury Verdict-find for the defnt's	Order		10/26/2017-14:02		
	Certain plntffs Notice/Appealling Order filed 10/20/17, srv	Filing		10/23/2017-15:08	10/26/2017-15:08	
Cooper, John Hughes	Pltff's Motion to Disqualify Judge Hughston & cert/srv	Motion		10/23/2017-12:52		
Cooper, John Hughes	Pltff's Motion to Alter, Amend or Reconsider, cert/srv	Motion		10/23/2017-12:47		
	Order/denying plntff's motion for reconsideration	Order		10/23/2017-11:40	10/26/2017-11:40	
Shaw Baker, Alice	Motion/Motion Filing Fee	Filing		10/23/2017-08:41	10/26/2017-08:41	
Shaw Baker, Alice	Motion/Motion Filing Fee	Filing		10/23/2017-08:40	10/26/2017-08:40	
	Certain Def's Memo in Opp to Pltff's Motion, cert/srv	Filing		10/19/2017-09:47	10/26/2017-09:47	
	Order/crt denies plntff's mot to stay etc	Order		10/19/2017-09:02	10/26/2017-09:02	
Denny, Cain	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Cooper, John Hughes	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Fisher, Lisa	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Jowers, Mary Frances G.	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Bullard, B. Allen Jr.	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Wills, Warren W. III	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
Crowley, Jessica Lynn	Roster/Notice of Case Roster Publication Sent	Action		10/19/2017-08:57	10/26/2017-08:57	
	Affidavit of Joann Hadwin	Filing		10/18/2017-16:24	10/26/2017-16:24	
	Affidavit of Donald J Budman	Filing		10/18/2017-16:22	10/26/2017-16:22	
	Affidavit of Lisa Fisher In	Filing		10/02/2017-	10/26/2017-	

C.X. D

South Carolina Appellate Case Management System

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Participant Search

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Case Information: 2017-000743 *sk*

**Court:** Supreme Court  
**Classification:** Certiorari - COA - Common Pleas - Appeal from Probate Court  
**Short Title:** Betty Fisher v. Bessie Huckabee AND Lisa Fisher v. Bessie Huckabee  
**Case Status:** Ready for Consideration  
View Full Title

**Consolidated:**

**Filed Date:** 03/27/2017  
**Disposition Date:**  
**Remittitur Date:**  
**Lower Court or Tribunal:** Charleston (2011CP1007819)  
**Oral Argument Date:**  
**Disposition Type:**

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Petitioner	Betty Fisher	N	John Hughes Cooper Lisa Fisher
Respondent	Bessie Huckabee	N	Peter A. Kouten Jessica Lynn Crowley

Views

Display:

Event Information

Filed Date	Event Information	Doc
11/28/2017	Correspondence - Outgoing (Letter to Jessica Crowley, Esquire)	
11/27/2017	Correspondence - Incoming (Letter from John Hughes Cooper, Esquire)	
11/20/2017	Correspondence - Incoming (Letter from Jessica Crowley & Order from Charleston County Court of Common Pleas)	
06/02/2017	Petition for Writ of Certiorari and Responses - Reply (of Petitioners Betty Fisher and Lisa Fisher's Reply to Return of Respondent Bessie Huckabee)	
05/18/2017	Correspondence - Outgoing (Order Granting Motion to Allow Late Filing mailed)	
05/18/2017	Non-Dispositional Decision - Order Granting Motion to Allow Late Filing	
05/15/2017	Motion - Return	
05/08/2017	Correspondence - Outgoing (Order mailed)	
05/08/2017	Non-Dispositional Decision - Order	
05/06/2017	Motion - Allow Late Filing (Return to Petition for Writ of Certiorari)	
05/05/2017	Motion - Extension of Time to file reply (10 days)	
04/17/2017	Correspondence - Incoming (Letter from Peter Kouten - Respondent's Brief)	
04/07/2017	Correspondence - Outgoing (Letter to Mr. Kouten related to "Respondent's Initial Brief")	
04/04/2017	Petition for Writ of Certiorari and Responses - Respondent's Initial Brief	
03/28/2017	Correspondence - Outgoing (Initial Letter)	
03/27/2017	Petition for Writ of Certiorari and Responses - Petition and Appendix	

EX B

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

RY

JULIE J. ARMSTRONG  
CLERK OF COURT

2009 JUN 10 PM 1:58

FILED

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

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

Court Reporter:

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.

EX C

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 merits<sup>1</sup>.

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

<sup>1</sup> 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 SCRCP, 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, SCRCP.

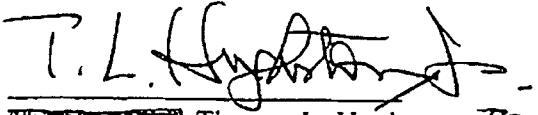
**THEREFORE**, based on the forgoing Findings of Fact and Conclusions of Law, it is hereby

**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 SCRCP, Rule 65.

**AND IT IS SO ORDERED!**

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

This 9<sup>th</sup> day of June, 2009  
Charleston, South Carolina