

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355  
Appellate Case No. 2016-000748

**RECEIVED**  
OCT 24 2016  
SC Court of Appeals

In RE: Estate of Norman R. Knight, Jr., (deceased), and Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby' Knight, III, Appellants,

v.

Beatrice A. Whitten, as a Special Administrator, and Chloe Knight-Tonney, Claimant, Respondents,

---

REPLY TO RESPONDENT SPECIAL ADMINISTRATOR WITH ARGUMENTS

---

Appellants' Petition satisfies the standards of Rule 221, SCACR. On each issue, Appellants made clear what points were either overlooked or misapprehended.

**ARGUMENTS**

Appellants, in their Petition and Supporting Memorandum drew the Courts' attention to the points as follows:

(1) This probate court claim is controlled by Rules 3 and 5, SCRCF, and Respondent Knight-Tonney did not comply with those rules, therefore all rulings are void. Chalek v. Nationwide Mutual Fire Ins. Co., 303 S.C. 26, 397 S.E. 2d 786 ( Ct. App. 1992); McLain v. Ingram, 314 S.C. 359, 444 S.E. 2d 512 (1994) (per curium); See Summons Subcommittee; Probate, Estate Planning and Trust Section, Summons in Probate Court, p. 5-7 ( January 21, 2010) (R.p. 283);

(2) S.C. Code Ann. 14-23-1040 states clearly: no person is eligible to hold the office who has not become a qualified elector of the county in which he is to be a judge;

Palmettonet, Inc. v. S.C. Tax Com'n, 318 S.C. 102, 456 S.E.2d 385 (1995) held there is no legislative repeal by implication especially where “two statutes are capable of co-existence,” i.e. appointing special judges from a pool of other qualified electors of the county in which he/she is to be judge; Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002) says that dual office holding is illegal;

(3) Affirming the failure to unredact documents and quashing a subpoena prevented Appellants from receiving a fair trial. Knight v Lee, 262 S.C. 17, 202 S.E.2d 19 (1974);

(4) The Court misapprehends the substantive character of this claim as one at-law when it is one in equity. Jaffe-Spindler Co. v. Genesco, Inc., 747 F.2d 253 (C.A.S.C.1984); Webb v. First Federal Sav. & Loan Ass'n of Anderson, 300 S.C. 507, 388 S.E. 2d 823 (Ct. App. 1989) (citing 66 Am. Jur.2d Restitution and Implied Contracts Section 2 (1973));

(5) This Court did not realize that the order under appeal involved Mildred C. Knight's status as guardian and conservator and was subject to the automatic stay. S. C. Code Ann. 62-1-308 (c) ( R.p. 219-220) (R.p. 169-174);

(6) This Court overlooked the guardian and conservator's failure to disclose pertinent material details to Mrs. Knight, i.e. suppression of truth. “ It is fundamental that a suppression of truth may constitute fraud as much as a false suggestion, provided that it is material to the transaction. A distinction must be drawn, however, between passive and active concealment. The former involves mere silence or failure to disclose a fact, while the latter involves a purpose or design. It is only when there is a duty to reveal the fact that mere non-disclosure constitutes fraud.” 14 Fla. Jur. Fraud and Deceit, sec. 27, pp. 555-556; Franklin v. Brown, 159 So. 2d 893 (Fla.App., 1964);

(7) This is a claim for equitable relief and when viewed under the appropriate standards it will be decided in favor of Appellants. Jaffe-Spindler Co. v. Genesco, Inc., 747 F.2d 253 (C.A.S.C. 1984); Webb v. First Federal Sav. & Loan Ass'n of Anderson, id.

(8) Knight-Tonney's claim was untimely and the relevant circumstance was brought to the Court's attention. Beach First National Bank v. Estate of Gurnham ( In re: Estate of Gurnham, 407 S.C. 194,754 S.E. 2d 875 (2014);

(9) The Court did not understand the citation to S.C. Code Ann. 62-3-801, et. seq. as a reference to S.C. Code Ann. 62-3-801, Part 8, Creditors Claims. Appellants' citation to note 7 in Howard. Matter of, 315 S.C. 356, 434 S.E. 2d 254 (1993) completes the legal authority necessary to assess Appellants' argument. In Re McCracken, 346 S.C. 87, 92 551 S.E. 2d 235, 238 (2001);

(10) The Court did not apply the proper standard for evaluating Respondent Knight-Tonney's claim for attorney's fees. Jackson v. Speed, 486 S.C. 750,326 S.E. 2d 289 (1997) ( attorney's fees are not recoverable unless authorized by contract or statute); S.C. Code Ann. 20-3-670 (C);

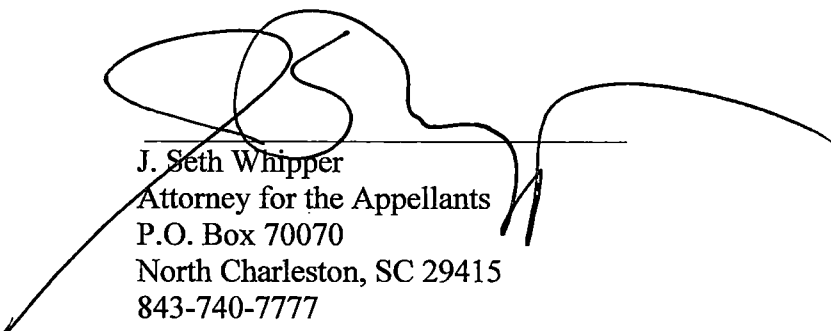
(11). The record shows that the Special Administrator did not effectively communicate with the Decedent's devisee and did not follow through on direct court orders or the inconsistent status of estate property, even when issues of estate liability were possible. S. C. Code Ann. 62-3-703, ( Attach. 1)

**CONCLUSION**

Appellants raised each point in the lower Courts, and are entitled to a rehearing in this matter.

Respectfully Submitted,

October 22, 2018

  
\_\_\_\_\_  
J. Seth Whipper  
Attorney for the Appellants  
P.O. Box 70070  
North Charleston, SC 29415  
843-740-7777

Other Counsel of Record:

Beatrice E. Whitten, Esquire  
C. Mac Gibson, Esquire

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355  
Appellate Case No. 2016-000748

**RECEIVED**  
OCT 24 2018  
SC Court of Appeals

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby' Knight, III, Appellants,

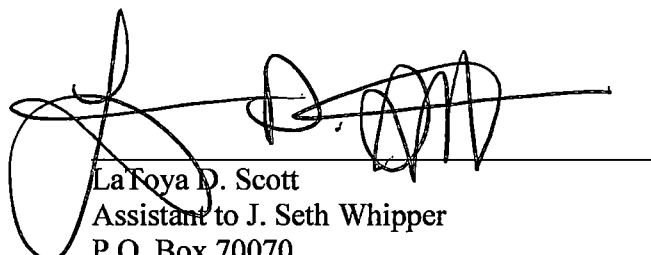
v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant,  
Respondents,

PROOF OF SERVICE

I certify that I have served 1 Original Copy of the Reply to Respondent Special Administrator with Argument, 1 Original Proof of Service, and 6 Copies on South Carolina Court of Appeals by depositing a copy to them in the United States Mail, postage prepaid, on October 22, 2018, addressed to: Clerk, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211 and served the same on: Beatrice A. Whitten, Special Administrator, 1110A Queensborough Blvd., Mt. Pleasant, SC 29464; and C. Mac Gibson, Jr., 1118 Savannah Highway, Charleston, SC 29407.

October 22, 2018

  
La Foya D. Scott  
Assistant to J. Seth Whipper  
P.O. Box 70070  
North Charleston, SC 29415  
843-740-7777

# Attachment # 1

1 A. Yes.

2 Q. How is that?

3 A. As special administrator, I have to  
4 serve the interest of not only the heirs but the  
5 creditors, and at the time I had creditors' claims  
6 which had been declared valid by the Probate Court.  
7 I was seeking to find a way to pay them.

8 Q. And that is part of your  
9 responsibility?

10 A. Yes.

11 Q. I just want to make sure we are clear  
12 about this. As we look at exposure and protection  
13 of the estate, this Mitsubishi, this vehicle is  
14 still in Mr. Knight's name, isn't it?

15 A. According to your client's testimony,  
16 yes.

17 Q. Is there no concern for any kind of  
18 liability for his estate as a result of this car  
19 being in his name?

20 A. There might be. However, I think there  
21 is also testimony that it is insured.

22 Q. And do you have any idea the level of  
23 insurance on it?

24 A. I don't. I don't honestly know if a  
25 car that age is still being used. Maybe.

1 I have treated both sides equally as far as that  
2 goes. I have actually been pretty good about  
3 staying with the rules. I have been more or less  
4 in continuous contact with the attorneys for both  
5 of the sets of parties. So if there was any  
6 information that needed to be submitted to me about  
7 the estate, my address hasn't changed. My contact  
8 information hasn't changed, and both attorneys have  
9 certainly sent me volumes of information, which is  
10 on that table over there.

11 I apologize, your Honor. I did not  
12 know there was a question about my dismissing the  
13 lis pendens. You did order me to do that, and I  
14 testified to you that I did it. However, because I  
15 was not aware that there was any question or any  
16 doubt about that, I cannot lay my hands on the  
17 proof in that folder, and perhaps I did not bring  
18 it with me. If that is a problem, I will submit  
19 it. I have obeyed every court order that has  
20 directed me to do anything in this case. I will  
21 continue to do so.

22 I have not paid any of the claims  
23 mostly because of the ongoing nature of litigation  
24 in this case. I believe it was not appropriate to  
25 do so. It was a fairly small amount of money that

**WHIPPER LAW FIRM**

*Attorneys and Counselors at Law*

4592 Durant Avenue  
North Charleston, SC 29405  
(843) 740-7777  
FAX (843) 740-9108

**RECEIVED**

OCT 24 2018

**SC Court of Appeals**

CHERYL WHIPPER HAMILTON  
J. SETH WHIPPER

MAILING ADDRESS  
POST OFFICE BOX 70070  
NORTH CHARLESTON, SC 29415

October 22, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**U.S. Mail Only**

Re: **In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert "Bobby" Knight, III Appellants, v. Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.**  
**Appellants' Case No.: 2016-000748**  
**1 Original Appellants' Reply to Respondent Special Administrator with Argument- For Filing**  
**6 Copies of Appellants' Reply to Respondent Special Administrator with Argument - For Filing**  
**Proof of Service- For Filing**

Dear Ms. Kitchings:

Find enclosed 1 Original Appellants' Reply to Respondent Special Administrator with Argument, Proof of Service, and 6 copies for filing and conforming. Also, enclosed is a self-addressed, stamped envelope for the return of the Proof of Service.

By copy of this letter, I am serving a copy of the same on Beatrice E. Whitten, Esq. and C. Mac Gibson, Esq., attorneys for Respondents.

Sincerely,  
WHIPPER LAW FIRM

  
J. Seth Whipper, Esquire

JSW/ljs  
Enclosure  
xc: Bobby Knight  
Judith A. Brown

J. Seth Whipper, Esq.  
Whipper Law Firm  
P.O. Box 70070  
North Charleston, SC 29415

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211



1000



29211

U.S. POSTAGE PAID  
FCM LG ENV  
NORTH CHARLESTON, SC  
29405  
OCT 22, 18  
AMOUNT  
**\$3.10**  
R2305K143215-12

**RECEIVED**  
OCT 24 2018  
SC Court of Appeals