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SC Court of Appeals
FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-32-00315

Leroy Fulmer et al
PLAINTIFFS

Elizabeth S Gainey et al
DEFENDANTS

Submitted by: Walton J. McLeod, IV, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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:

Defendant Elizabeth Gainey as Personal Representative of the Estate of Leroy Fulmer filed an Amended Motion to Alter or Amend Order Removing Personal Representative pursuant to Rule 59(e), SCRPC on October 26, 2018.

The former Personal Representative, Ms. Gainey, argues that there was no evidence in the record to support a finding that Ms. Gainey should be removed or that Ms. Gainey's husband, Dennis Gainey, should be disqualified as an alternate personal representative. The court disagrees.

A court may remove a personal representative for good cause pursuant to S.C. Code Ann. § 62-3-611(a) (2017). Good cause exists when the removal would be in the best interest of the estate or if the personal representative has failed to perform any duty pertaining to the office. S.C. Code Ann. § 62-3-611(b) (2017).

A personal representative is a fiduciary. S.C. Code Ann. §§ 62-3-703 and 62-1-201 (2017). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." Witherspoon v. Stogner, 182 S.C. 413, 414, 189 S.E. 758, 759 (1937); Ex parte Wheeler v. Estate of Green, 381 S.C. 548, 555-56, 673 S.E.2d 836, 840 (Ct. App. 2009).

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A personal representative owes a fiduciary duty to all beneficiaries of the estate. S.C. Code Ann. § 62-3-703(a) (2017) (stating “[a] personal representative is a fiduciary” and must “use the authority conferred upon him . . . for the best interests of successors to the estate”); see also *Turpin v. Lowther*, 404 S.C. 581, 589-90, 745 S.E.2d 397, 401 (Ct. App. 2013). The existence of a fiduciary duty is a question of law for the court. *Turpin*, at 589, 745 S.E.2d at 401. The court in *Turpin* determined that this duty required the personal representative to disclose information affecting the value of the beneficiaries’ interests in the estate before he could negotiate those interests. *Id.* at 590-91, 745 S.E.2d at 402; see also *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004) (providing that a fiduciary must fully disclose to a beneficiary all known information that is significant and material and that when the duty to disclose is triggered, silence may constitute a breach of that duty).

During the hearing on the Expedited Motion to Remove Personal Representative on October 10, 2018, the court asked Ms. Gainey, in her capacity as the Personal Representative of the Estate, if she had communicated with Ms. Fulmer after Mr. Fulmer’s death to which Ms. Gainey replied, “no”. The court declines to determine that Ms. Gainey violated her fiduciary duties based on this response; however, the court determines that because the former Personal Representative had not been communicating with a beneficiary of the Estate regarding the Estate’s administration, the Personal Representative had not been performing her duty. Due to this lack of performance, the court also believes that removing the Personal Representative is in the best interest of the Estate. Additionally, given the close relationship of the former Personal Representative and Mr. Gainey, it is not in the best interest of the Estate for Mr. Gainey to serve as the alternate Personal Representative. Having Special Administrator Carlos Gibbons is in the best interest of the Estate at this time.

Ms. Gainey also argues that *Smith v. Heyward*, 116 S.C. 145, 105 S.E. 275 (1920) and *Blackmon v. Weaver*, 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005) provide that a court may not remove a personal representative named in a testator’s will based on hostility among the personal representative and other heirs. Ms. Gainey’s argument is misplaced. The court did not remove the former Personal Representative based on mere hostility or the mere existence of conflict between the parties.

Therefore, the Defendant’s aforementioned motion is DENIED. The Court’s Form 4 Order dated October 16, 2018 stands.

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

Circuit Court Judge

Judge Code

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Lexington Common Pleas

Case Caption: Leroy Fulmer , plaintiff, et al VS Elizabeth S Gainey , defendant, et al
Case Number: 2018CP3200315
Type: Order/Form 4

So Ordered

s/Walton J. McLeod, 2765