

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

Circuit Court Case No. 2009-CP-10-3010
Appellate Court Case No. 2018-000566

Betty Fisher and Lisa Fisher,Appellants

v.

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

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

**APPELLANT LISA FISHER'S MOTION FOR LEAVE TO SUPPLEMENT RECORD
ON APPEAL TO REBUT RESPONDENTS' FACTUAL MISSTATEMENTS MADE AT
ORAL ARGUMENT**

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(Appellant)

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I.

INTRODUCTION

THE RECORD on appeal in the above-entitled action has been transmitted to the South Carolina Supreme Court on 10/9/18 and 10/17/18 (supplement).

Appellant Lisa Fisher ("Appellant") pursuant to Rule 212 (b), SCACR, hereby requests leave to file this additional supplement record on appeal to rebut Respondents' Counsel W. Westbrook Wills' ("Respondents") factual misstatements at the oral argument.

On Wednesday, November 28, 2018, this Court heard oral argument on this matter. During oral argument, Respondents made significant, material factual misrepresentations. Because Respondents' efforts to discredit Appellant Lisa Fisher and the arguments related to the equitable issues and the sanctions issues rests so heavily on those disputed facts, Appellant Lisa Fisher respectfully asks this Court for leave to file the Supplemented Record on Appeal related to the issue of the revocation of the will and the intentions of the decedent, Alice Shaw Baker, which explains why Respondents' factual misrepresentations should not be accepted as true by this Court.

This motion could not have been made at an earlier time, because Appellant Lisa Fisher did not know that Respondents' counsel would make these factual falsehoods contrary to previously produced discovery responses to this court and make the untenable assertions that Appellant was engaged in Fraud before this court.

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**II.
LEGAL AUTHORITY TO SUPPLEMENT THE RECORD**

Pursuant to Rule 212(b), SCACR, a record may be supplemented even after oral argument:

"(b) By a Party. With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion." (Emphasis added).

**III.
FACTUAL MISSTATEMENTS BY RESPONDENTS NECESSITATE THE FILING OF
THIS MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

A. Factual Misstatements:

Respondents seek to shield their own misconduct by manipulating and asserting false facts in this case. There certainly are arguments which Appellant believes are not correct and/or misrepresentations, however during oral argument, there were certain claims made, that if believed by this tribunal, would have serious implications for the case and for this Appellant.

While Appellant objected to review of the discovery in this case by the Honorable Thomas Hughston, Judge presiding. At this time, review of the discovery in this case is the only way to demonstrate that the issues related to revocation and the intention of Alice Shaw Baker, that all monies would go to animal charity, can best be demonstrated by review of the discovery responses of Appellants.

Therefore, as part of the Appendix, Appellant Lisa Fisher references the record to show that the lower court had requested the discovery, had access to the discovery (See Record ("Rec") 1232), and that the statements of opposing counsel are false.

Appellants' responses provide evidence that the assertions made by Respondents are false and at the same time, serve to rehabilitate Appellant Lisa Fisher's credibility as she has always asserted that Alice Shaw Baker revoked her will--not as claimed by Respondents, that this issue was first raised during this appeal.

During oral argument, Respondents' counsel stated:

"With regard to the bench trial of the equitable claim which was a constructive trust essentially, there was absolutely no question of an ambiguity in the will like I said earlier that never been brought up before this appeal. (Transcribed from the Video portal, time: 18:05 to 18:22--lists 4.36 in time on clock, emphasis added)¹

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¹ Appellant Lisa Fisher transcribed the argument of Respondents' counsel. She has taken great strides to ensure that it is accurate. She did not want to delay the filing of this motion by waiting for a court reporter to transcribe. If the court believes this is necessary, she will resubmit the transcription.

Later on, Respondents' counsel said:

"The claim which was a total fraud² was that Alice Shaw Baker revoked her will by...

Chief Justice Beatty stated: ...tearing it up

Respondents' counsel continued:

..tearing up a copy which is absolutely not what was pled in the complaint which had been filed some 9 years earlier certainly more contemporaneously with the event of the alleged tearing which happened on January 1, 2009 in the complaint its only alleged that Alice Shaw Baker told the Appellant that she would like to revoke the will and of course that morphed over time and at the trial perhaps because the Appellant discovered that the dead man statute would preclude any testimony of what Alice Shaw Baker had told her now the claim morphed into a tearing of a copy of the will with an intent to revoke

² This allegation of "fraud" is significant , because there are serious consequences to Appellant for any purported fraud alleged. She is an attorney in California and as such any finding of fraud would have serious consequences, not to mention the fact that it is just false. As the court in *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003) provides that "since attorneys are officers of the court, their conduct, if dishonest, would constitute a fraud on the court." (See also, Rules of Professional conduct, Rule 3.3 (lawyer shall not make a false statement of material fact or law to tribunal or offer evidence that the lawyer knows to be false); Rule 8.4(c) (engaging in conduct involving in moral turpitude); Rule 8.4(d) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice.)

Respondents' counsel W. Westbrook Wills and Jessica Crowley never met Alice Shaw Baker, nor was there ever any supporting testimony for this statement.

Moreover, This case is about Alice Shaw Baker's intentions-which were at the forefront in our hearts and mind, and as shown by this supplement in the representations made to the lower court and Respondents.

that never happened." (Emphasis added, video portal as transcribed by Appellant, time: 19:45 to 21:06 time on clock at 3:14 to 2:17)

Although Appellant informed the court that this was not correct, that the issue of ambiguity of the will was addressed in the pleadings, and that the actions by Alice Shaw Baker in revoking the will were the truth, she can not ignore the significant misrepresentation of Respondents' counsel and she not let it go lower court. Therefore, she is referencing the documents made available (over her objection) to the trial court.

B. Appellants' Discovery Responses Demonstrate that they have Claimed from the Beginning that Alice Shaw Baker revoked her will on January 1, 2009 and that the Case was always about the Intent of Alice Shaw Baker

Respondents served their discovery requests on October 29, 2009 on both Appellant Lisa Fisher and Betty Fisher. (Supp. Rec. 1708)

Appellant Lisa Fisher responded to interrogatory no. 2, inquiring into her personal knowledge of Alice Shaw Baker's wills (Supp. Rec. 1712), as follows:

"I now have personal knowledge of the wills purportedly drafted by Alice, or by someone on her behalf. Other than the May, 21, 2001 will, I did not discover the other wills until after her death. Alice told me in October and December, on numerous occasions that she wanted me to revoke the Will. I have personal knowledge that the May 21, 2001 will was revoked by Alice on or about January 1, 2009." (Supp. Rec. 1722)

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Appellant Lisa Fisher's response to the discovery request interrogatory no. 34, requesting the revocation of the will (Supp. Rec. 1715), was as follows, in pertinent part:

"When I was visiting Alice in South Carolina, she told me in October and December, on numerous occasions that she wanted me to revoke the Will. I have personal knowledge that the May 21, 2001 will was revoked by Alice on or about January 1, 2009." (See Supp. Rec. 1730, Emphasis added)

In response to interrogatory no. 35, regarding instances of undue influence (Supp. Rec. 1715), Appellant Lisa Fisher responded:

"Huckabee made Alice believe she would make sure that all of her monies went to dog Charities. Slade convinced Alice she ran a dog charity. When she learned that Slade no longer ran the dog rescue, she did not want her to have the money. Huckabee and Slade knew that Alice was fragile and vulnerable, and that she was subject to undue influence. They continued to represent that Slade had the dog charity, and Huckabee confirmed this to Alice. This confirmation never allowed Alice the opportunity to change her estate plan, until Alice Shaw-Baker revoked the Will in Lisa Fisher's presence. Discovery is continuing." (See Supp. Rec. 1731, Emphasis added)

Appellant Lisa Fisher's responses were dated on January 11, 2010.

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Appellant Betty Fisher responded to discovery request interrogatory no. 18, regarding revocation of the will (Supp. Rec. 1687), as follows:

"After Alice learned that Huckabee and Slade had deceived her about the dog charity, she said she had a right to change her will, because it was her money and she didn't want the money to go to these people. Bessie Huckabee refused to be Alice's power of attorney and she cried like a little girl when she discovered they lied to her. Alice stated all of her monies were to go to animal charities. She said this in my presence on several occasions." (Supp. Rec. 1700)

Appellant Betty Fisher's response to interrogatory no. 19, regarding undue influence and the will (Supp. Rec. 1687), was as follows:

"Huckabee made Alice believe she would make sure that all of her monies went to dog Charities. Slade convinced Alice she ran a dog charity. When she learned that Slade no longer ran the dog rescue, she did not want her to have the money. Huckabee and Slade knew that Alice was fragile and vulnerable, and that she was subject to undue influence. They continued to represent that Slade had the dog charity, and Huckabee confirmed this to Alice. This confirmation never allowed Alice the opportunity to change her estate plan, until Alice Shaw-Baker revoked the Will in Lisa Fisher's presence. Discovery is continuing." (Supp. Rec. 1700, Emphasis added)

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Appellant Betty Fisher responded to interrogatory no. 32, regarding communication that the money was being left for Animal welfare or rescue projects (Supp. Rec. 1689), as follows:

"Alice spoke to me on several occasions, before, and after she was conserved, day after day, about her desire that all of her estate go to animal charities. These conversations were by phone and in person. Prior to being conserved, she informed me that all her monies were going to animal charities only. (Emphasis added)

As these responses indicate by supplementing the record, the court has the evidence which ties in the allegations in the underlying complaint on the will contest, which included allegations that:

"Plaintiffs challenge Ms. Shaw Baker's May 21, 2001 Will. 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." (Rec. 154, prg. 79, 81)

As Justice Hearn asked Lisa Fisher about seeking relief as a constructive trust during oral argument, this supplemental record will answer her inquiry and emphasize the necessity of equitable relief. Appellant Lisa Fisher relies on the rationale in *Eldridge v. Eldridge*, 398 S.C. 113, 728 S.E.2d 24 (2012) where the lower court that found that the sons who challenged a trust had an adequate remedy at law and therefore were not entitled to equitable relief. However, the South Carolina Supreme Court reversed and referenced the case, *Chisolm v. Pryor*, 207 S.C. 54, 60, 35 S.E. 2d 21, 24 (1945), stating:

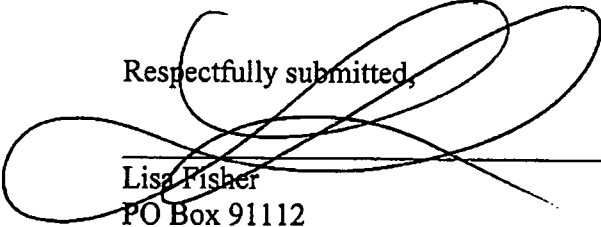
"In order to justify a court of equity in refusing to take jurisdiction, the remedy at law must be adequate and must attain the full end and justice of the case. It is not enough that there is some remedy at law, but that remedy must be as practical, efficient, and prompt as the remedy in equity." (Emphasis added)

Appellants did not have an adequate remedy at law to ensure that Alice Shaw Baker's intentions are honored. A constructive trust/equitable deviation is necessary to ensure that Alice Shaw Baker's rights are honored. This supplemental record demonstrates that Appellants' efforts have been selfless--in that from Alice's death until now, they seek the most efficient way to obtain "full end and justice of the case." ³

Therefore, Appellant Lisa Fisher respectfully prays that the court grant this motion for leave to file a supplemental record to rebut the factual misstatements made by Respondents at oral argument.

December 4, 2018

Respectfully submitted,



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³ As an attorney, Lisa Fisher holds the statements in the 2013 article entitled the "Courage of a Lawyer" as a powerful incentive to fight for those who can not fight for themselves:

"As men and women, but particularly as lawyers, we are armed with more than the heritage of courage those before us have shown. We are also armed with the hope that the lives of those we touch will be strengthened and enabled by our courage and our work. Our courage lives on."

(www.americanbar.org, Few, Hon. John Cannon (2013).)

Appellant Lisa Fisher's main purpose is to ensure that the intentions of Alice Shaw Baker are honored.

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PROOF OF SERVICE

I certify that I have served **APPELLANT LISA FISHER'S MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL TO REBUT RESPONDENTS' FACTUAL MISSTATEMENTS MADE AT ORAL ARGUMENT** postage prepaid, on December 4, 2018 (and via email) addressed as follows:

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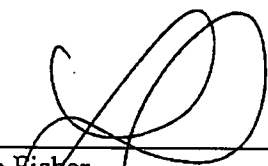
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December 4, 2018



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