

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 Case No. 2018-000566

Betty Fisher and Lisa Fisher,

Appellants,

Bessie Huckabee, Kay
Passailaigue Slade, and
Sandra Byrd,

Respondents.

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

**RESPONDENTS' RETURN AND OBJECTIONS TO
APPELLANTS' MOTION TO SUPPLEMENT
THE RECORD ON APPEAL AND TO
SECOND SUPPLEMENTAL RECORD ON APPEAL**

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COMES NOW Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd, Respondents in the above captioned appeal, and pursuant to Rule 212(b), SCACR, hereby file their Return to Appellants' Motion for Leave to Supplement Record on Appeal, filed on December 4, 2018 ("Motion"). Respondents object to the Appellants' showing this Court as follows:

I. The Proposed Materials to Supplement to the Record are Unnecessary.

While Appellants claim their Motion to Supplement the Record is to request the Court allow the additional materials in order to rebut alleged factual misstatements Respondents made at oral argument, they are really attempting, improperly, to re-argue the merits of the appeal. Appellants claim that supplementing the Record with their responses to Respondents' discovery requests somehow demonstrates that Respondents' contention at oral argument that Appellants never raised the issue of an ambiguity in the will in the pleadings and that the issue was not presented to the jury is false. Appellants also attempt, by the same means, to demonstrate, after the fact, that Alice Shaw-Baker's actions in revoking the will were the truth. Respondents merely claimed that Appellants' Verified Complaint alleged that Alice Shaw-Baker told Lisa Fisher orally that she wanted to revoke her will, and then over time, the claim morphed, until Appellants changed their story at trial and claimed for the first time that Ms. Shaw-Baker tore up her will to revoke it. The proposed materials to be added to the Record on Appeal are not necessary for the Court to verify the facts related to either of those issues. The Court may look for itself at the Complaint and compare what Appellants pleaded there to what they later claimed at trial with regard to the revocation claim. Similarly, the Court may look at the Complaint to determine on its own that Appellants never pleaded an ambiguity in the will, and never argued that to the jury. Appellants' responses to Respondents discovery requests stating merely that

Appellants had knowledge that Alice Shaw-Baker revoked her will is of no use to the Court in determining if such allegations were pleaded or raised in the lower court.

II. The Proposed Materials to Supplement to the Record Support Respondents' Position

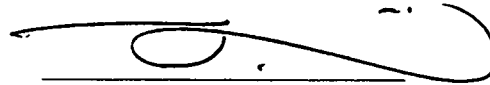
Even were the Court inclined to allow Appellants' supplementation to the Record, the materials they propose support Respondents' position that Appellants never litigated an allegation that Alice Shaw-Baker tore up a copy of her will to revoke it. That allegation was not pleaded in the Complaint, and it was not specified in Appellants' responses to Respondents' discovery requests. Respondents reiterate that the allegation of the tearing up of the will was not made until the trial itself.

Similarly, the proposed materials in no way address any issue of ambiguity in the will, and does not support Appellants' claim that Respondents misrepresented that fact to this Court. For the foregoing reasons, Respondents ask the Court to deny Appellants' Motion to Supplement the Record.

[Signatures on following page]

Respectfully submitted,

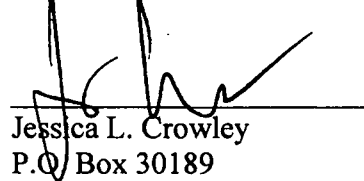
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Betty Fisher and Lisa Fisher Appellants

v.

Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd Respondents

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

PROOF OF SERVICE

I certify that I have served the enclosed Respondents Return to Appellants' Motion for Leave to Supplement the Record on Appeal by electronic mail and depositing a copy in the United States Mail, postage prepaid, on December 7, 2018, addressed to Appellants separately at their address of P.O. Box 91112, Long Beach, California 90809-1112.

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