

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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DEC 27 2018

S.C. SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
WRIT GRANTED ON 08-02-18

Appellate Case No. 2017-000743

Betty Fisher and Lisa Fisher,Petitioner

v.

Bessie Huckabee.....Respondent

**PETITION FOR REHEARING;
OR ALTERNATIVELY,
MOTION TO VACATE MEMORANDUM OF OPINION AND TO CORRECT
FACTUAL AND LEGAL INACCURACIES
IN OPINION 2018-MO-041**

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(Petitioner)

INTRODUCTION

Pursuant to Rule 221(a), SCACR, Petitioner Lisa Fisher (“Petitioner”) respectfully petitions this Court for rehearing of Memorandum Opinion No. **2018-mo-041** (“Opinion”) filed on December 12, 2018 which “Affirmed in part, Reversed in part” the Court of Appeals decision on *Fisher v. Huckabee*, op. No. 2016-UP-528 (S.C. Ct. App. Filed Dec. 21, 2016.) This is a per curiam decision.

This Court’s opinion mandates reversal due to the factual inaccuracies and the grave constitutional issues remaining after the decision. Petitioner brings this petition to ask the court to correct these errors. Therefore, if the court does not wish to correct it through the procedural vehicle of a petition for rehearing, Petitioner requests that the court correct it via its inherent power to correct opinions, by way of motion.

LEGAL STANDARD FOR PETITIONS FOR REHEARING

It is well settled that a rehearing is warranted when the Court has overlooked or misapprehended an argument. (See *Kennedy v. S.C. Retirement System*, 349 S.C. 531, 564, S.E. 2d 322 (2001).)

Also, if the Court fails to address some of the arguments raised in the appeal, “a *prima facie* case for rehearing has been made.” (*Covar v. Sallat*, 22 S.C. 265, 272 (1885), emphasis added.)

The principles behind the concept of rehearing were discussed in the broad constitutional context in the United States Supreme Court decision, in *Flynn v. United States*, 348 U.S. 956, 99 L.Ed. 1298, 1299 (1955) which provides: “ The right to [a petition for rehearing] is not to be deemed an empty formality...”

ARGUMENT

I. THE EFFECT OF THE MEMORANDUM OPINION IS TO DEPRIVE PETITIONER OF HER RIGHT TO COMPENSATION AS ALICE SHAW BAKER'S GUARDIAN AND CONSERVATOR.

THIS AMOUNTS TO A "TAKING" UNDER SOUTH CAROLINA LAW AND THE UNITED STATES CONSTITUTION, AND DOES AN INJUSTICE AS RESPONDENTS ARE UNJUSTLY ENRICHED AND THIS COURT ACTS ON BEHALF OF RESPONDENTS AS IT SUA SPONTE REVERSES THE COURT OF APPEALS DECISION TO GRANT LISA FISHER RELIEF.

IT ALSO CONSTITUTES AN IMPROPER SANCTION WITHOUT NOTICE, AN OPPORTUNITY TO BE HEARD, AND INCONSISTENT WITH RULES OF PROPORTIONALITY.

Unfortunately, due to this court's per curiam effort to finish this litigation in one master swoop of the pen,¹ Petitioner is being deprived of important legal protections and rights.

The issue as to delivery of the property is moot at this time, as the assets were already delivered to Bessie Huckabee. While petitioner disagrees with this Court's opinion in the companion case, the effect of the Memorandum opinion in this case is prejudicial to this petitioner.

This court ruled:

"We affirm that lower court's determination that Lisa Fisher is not entitled to any additional conservator fees. We therefore reverse the court of appeals as to this issue, removing the need for remand."
(Emphasis added)

¹ Petitioner has concurrently filed a petition for rehearing in the companion case, 2018-000566. ("Companion case")

This finding is factual incorrect as Lisa Fisher received **NO** fees as guardian or conservator, and **NO** reimbursement of expenditures. This despite the fact that she provided in excess of 465.85 hours in services and expended over \$11, 912.50 on behalf of Alice Shaw Baker (Appendix, pp. 360). Petitioner has never received any monies despite making Alice Shaw Baker's home safe, making sure she received medical care, and complied with all court requirements. All other individuals in this case were compensated.²

Petitioner is entitled to fees as a matter of law. Petitioner sets forth the legal authority which this court misapprehended based on its misunderstanding of the facts:

- a) Petitioner as guardian "is entitled to receive reasonable sums for his services" under S.C. Code Ann. § 62-5-312(b) and "is entitled to reasonable compensation from the estate" and as conservator under S.C. Code Ann. § 62-5-414.
- b) Petitioner is entitled to be treated as others similarly situated under Equal Protection. (U.S. Const. Amend. 14; S.C. Const. Art. I, § 3.)
- c) This Court has deprived Petitioner of Due process by depriving her of said compensation, in light of the fact that there was no hearing or even notice that the court would reverse the Court of Appeals decision. Respondents did not seek review, therefore this court's sua sponte action was prejudicial.

² Review of the record demonstrates that most of the parties were compensated on an ex parte basis with no opportunity for Alice Shaw Baker to object, but they **all** were compensated except for petitioner. (See Appendix, pp. 20, 22, 24, 27, 42, 44, 46, 48, 50, 51)

- d) This court is unfairly preventing Lisa Fisher from receiving compensation in violation of the United States Takings clause, *Ex Parte Brown*, 711 S.E.2d 899 (S.C. 2011) [court appointed attorney fees], *State v. Smith*, 242 Kan. 336, 747 P.2d 816, 842 (1987), *Armstrong v. United States*, 364 U.S. 40, 44-46 (1960) [Government's action destroyed the value of petitioners' liens, there was, under the circumstances of this case, a "taking" of these liens by the Government, for which compensation is due under the Fifth Amendment].

The lower court, and now this court, is treating Petitioner different from all other individuals providing services to Alice Shaw Baker, and has destroyed the economic value of her services and engaged in a "taking" of the value of her services.

Finally, by "taking" the value of these services without compensation, this Court is also providing an unjust enrichment to Respondents and imposing *another* sanction against Lisa Fisher for the benefit of these individuals—*without their attorneys having to do one ounce of work*, instead only having the luxury of being the beneficiaries of this court's favor. This was done without any opportunity to brief the matter or demonstrate the grave miscarriage of justice that this action would have on this petitioner. ³

³ Petitioner reminds this court of the harm of this type of favoritism. This Court held in *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109 (2010) in fn. 1 which queried the commissions findings concerning when a judge creates:

"...an atmosphere of distrust that made [plaintiff] construe both her ruling and the system that authorized and sanctioned it as corruptible and capable of manipulation by persons with connections to a judge..." it causes the appearance of impropriety and led the litigant "not only to question [the judge's] ability to render a fair and impartial decision, but also to lose

This is in violation of procedural due process requiring “ 1) adequate notice; 2) adequate opportunity of a hearing; 3) the right to introduce evidence and the right to confront and cross examine witnesses.” (See *Moore v. Moore*, 376 S.C. 467, 657 S.E. 2d 743 (2008).)

While due process issues are not usually preserved if raised for the first time on appeal (see *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E. 2d 388 (1995)), Petitioner could not raise this issue until this court’s memorandum opinion. In *Runyon v. Wright*, 471 S.E. 2d 160 (1996), this court held that an order describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed.

The United States Supreme Court has ruled in *Goodyear Tire & Rubber v. Haeger*, 581 US ___ (2017) explained last year that an appropriate sanction when imposed pursuant to civil procedures must be compensatory rather than punitive in nature....in other words, the fee award may go no further than to redress the wronged party ‘for losses sustained’; it may not impose an additional amount as punishment for the sanctioned party’s misbehavior...To level that kind of separate penalty, a court would need to provide procedural guarantees applicable in criminal cases,

faith in the integrity of this state’s judicial system.”

This law applies to Petitioner too. While Petitioner is now pro se, she had counsel throughout this litigation, and would at this time, except for the actions of the lower court in sanctioning Attorney John Hughes Cooper which created an “actual conflict.” Now, this court reversed Judge Hughston’s decision as to John Hughes Cooper’s conduct. (Request for Judicial Notice, Memorandum opinion, 2018-MO-040 [finding no evidence of misconduct against Cooper].) Causing a litigant to lose their counsel very much undermines the integrity of the system.

such as ‘beyond a reasonable doubt’ standard of proof.. When (as in this case) those criminal type protections are missing, a court’s shifting of fees is limited to reimbursing the victim.”⁴

This is not an attorney sanction, however when ever a court determines bad faith conduct, a court must observe due process “both in determining the requisite bad faith exists and in assessing fees.” (See *Chambers v. Nasco, Inc*, 501 U.S. 32 (1991).)

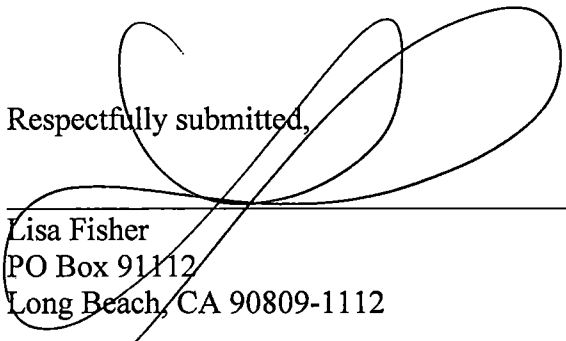
Therefore, this is illegal. Petitioner is entitled to all of the same protections and compensation provided to other conservators under the South Carolina Constitution and United States constitution, Due process requirements, and statutory dictates. It is important to remember in this case that the lower court refused to have a hearing on the matter, therefore affirming the lower court’s decision is approving a procedure in violation of all known legal authority for fairness.

Petitioner loved Alice Shaw Baker. The court may not agree with the legal actions that she took, but Respondents refused to help Alice in her time of need. The record shows that petitioner took all appropriate action to protect her both as conservator and guardian. Therefore, she is entitled to compensation, and respondents are not entitled to any unjust enrichment.

WHEREFORE, Petitioner respectfully seeks an Order granting rehearing and concluding that she is entitled to compensation.

December 24, 2018

Respectfully submitted,



Lisa Fisher
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⁴ Rule 11 or discovery sanctions were not requested in this case, nor are they justified. While this court does not call the loss of these monies sanctions, they have the effect of unjustly benefitting respondents.

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PROOF OF SERVICE

I certify that I have served **PETITION FOR REHEARING;
OR ALTERNATIVELY, MOTION TO VACATE MEMORANDUM OF OPINION AND
TO CORRECT FACTUAL AND LEGAL INACCURACIES IN OPINION 2018-MO-041-
MO-041** postage prepaid, on December 24, 2018 (and via email) addressed as follows:

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(Personal service only)

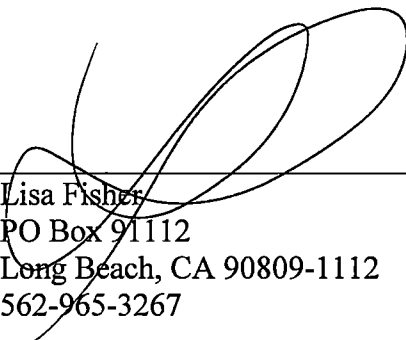
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December 24, 2018



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