

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge S.C. SUPREME COURT

Unpublished Opinion No. 2018-UP-365
(S.C. Ct. App. Filed Sept. 19, 2018)

IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR.,
(deceased), ESTATE OF MILDRED C. KNIGHT (deceased)
and NORMAN ROBERT "BOBBY" KNIGHT, III,

Appellants,

-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR,
and CHLOE KNIGHT-TONNEY, CLAIMANT,

Respondents.

RESPONDENT CHLOE KNIGHT-TONNEY'S RETURN

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QUESTIONS PRESENTED

- I. THE APPELLANTS WAIVED THE RIGHT TO CONTEST THE ABSENCE OF A SUMMONS WITH RESPONDENT'S PETITION FOR ALLOWANCE OF CLAIM
- II. THE CHIEF JUDGE OF THE SOUTH CAROLINA SUPREME COURT HAS THE POWER TO APPOINT a SPECIAL PROBATE COURT JUDGE TO PRESIDE OVER A PROBATE PROCEEDING IN ANOTHER JURISDICTION
- III. THE SOUTH CAROLINA COURT OF APPEALS AND LOWER COURT CORRECTLY RULED UNREDACTED DOCUMENTS WERE NOT ADMISSIBLE
- IV. DOCTRINE OF UNCLEAN HANDS IS NOT APPLICABLE IN A CASE THAT IS AN ACTION AT LAW
- V. THE LAW OF AUTOMATIC STAY WAS NOT APPLICABLE TO THE CASE
- VI. APPELLANTS' FAILED TO PROVE THE ELEMENTS OF FRAUD
- VII. APPELLANTS' ARGUMENT CONCERNING THE GREATER WEIGHT OF THE EVIDENCE AND ABUSE OF DISCRETION AS TO RESPONDENT TONNEY'S CLAIM IS THE INCORRECT STANDARD OF REVIEW
- VIII. RESPONDENT CHLOE TONNEY TIMELY FILED HER CREDITOR'S CLAIM

STATEMENT OF THE CASE

Norman Robert Knight, Jr. died on March 11, 2008, in Charleston County, South Carolina. The Estate of Norman Robert Knight, Jr. "(Knight Estate") was commenced on March 19, 2008, at the Charleston County Probate Court. The creditors' claim notice for the Knight Estate was first published in a local newspaper on May 21, 2008.

On July 30, 2008, the Honorable Irvin C. Condon and Honorable Tamara C. Curry, Judges for the Charleston County Probate Court, submitted a request to the South Carolina Court Administration for recusal from all matters pertaining to the Knight Estate. On August 5, 2008, the South Carolina Court Administration issued an Order of the Chief Justice for the appointment of the Honorable Mary Blunt, Probate Court Judge for Dorchester County, as the special Probate Court Judge to preside over the Knight Estate. Further, the Order from the South Carolina Court Administration stated the Honorable Mary Blunt "shall have all the powers and duties appertaining to a probate court judge for Charleston County for the handling of the" Knight Estate.

On December 15, 2008, Judge Blunt as the special Probate Court Judge for Charleston County appointed Respondent Beatrice Whitten ("Respondent Whitten") as the special administrator for the Knight Estate.

On January 20, 2009, Respondent Chloe Tonney ("Respondent

Tonney") filed at the Charleston County Probate Court a creditor's claim against the Knight Estate for loans and reimbursement of expenses that she incurred for her father, Norman Robert Knight, Jr. Respondent Whitten filed a notice of disallowance of Respondent Tonney's claim on April 14, 2009. Respondent Tonney filed a Petition for Allowance of Claim at the Charleston County Probate Court on April 24, 2009.

On November 28, 2012, the South Carolina Court Administration issued an Order of the Chief Justice for the appointment of Kenneth E. Fulp, Jr., Probate Court Judge for Beaufort County, as the special probate court judge for Charleston County Probate Court to preside over the Knight Estate.

On or about May 27, 2013, Appellants Mildred Knight and Norman Robert Knight, III ("Appellants") filed a Summons and Complaint to remove Respondent Whitten as the special administrator for Knight Estate.

On the same date, Appellants filed Amended Motions to Recuse, Dismiss and Change Venue. Appellants contended Respondent Tonney's claim was time barred on the basis Respondent Tonney did not file her claim within one year after the death of Norman Robert Knight, Jr. Upon oral argument by the parties' attorneys on July 17, 2013, Judge Fulp denied Appellants' motions per an Order dated July 29, 2013.

On March 31, 2014, and April 28, 2014, Judge Fulp conducted a hearing concerning Respondent Tonney's claim against the Knight

Estate and the Appellants' Complaint to remove Respondent Whitten as the special administrator for the Knight Estate. On July 11, 2014, Judge Fulp issued an Order, which he concluded Respondent Tonney was allowed to receive a sum of \$23,914.73 plus interest against the Knight Estate. Further, Judge Fulp held Respondent Beatrice Whitten would remain as the special administrator for the Knight Estate.

On July 14, 2014, Appellants filed Motion for Relief from Judgment pertaining to an Order dated July 29, 2013. Judge Fulp denied the Motion per an Order dated August 15, 2014.

On July 28, 2014, Appellants submitted a Motion for New Trial and to Alter or Amend Judgment. Judge Fulp denied the Motion per an Order dated August 21, 2014.

The Appellants filed a Notice of Intent to Appeal with the Charleston County Clerk of Court on September 3, 2014. The Honorable J.C. Nicholson as the appellate judge denied the Appellants' motion for appeal on January 27, 2016.

The Appellants filed a Notice of Motion and Motion for New Trial or to Alter Judgment at the Charleston County Clerk of Court on February 9, 2016. On March 4, 2016, the Honorable J.C. Nicholson as the appellate judge denied the Appellants' motion without a rehearing.

The South Carolina Court of Appeals filed an unpublished per curiam opinion on September 19, 2018, and affirmed the decision of the lower court. The Appellants filed a Petition for Rehearing, which was denied on December 13, 2018.

ARGUMENT AND AUTHORITY

ARGUMENT I

**THE APPELLANTS WAIVED THE RIGHT TO CONTEST THE
ABSENCE OF A SUMMONS WITH RESPONDENT'S PETITION
FOR ALLOWANCE OF CLAIM.**

In a per curiam opinion, the South Carolina Court of Appeals ("Court of Appeals") held that Appellant should have included a Summons with the Petition for Allowance. However, the Court of Appeals concluded the Appellants waived the issue of the summons and lack of personal jurisdiction on the basis that the Appellants did not raise the lack of summons in their first motion to dismiss. Also, the Court of Appeals noted the Appellants appeared and argued the merits of Respondent's Petition for Allowance multiple times in probate court and circuit court.

The Court of Appeals referred to Rule 12(h)(1), SCRCP, in support of its conclusion that Appellants waived the issues of summons and personal jurisdiction.

The Appellants have restated the same argument in their Petition for Writ of Certiorari that they raised in their brief to the South Carolina Court of Appeal and to the lower court as the appellant court.

ARGUMENT II

THE CHIEF JUDGE OF THE SOUTH CAROLINA SUPREME COURT HAS THE POWER TO APPOINT A SPECIAL PROBATE COURT JUDGE TO PRESIDE OVER A PROBATE PROCEEDING IN ANOTHER JURISDICTION.

"The probate court of each county is part of the unified judicial system of this State." S.C. Code Ann. §14-23-1010. As enumerated in S.C. Const. art. V, §4, "[t]he Chief Judge shall ... have the power to assign any judge to sit in any court within the unified judicial system... The Supreme Court shall make rules governing the administration of all the courts of the State." (emphasis added).

Additionally, the Chief Judge of the Supreme Court has the authority to appoint a special judge when the Chief Judge has determined there is cause to remove the sitting judge. S.C. Code Ann. §14-23-1080(1976).

On July 30, 2008, the Honorable Irvin G. Condon, the Judge of Charleston County Probate Court, and the Honorable Tamara C. Curry, the Associate Judge of the Charleston County Probate Court, filed a request to the South Carolina Court Administration for recusal on all pending and subsequent matters relating to the Estate of Norman Robert Knight, Jr. Consequently, on behalf of Chief Justice Jean Toal, the South Carolina Court Administration issued an Order dated August 5, 2008, appointing the Honorable Mary Blunt, the Judge of Probate for the Dorchester County, as the special probate judge for the Charleston County Probate Court

concerning the Knight Estate. After six years of litigation and appeals, the South Carolina Court Administration on behalf of Chief Justice Toal, appointed Kenneth E. Fulp, Jr., the Probate Court Judge for Beaufort County, as the special probate court judge for Charleston County regarding all matters of the Knight Estate. Such appointment occurred on November 28, 2012. Judge Fulp as the special probate court judge for the Knight Estate had the authority to preside and issue orders as related to the motions and trial.

Further, Judge Fulp noted in his Order dated January 17, 2014 that Appellants' attorney "confirmed at the July 17, 2013 hearing that he did not challenge my authority [per Chief Justice's Order to serve as the special probate court judge for Charleston County] in the matter, and appeared to concede the issue on the record during the January 6, 2013 hearing." (R.p. 27). Such action constitutes as a waiver of the right to challenge the authority of Judge Fulp.

The Appellants raised the issue of venue as an additional ground for the appeal. Yet, the Appellants' attorney withdrew his objection to the issue of venue at a motion hearing per an Order dated December 23, 2013; therefore, such issue was deemed abandoned as affirmed in the opinion of the South Carolina Court of Appeals.

ARGUMENT III

THE SOUTH CAROLINA COURT OF APPEALS AND LOWER COURT CORRECTLY RULED THE UNREDACTED DOCUMENTS WERE NOT ADMISSIBLE.

The Court of Appeals and lower court correctly held the probate court did not abuse its discretion in quashing Appellants' subpoena for deposit and withdrawal records pertaining to a certain bank account on the ground that such records were irrelevant.

Relevant evidence has to be of such nature which tends to make "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Irrelevant evidence is not admissible per Rule 402, SCRE.

Respondent Tonney sought a sum of \$1,622.22 as a reimbursement for payments that she made to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr. The payments were made from a Morgan Stanley account that she and her sister established.

Appellants issued a subpoena to Morgan Stanley for copies of checks that were issued from the Morgan Stanley account which had been referred to as "Queenie Account". Respondent Tonney filed a motion to quash Appellants' subpoena. (R.p. 19). Judge Fulp refused to quash Appellants' subpoena; therefore, Respondent Tonney informed Judge Fulp that she would withdraw a part of her claim in the amount of \$1,622.22 as a reimbursement for payments.

she made from the Morgan Stanley account to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr. (R.p. 20). As a result of Respondent Tonney's withdrawal of her claim in the amount of \$1,622.22 as related to the payments she made to Bishop Gadsden Rehab., Inc., Judge Fulp quashed Appellants' subpoena. (R.p. 22).

Judge Fulp stated in his Order dated April 22, 2014 that "[n]o checks from the [Morgan Stanley] account were introduced in support of any other expenses claimed by Tonney, so the withdrawal of that portion of her claim pertaining to expenses paid from the [Morgan Stanley] account renders the subpoenaed documents irrelevant to the remainder of the Tonney claim which is subject to adjudication. Enforcement of the subpoena, under these circumstances, would require the disclosure of otherwise confidential personal financial information, protected by law, to no purpose relevant to the matter before the Court."

The Appellants asserted Respondent Tonney should have sought a protective order for the [Morgan Stanley] account. The Appellants did not raise such contention until the filing of their appeal; therefore, such contention cannot be considered. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006) (such contention must be raised and ruled upon the circuit court to be preserved).

Appellants further alleged the letter dated October 16, 2007 from Thad Vincent to Respondent Tonney and Walter Kaufmann should not have been redacted.

Such letter is not relevant as defined in Rule 401, SCRE. Respondent Tonney filed a claim for expenses that she paid for the benefit of her father, and the payments were in the form of loans to her father. Thad Vincent's letter regarding the fault of the party in a domestic action did not have any bearing or relevancy to Respondent Tonney's claim; therefore, such letter was irrelevant and not admissible per Rule 402, SCRE, and Rule 26(b)(1), SCRCF as concluded by the Court of Appeals.

ARGUMENT IV

DOCTRINE OF UNCLEAN HANDS IS NOT APPLICABLE IN A CASE THAT IS AN ACTION AT LAW.

The Court of Appeals held the doctrine of unclean hands was not a bar to Respondent's claim for money.

The doctrine of unclean hands prevents a party from "recovering *in equity* if he acted unfairly in a matter that is the subject matter of the litigation to the prejudice of the defendant. (citation omitted). The equitable doctrine of unclean hands, however, has no application to an action at law." (original emphasis). Aaron v. Mahl, 381 S.C 585, 674 S.E.2d 482, 487 (2009). (The Court held the trial court erred in applying the doctrine of unclean hands because the Appellant was not seeking to recover in equity.)

"Petitions to allow claims against an estate are treated the same as any other proceeding for the purposes of ascertaining their legal or equitable nature. Tollison v. Anderson Area

Medical Center, Inc., 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995). When the proceeding involves a claim for money, such proceeding is "ordinarily triable at law." Id.

Respondent Tonney purchased items for her father's benefit when he was removed from his residence to an assisted living facility and later to a skilled nursing facility. (S.R.p. 36 - p. 52, line 17). The Appellants would not permit Iris Albright as an authorized agent for the court appointed conservator to retrieve Norman Knight, Jr.'s hospital bed from his home; therefore, a hospital bed had to be purchased. (S.R.p. 27, lines 15-22). Mrs. Albright discussed with Respondent Tonney about the need to purchase items for Norman Knight, Jr. Respondent Tonney treated the purchase of items as a loan. (S.R.p. 20, lines 12-16, R.pp. 136-137). Respondent Tonney presented receipts of items that she purchased for her father. (R.pp. 120-135).

Additionally, Respondent Tonney paid for the legal fees for her father arising out of a domestic law action. Family Services through Iris Albright as the court appointed conservator and Walter Kaufmann as the court appointed guardian believed Norman Knight, Jr. needed legal representation. (S.R.p. 32, line 22- p. 35, line 18). Respondent Tonney sent a letter dated October 27, 2007 to Iris Albright to confirm that all payments for attorney's fees for her father should be treated as a loan. (R.p. 113).

Mrs. Albright testified that an Order from Family Court required Norman Knight, Jr. to pay half of his civil service

funds to his wife Mildred Knight.. (S.R.p. 21, lines 13-17). Such Order impacted Mr. Knight's financial ability to live at Savannah House, an assisted living facility, and at Bishop Gadsden, a skilled nursing facility, so Mrs. Albright contacted Respondent Tonney for financial assistance. Respondent Tonney agreed to provide assistance. (S.R.p. 21, line 18- p.22, line 3).

At one point, Mrs. Albright had to contact Respondent Tonney for money because she only had 67 cents in his conservatorship account, and she needed funds to pay for Mr. Knight's prescription and hygiene items. Respondent Tonney sent a check in the amount of one thousand dollar to Mrs. Albright. (S.R.p. 24, line 16- p.25, line 11; R.p. 141).

Since Respondent Tonney's claim sought money from the Knight Estate for the loans and expenses that she incurred for the benefit of her father, such claim should be treated as an action at law, not as an action in equity, per Tollison v. Anderson Area Medical Center, Inc.

ARGUMENT V

THE LAW OF AUTOMATIC STAY WAS NOT APPLICABLE TO THE CASE.

"Section 62-1-308(c) of the South Carolina Probate Code does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken." Ulmer v. Ulmer, 369 S.C. 486, 632 S.E.2d 858, 861 (2006).

The Court of Appeals stated Respondent filed her claim for allowance three years after the circuit court affirmed the probate court order appointing Walter Kaufman as the Guardian for Respondent's father. Additionally, the Court of Appeals noted the orders of the probate court that Appellants appealed did not concern the administration of Respondent's father's estate because he was still alive at the time the orders were issued.

On August 30, 2005, Appellants appealed to the Charleston County Clerk of Court an Order dated August 25, 2005 issued by Judge Tamara Curry, the presiding judge of the Charleston County Probate Court. The appeal was given a case number that being 2005-CP-10-3573. (Appellants' Notice of Appeal dated August 30, 2005). The Appellants asserted Judge Curry erred in appointing Walter Kaufmann as the Guardian for Norman Robert Knight, Jr.

Judge Roger Young in his capacity as the appellate judge issued an Order dated October 5, 2005, wherein he decreed that Mildred Knight was to remain as Guardian and Conservator pending appeal. (R.p. 219). Judge Young further ordered the Clerk of Court to expedite the appeal during the October 31, 2005 term of court. (R.p. 220). The Order showed case number 2005-CP-10-3573.

The appeal was heard by the Honorable Kenneth Goode on December 15, 2005. Judge Goode concluded in his Order dated January 16, 2005 (should have been January 16, 2006 as the year was a typographical error) that Appellants failed to timely appeal case numbers 2005-CP-10-2603 and 2005-CP-10-2569. Also, Judge Goode held Appellant Mildred Knight did not preserve her

appeal for case number 2005-CP-10-3573, and such appeal was dismissed with prejudice. (R.p. 226).

Judge Goode opined that the appeal concerning Judge Curry's Order dated August 25, 2005, to be timely filed. (R.p. 226). In regard to Judge Curry's Order, Judge Goode held the "Charleston County Probate Court did not err in its findings of fact nor was there any abuse of discretion, the appeal is dismissed with prejudice[;]" therefore, the appeal of the Order dated August 25, 2005 was adjudicated and dismissed with prejudice. (R.p. 228).

The Appellants filed a Notice of Motion and Motion for New Trial on January 30, 2006, concerning Judge Goode's Order. The Appellants did not state in their Motion for a New Trial that Judge Goode erred in holding that the Charleston County Probate Court did not abuse its discretion or its findings of facts were incorrect. (R.pp. 161-162). As a result, Judge Goode's ruling became the law of the case.

ARGUMENT VI

APPELLANTS' FAILED TO PROVE THE ELEMENTS OF FRAUD.

The South Carolina Court of Appeals correctly concluded the Appellants failed to prove all elements of fraud by clear and convincing evidence. The failure to prove all elements of fraud is fatal to recovery. M.B. Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980).

The Appellants made allegations in their initial brief

regarding Mildred Knight and her purported reliance on alleged statements. However, Appellants did not prove any of the nine elements of fraud. Mildred Knight died prior to the trial. The Appellants did not take the deposition of Mildred Knight prior to her death. Consequently, the Appellants failed to prove the nine elements of fraud by a clear and convincing evidence as required per M.B. Kahn Constr. Co.

ARGUMENT VII

APPELLANTS' ARGUMENT CONCERNING THE GREATER WEIGHT OF THE EVIDENCE AND ABUSE OF DISCRETION AS TO RESPONDENT TONNEY'S CLAIM IS THE INCORRECT STANDARD OF REVIEW.

"The rules governing appeals at law and in equity are well settled. If a proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them. (citations omitted). If the probate court proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." Howard v. Mutz, 315 S.C. 356, 361-262, 434 S.E.2d 257-258 (1993). The appellate court has to consider the essential character of the petitioner's cause of action in the lower court. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct.App. 1993).

Petition to allow claims against an estate for money due is "ordinarily triable at law[; therefore] if there is any evidence

which reasonably supports the factual findings of the probate judge", then the presiding probate judge's order must be affirmed. Tollison v. Anderson Area Medical Center, Inc., 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995).

Appellants contend Judge Fulp as the presiding probate court judge allowed Respondent Tonney's claim against the greater weight of the evidence, and she had failed to satisfy the legal requirements of her case. (Appellants' Brief p. 19). Such contention is not the requisite standard of review as espoused in Howard. As previously stated, Respondent Tonney's claim is an action at law per Tollison. As a result, the circuit court as appellate court affirmed Judge Fulp's Order on the basis the record supported Judge Fulp's findings of fact.

Judge Fulp in his Order outlined specific findings of fact. He concluded there was evidence of discussion between Respondent Tonney, Walter Kaufman and Iris Albright of Family Services, Inc., guardian and conservator for Norman Robert Knight, Jr, respectively, about the need for clothes, medicine, food, and furniture for Mr. Knight. (S.R.p. 19, line 23- p. 20, line 5; S.R.p. 31, lines 9-21; R.pp. 136-137). Further, Iris Albright testified she agreed for Respondent Tonney to purchase food, medicine, clothes, and furniture for her father with the expectation that she would be reimbursed. (S.R.p. 20, lines 12-16; R.pp. 136-137).

Walter Kaufmann testified the need for such purchase for the benefit of Norman Robert Knight, Jr. arose from the emergency

removal of Mr. Knight from his primary residence to an assisted living facility. (S.R.p. 28, line 22- p. 31, line 21). The Charleston County Probate Court issued an Order dated January 31, 2006, which authorized Mr. Kaufmann as the guardian to "take custody of the ward, Mr. Knight." (R.p. 230).

Respondent Tonney presented detailed receipts of food, clothes, and furniture that she purchased with her own funds or credit cards. (R.pp. 120-135). Judge Fulp concluded by the preponderance of the evidence that Respondent Tonney made the purchases for her father with the expectation that she would be reimbursed. (R.p. 13).

Appellants further asserted Walter Kaufman and Iris Albright, guardian and conservator for Norman Knight, Jr., respectively, failed in their duty to inform Mildred Knight of major decisions regarding Mr. Knight; therefore, they breached their duty. (Appellants' Brief, p. 22). Such contention is incorrect.

Mrs. Albright testified that she did not contact Mildred Knight because Mrs. Knight did not want to hear from her. (S.R.p. 26, lines 14-18). Mr. Kaufman expressed in his testimony that he "consulted with her as often as she would speak with me, but that was not very often..., the dynamic between Mrs. Knight and Mr. Bobby Knight and myself went south so early on in the process that we did not have good open lines of communication as I did with Mr. Knight's daughters." (S.R.p. 35, lines 3-11).

The exhibits and testimony of Walter Kaufman, Iris Albright, and Respondent Tonney provided significant evidence to substantiate Judge Fulp's findings of fact.

ARGUMENT VIII

**RESPONDENT CHLOE TONNEY'S TIMELY FILED
HER CREDITOR'S CLAIM.**

The Court of Appeals held Respondent filed her creditor's claim within eight months of the date that the creditor's notice was published and within a year of father's death.

The applicable claim statute that being S.C. Code Ann. §62-3-803(a) (2008) required the claimant to file a claim against an estate within one year after the decedent's death or within the time provided in S.C. Code Ann. §62-3-801(a) (2008). Pursuant to S.C. Code Ann. §62-3-801(a) (2008), creditors of the estate must "present their claims within eight months after the date of the first publication of the notice or be forever barred."

"The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the clerk of the probate court" per S.C. Code Ann. §62-3-804(1)(a) (2008).

The issue of the timeliness of Respondent Tonney's claim filing was presented in Judge Fulp's Order dated July 29, 2013. (R.p. 41). In such Order, Judge Fulp indicated the record

reflected as follows: the decedent died on March 11, 2008; notice to creditors was first published on May 21, 2008; Chloe Tonney's claim was presented on January 20, 2009. "Those dates were stated on the record at the hearing, and none was questioned by Knight's counsel." (R.p. 41).

ARGUMENT IX

APPELLANTS' CONTENTION THAT PROBATE COURT JUDGE ERRED IN ALLOWING RESPONDENT TONNEY TO BE REIMBURSED FOR ATTORNEY'S FEES ARISING OUT OF FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT IS WITHOUT MERIT.

The transcript of the probate court proceeding is replete with testimony from Iris Albright of Family Services, Inc., conservator, and Walter Kaufman, the guardian for Norman Robert Knight, that Mr. Knight needed representation in the family court matter. (S.R.p. 21, lines 8-17; S.R.p. 32, line 12-p. 33, line 11). Respondent Tonney apprised Ms. Albright in a letter dated October 24, 2007, that she would pay her father's legal expenses for the family court matter, and such payments would be treated as a loan. (R.p. 113). Judge Fulp concluded Respondent Tonney agreed to pay for her father's legal expenses, and she had made arrangements with Iris Albright as the conservator to Mr. Knight for such payments. (R.pp. 9-10).

The Court of Appeals indicated the Appellants' reliance on Matter of Jennings, 321 S.C. 440, 468 S.E.2d 869 (1996), and Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886 (Ct. App. 1995) were

inapposite to the facts of the case. The Respondent did not seek fees from the family court matter as an attorney. Instead, Respondent sought to be repaid for the loans that she provided to her father in his defense arising out of the family court matter. Also, the Court of Appeals correctly concluded that Respondent's payment of attorney's fees for her father in the form of a loan was an allowable claim against her late father's estate.

CONCLUSION

As set forth in Rule 402 of the Appellate Court Rules, the pending Writ of Certiorari of the Appellants does not meet any of the reasons for this Court to review the per curiam opinion of the South Carolina Court of Appeal.

The Appellants' appeal does not present a novel question of law. The South Carolina Court of Appeal's per curiam opinion including cited cases conformed to the holdings of the South Carolina Supreme Court.

The per curiam opinion of the South Carolina Court of Appeals showed the Court undertook a thorough review of the issues that the Appellants raised and the rebuttals of the Respondent.

The Court of Appeals held the Appellants waived the issue of the summons and lack of personal jurisdiction on the basis that the Appellants did not raise the lack of summons in their first motion to dismiss. Also, the Court of Appeals noted the Appellants appeared and argued the merits of Respondent's Petition for Allowance multiple times in probate court.

Additionally, it is irrefutable the South Carolina Court Administration on behalf of the Chief Justice of the South Carolina Supreme Court had the authority to appoint a special probate court judge per S.C. Const. art. V, §4 and S.C. Code Ann. §14-23-1080(1976). Appellants' attorney conceded such point in a motion hearing before Judge Fulp.

Moreover, the Court of Appeals and lower court correctly opined that Judge Fulp was correct in holding that the redacted documents regarding checks from a Morgan Stanley account were not relevant to Respondent Chloe Tonney's claim. Judge Fulp pointed out Respondent Chloe Tonney withdrew a claim for \$1,622.22 for a payment she made from the Morgan Stanley account to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr., and such checks were the only checks that were drawn from a Morgan Stanley account. Judge Fulp concluded in his Order dated April 22, 2014, that the withdrawal of such checks eliminated such payments as a matter for trial or defense by Appellants.

Appellants' contention that the appeal of a 2005 Order and 2007 Order required the proceeding to be stayed does not have any merit. Judge Goode as the appellate judge concluded in the Order that Judge Curry's Order regarding the appointment of Walter Kaufman as the Guardian for Norman Robert Knight, Jr. was proper. Moreover, the 2007 Order only dealt with the appointment of Respondent Chloe Tonney as the successor conservator for Norman Robert Knight, Jr. The Charleston County Probate Court appointed Family Services, Inc. as the successor conservator so Respondent

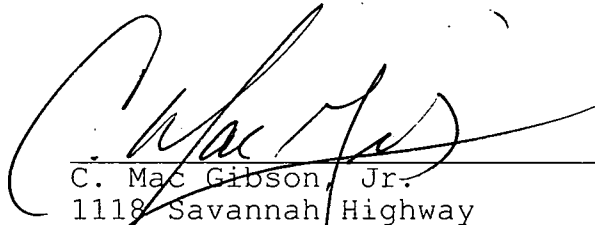
Chloe Tonney never undertook the role as a conservator. The 2005 Order and 2007 Order dealt with the conservatorship and guardianship of Norman Robert Knight, Jr., not with Respondent Chloe Tonney's claim against the Estate of Norman Robert Knight, Jr.; therefore, a stay was not applicable.

Respondent Chloe Tonney complied with the applicable 2008 South Carolina Probate Code regarding the submission of her creditor's claim against the Estate of Norman Robert Knight, Jr. As Judge Fulp stated in his Order dated July 29, 2013, Appellants' attorney did not question the dates, which included the date of the creditor's notice and the date that Respondent Tonney filed her claim.

Appellants' reliance on Matter of Jennings, 321 S.C. 440, 468 S./E.2d 869 (1996), and Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886 (Ct. App. 1995) were inapposite to the facts of the case. The South Carolina Court of Appeals found there was evidence in the record that the Respondent expended money for her father's legal service regarding family court matter, and such expenditure for attorney's fees was an allowable claim against her late father's estate.

For the foregoing reasons and in accordance with Rule 402 of the Appellate Court Rules, the South Carolina Supreme Court should deny the Appellants' Writ of Certiorari.

Respectfully submitted,



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Chloe Knight-Tonney

Charleston, South Carolina
January 29, 2018

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 31 2019

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

J.C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-365
(S.C. Ct. App. Filed Sept. 19, 2018)

IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR.,
(deceased), ESTATE OF MILDRED C. KNIGHT (deceased)
and NORMAN ROBERT "BOBBY" KNIGHT, III,

Appellants,

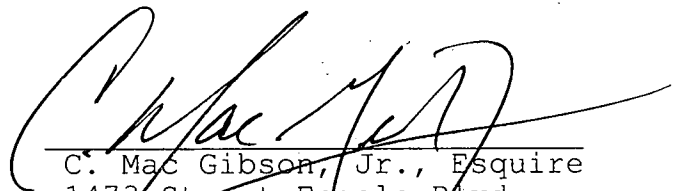
-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR,
and CHLOE KNIGHT-TONNEY, CLAIMANT,

PROOF OF SERVICE

I certify that I have served Respondent Chloe Knight-Tonney's Return to Appellants and to Respondent Beatrice E. Whitten by depositing a copy of Respondent Chloe Knight-Tonney's Return in the United States Mail, postage prepaid, on January 29, 2019, addressed to Appellants' attorney of record, Jackson Seth Whipper, Esquire, P.O. Box 70070, North Charleston, SC 29415, and to Respondent Beatrice E. Whitten at 1110 Queensborough Blvd., Suite 100, Mt. Pleasant, SC 29464.

January 29, 2019



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