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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

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Unpublished Opinion No. 2018-UP-365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,

Respondents.

RETURN OF SPECIAL ADMINISTRATOR, BEATRICE E. WHITTEN

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Special Administrator
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(843)881-1399

February 14, 2019

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STATEMENT OF THE ISSUE

THE PROBATE COURT CORRECTLY HELD THAT THERE WERE NO GROUNDS TO REMOVE THE SPECIAL ADMINISTRATOR.

STATEMENT OF THE CASE

The decedent in this case, Norman Robert Knight, Jr., died on March 11, 2008. An estate was opened for him on March 19, 2008, with the Charleston County Probate Court. The Probate Judges for Charleston County recused themselves after being named defendants in a lawsuit brought by the Appellant, Robert ("Bobby") Knight, III. The case was thereafter transferred by South Carolina Court Administration to the Dorchester County Probate Court, which appointed Beatrice E. Whitten as Special Administrator on December 15, 2008. After subsequent transfers and recusals by Probate Judges in Lexington and Berkeley Counties, The Honorable Kenneth E. Fulp, Jr., of Beaufort County, was assigned the case by Court Administration in 2012.

The matters under appeal were heard by Judge Fulp on March 31, 2014, and April 28, 2014. Judge Fulp issued his final order on July 11, 2014, ruling that a claim brought against the estate by Respondent Chloe Knight-Tonney was allowed in part, and leaving the Special Administrator in place.

The Appellant appealed both issues to the Charleston Court of Common Pleas. This appeal was heard by The Honorable J.D. Nicholson, who issued a denial of the Appellant's appeal on January 27, 2016.

The South Carolina Court of Appeals filed an unpublished *per curiam* opinion on September 19, 2018, affirming the decision of the lower court.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

Respondent in this response will address only the issue of the motion brought to remove the Special Administrator.

ARGUMENT AND AUTHORITY

In its *per curiam* opinion, the South Carolina Court of Appeals affirmed the denial of Bobby Knight's petition to remove the Special Administrator because "he did not provide an adequate record to complete appropriate judicial review of this issue."

In their petition for certiorari, the Appellants merely restated the arguments they have made in Probate Court, Circuit Court, and the South Carolina Court of Appeals. These arguments have now been ruled upon by three courts and three sets of judges. Appellants have waived their right to make further arguments under *Harkins v. Greenville County*, 340 S.C. 606 at 616, 533 S.E.2d 886 at 891 (2000) (affirming lower court decision when appellant failed to provide this court with an adequate record on the issue).

A Special Administrator is basically a personal representative appointed by the Probate Court when such "appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act." S.C. Code Ann. § 62-3-614(2). A special administrator has the power of a general personal representative unless otherwise limited by the order of appointment. S.C. Code Ann. § 62-3-617.

The December 15, 2008, order of the Dorchester County Probate Court, appointing Beatrice E. Whitten as special administrator, states, "The Special Administrator has the power of a general Personal Representative pursuant to S.C. Code § 62-3-617." (R.p. 50-55) The rules governing removal of a personal representative are therefore applicable to the issue of removing a special administrator.

The legal standard for removal of a personal representative is a showing that such removal would be in the best interest of the estate, has disregarded an order of the court, has become incapable of discharging her duties, has mismanaged the estate, or has failed to perform any duty of the office. S. C. Code Ann. § 62-3-611. The South Carolina Court of Appeals has further stated that "The power to remove a personal representative should be exercised with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." *Church v. McGee*, 705 S.E. 2d 481, at 343 (S.C. Ct. App. 2011), *quoting Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920).

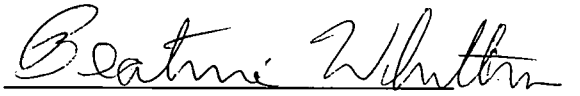
Appellant Bobby Knight failed to allege or prove any of the required grounds for removal of a personal representative. He made vague allegations both at trial and in appeals arguments. However, he failed to describe any damage or even prejudice caused to the estate by the current Special Administrator, even if his unproven assertions were considered true. He submitted no evidence to prove or support any of his allegations. The trial judge specifically found that continuing the Special Administrator's appointment would be in the best interest of the estate. (R.p. 3, lines 15-16) Circuit Judge Nicholson affirmed this finding. (S.R.p. 2) There is no indication that these findings lack evidentiary support or that they are against the clear preponderance of the evidence.

South Carolina appellate courts have declined to remove a Personal Representative even in cases where there were allegations of self-dealing, maladministration or actual documented conflicts between Personal Representative and beneficiaries. *See Blackmon v. Weaver*, 621 S.E.2d 42, 366 S.C. 245 (S.C. 2005); *Reed v. S.C. National Bank*, 360 S.E.2d 527, 293 S.C. 357 (S.C.App. 1987).

In this case, Judge Fulp considered all of the testimony and documentary evidence and found that Appellant Bobby Knight's complaints about the Special Administrator, most of which he repeated in the Circuit Court appeal and again in his South Carolina Court of Appeals argument, were factually unfounded. (R.p. 2, lines 3-5, R.p. 3, lines 12-14) Judge Fulp's final order fully and fairly discusses and takes into consideration all of the evidence, leading to a logical decision which tracks all of the facts and fully complies with all legal standards. (R. pp. 15-18)

Appellants have not presented any reason, under SCACR 242, for this Court to grant certiorari.

Respectfully submitted,



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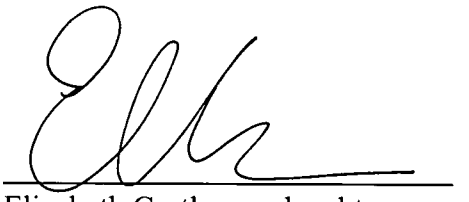
PROOF OF SERVICE

I certify that I have served Beatrice E. Whitten's Return of Special Administrator Beatrice E. Whitten to Appellants and Respondent Chloe Knight-Tonney by depositing copies in the United States Mail, postage prepaid, on February 14, 2019 addressed to Appellants' attorney of record, J. Seth Whipper, P.O. Box 70070, North Charleston, SC 29405 and to Respondent Chloe Knight-Tonney's attorney of record, C. Mac Gibson, Jr., 1473 Stuart Engals Blvd., Mount Pleasant, SC 29464.



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