

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J.C. Nicholson, Jr. Circuit Court Judge

Appellate Case No. 2019-000054

In RE: Estate of Norman R. Knight, Jr., (deceased), and Estate of Mildred C. Knight,
(deceased), and Norman Robert 'Bobby' Knight, III, Petitioners,

v.

Beatrice A. Whitten, as a Special Administrator, and Chloe Knight-Tonney, Claimant,
Respondents,

PETITIONERS' REPLY TO SPECIAL ADMINISTRATOR, BEATRICE E. WHITTEN

.....J. Seth Whipper
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INDEX

Argument in Reply.....i

Argument

**I. BEATRICE WHITTEN SHOULD BE REMOVED AS
 SPECIAL ADMINISTRATOR.....1**

Conclusion.....3

ARGUMENT

I. BEATRICE WHITTEN SHOULD BE REMOVED AS SPECIAL ADMINISTRATOR.

S.C. Code Ann. 62-3-618 (1986) states, inter alia..., “ the appointment of a special administrator is subject to termination as provided in Sections 62-3-608 through 62-3-611.” Further, S.C. Code Ann. 62-3-611 (b) (1986) provides that “Cause for removal exists when removal would be in the best interests of the estate... or that the personal representative has disregarded an order of the court... or has mismanaged the estate or failed to perform any duty pertaining to the office.”

Petitioners have offered solid evidence of at least three (3) of these items: (a) removal would be in the best interests of the estate; (b) the Special Administrator has disregarded an order of the Court; (c) has mismanaged the estate or failed to perform any duty pertaining to the office. Respondent Whitten relied on unsworn oral statements regarding the disposition of Mr. Knight’s car (Mitsubishi, 1995) with no corroboration from Mrs. Knight; Respondent Whitten disregarded the Court’s order to remove the *Lis pendens* on the marital property; Respondent Whitten failed to provide access to the AIG annuity that was co-owned by Mrs. Knight (R.p. 234, L. 1-15); and the kind of communications that were found in her file from the opposing party clearly indicate that the best interest of this estate would be accomplished by her removal. In an e-mail to Respondent Whitten from Tonney’s attorney concerning motions filed by Petitioners, Tonney’s attorney states: “I was also thinking that some kind of timeline or explanation of the case history would be helpful. Did you do that already?” (R.p. 235, L-12 -R.p. 236, L-12). In a note written on a funeral program, Tonney informs Respondent Whitten that “We are grateful for you.” (R.p. 235, L.20-25). Petitioners cannot feel comfortable with this kind of exchange occurring without real time notice to them.

The Special Administrator is not nominated or selected by the testator. The protections and deference shown to Personal Representatives by our jurisprudence comes from our recognition of the testator's intent as the primary reference and guide for satisfying the directives of a will. The emphasis on achieving the intent of the testator was not being made by Ms. Whitten, and Mr. Knight, Jr.'s will had become an afterthought. Ms. Whitten has offered only one alternative for dealing with Tonney's claim: sell the real estate where Bobby Knight lives. (R.p. 412:tr.p.375 L.15-17); (Tr. 7/17/13; p. 35 L.20-p. 36 L.11). The Special Administrator's behavior is wholly prejudicial to the interest of the Estate of Mildred C. Knight and Bobby Knight. Respondent Whitten, in her own right, has failed to protect the estate. As noted earlier, Respondent Whitten was aware of the discord and rancor among the parties to this matter. (R.p. 232) Respondent Whitten had reason to challenge the allegations of abuse of the decedent. Respondent Whitten knew that decedent's assets at the time of his passing were marital property and devised to his spouse. Respondent Whitten is an attorney licensed to practice in South Carolina. Respondent Whitten knew that there is no Family Court order requiring payment of attorney fees to Tonney or the attorney representing her father in that court. (R.p. 232) Respondent Whitten knew that Mr. Knight died during the Family Court litigation and that litigation could not be prosecuted beyond that date. Respondent Whitten knew that certain retirement accounts were held in common or some similar status by Mr. and Mrs. Knight. (R.p. 242) Respondent Whitten knew that Mr. Knight, Jr. left a modest estate and a sole devisee who was wholly dependent on him for support. (R.p. 236, L.8-25) Notwithstanding these realizations, Respondent Whitten transferred an automobile belonging to Mr. Knight to Tonney's nephew who was not in the will. Whitten received and disbursed these common retirement funds without consultation With Mrs. Knight. Including the communications and the Lis Pendens, Respondent Whitten

appears to be a cohort of the Respondent Tonney. Even a Personal Representative can get too close to the controversy. See Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013).

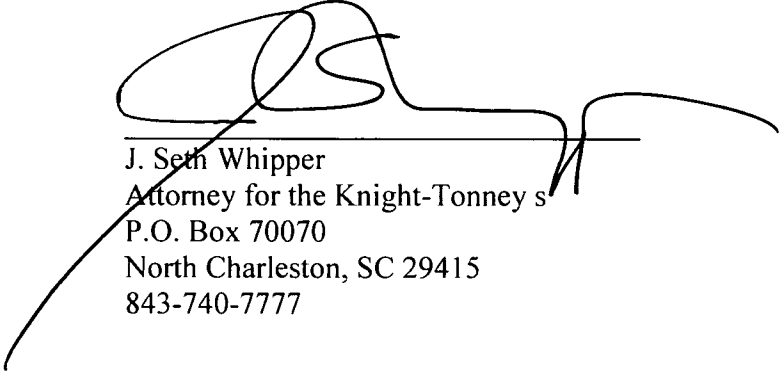
Finally, Respondent Whitten is tainted by the fault of being an appointee of a non-qualified elector probate judge. The proper constituents of the Charleston County Probate Court are not properly represented by Dorchester County Judge Blunt's appointment.

CONCLUSION

For the reasons stated, Petitioners ask the court to grant the petition for a writ of certiorari.

Respectfully Submitted,

February 25, 2019



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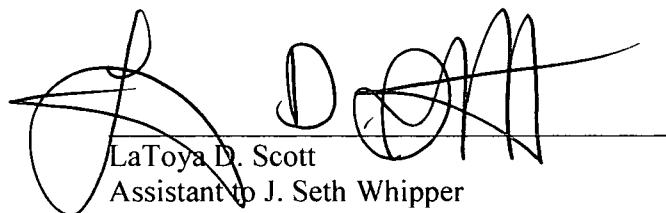
v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant,
Respondents,

PROOF OF SERVICE

I certify that I have served 1 Original Petitioners' Reply to Special Administrator, Beatrice E. Whitten, 1 Original Proof of Service, and 7 Copies on the South Carolina Supreme Court by depositing a copy to them in the United States Mail, postage prepaid, on February 25, 2019, addressed to: Daniel Shearouse, Clerk, South Carolina Supreme Court, Post Office Box 11330, Columbia, South Carolina 29211 and served the Petitioners' Reply to Special Administrator, Beatrice E. Whitten on: Beatrice E. Whitten, Special Administrator, 1110A Queensborough Blvd., Mt. Pleasant, SC 29464; and C. Mac Gibson, Jr., 1473 Stuart Englas Blvd. Mt. Pleasant, SC 29464-3305.

February 25, 2019


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