

Provence, Esquire as Successor Personal Representative. Pursuant to the Will, Decedent's real estate located at 3329 Von Oshen Road bearing tax number 388-00-00-107 was devised to Rose; a vacant lot on Mill Street bearing tax number 385-10-00-018 was devised to Jessie; and all other property was to be shared equally between Rose, Jessie, Bobby, and Kelvin. (R. App. 629).

Decedent owned a 100% interest in property located at 3283 Von Ohsen Road in Summerville, South Carolina, which she used as her primary residence until a few years before her death. According to appraisals obtained by Rose, the date of death value of 3283 Von Ohsen Road was \$145,000.00, and the value as of March 28, 2018 was \$190,000.00. (R. App. 634,653). On April 12, 2018, Rose filed an Amended Petition for Approval of Sale of Real Estate, seeking approval from the Probate Court to sell 3283 Von Ohsen Road to herself for \$171,000.00 (R. App. 735-739).

Prior to the hearing on the Amended Petition for Approval of Sale of Real Estate, Jessie requested to purchase 3283 Von Ohsen Road from the Estate. By Order dated May 16, 2018, the Probate Court approved the sale of various pieces of real property of the Decedent, including 3283 Von Ohsen Road. Pursuant to the Order dated May 16, 2018, a bidding process was established for 3283 Von Ohsen Road. At the conclusion of the bidding, the highest bidder was to remit 75% of the bid amount to the attorney for the Estate within ten days. (R. App. 5).

The requirement to pay only 75% of the purchase price was based on the fact that each beneficiary owned a 25% interest in the property, so the successful bidder was purchasing the interests of the other beneficiaries. However, if the highest bidder did not make the payment to the attorney for the Estate, then the other bidder would be able to purchase 3283 Von Ohsen for \$171,000.00. The bidding process also allowed the highest bidder to assign \$75,000.00 of his expected share of the Estate of Annie Mae Crosby toward the purchase of the property. (R. App. 5).

The bidding process for 3283 Von Ohsen began on May 21, 2018 and concluded on May 31, 2018. At the beginning of the bidding process, Jessie's attorney informed the attorneys for Rose that Jessie would be bidding on the property with Bobby. In response to this information, Rose's personal attorney sent the following e-mail:

We can take this issue up only if we need to once the bidding is over, but it seems to me that the order states that the bidding is between Rose and Jessie, and, from page 5, that either of them can assign “up to \$75,000 of her or her expected share of the estate to the purchase.” So I am not sure that Judge Condon would agree that it complies with the order for Jessie to try to make payment by assigning Bobby’s expected share rather than his own, or in addition to his own. Should Jessie purchase it, he is of course free to arrange the ownership interest any way he chooses between he and Bobby or anyone else, I think the issue I am talking about comes into play only if Jessie wins the bid and attempts to achieve the payment by that method of assignment.

This is just to let you know that we read the order differently in that regard. But we don’t need to join that issue until it becomes ripe for adjudication, if and when it does. This is merely notice of a different read.

(R. App. 760-761).

On May 30, 2018, Jessie and Robert submitted the highest bid in the amount of \$312,000.00. After the conclusion of the bidding process, there were disputes between the parties as to the amount of money that should be deposited with the Personal Representative. Jessie and Bobby timely delivered \$81,000.00 in cashier's checks to Shelly K. All, Esquire, attorney for the Estate. According to Respondents’ counsel, the \$81,000 payment was calculated as follows:

Amount bid by Jessie and Bobby	\$312,000.00
Less: 50% interest owned by Jessie and Bobby	<u>(\$156,000.00)</u>
BALANCE DUE TO ESTATE	\$156,000.00
Less: \$75,000 credit per Consent Order	<u>(\$75,000.00)</u>
NET BALANCE DUE TO ESTATE	\$81,000.00

Upon receipt of the cashier's checks, Rose, acting in her capacity as Personal Representative, determined that Jessie and Bobby had not complied with the May 16, 2018 Order, but did not seek guidance or approval by the Probate Court in making this determination. Therefore, she decided to exercise the right to purchase the property for the sum of \$171,000.00 from the Estate pursuant to her interpretation of the May 16, 2018 Order.

While the bidding process was ongoing, on May 23, 2018, Jessie and Bobby filed a Motion to Compel and for Removal of Personal Representative. In their Motion, Jessie and Bobby argued that Rose Walsh, in her capacity as Personal Representative, should be compelled to deed the property located on Mill Street to Jessie, pursuant to the terms of the Decedent's Last Will and

Testament. They also argued that Rose should be removed as Personal Representative for failing to distribute the assets of the Estate. (R. App. 293-307).

On June 20, 2018, after learning that Rose had determined to sell 3283 Von Ohsen Road to herself for \$171,000.00, Jessie and Bobby filed a Petition to Enforce Sale and Petition to Remove Personal Representative. (R. App. 308-330). In their Petition, they asked the Probate Court to enforce the sale of 3283 Von Ohsen Road to them for \$312,000.00 and to remove Rose as Personal Representative. On June 25, 2018, Rose filed a Return to Petition to Enforce Sale and Petition to Remove Personal Representative, Counterclaim, and Motions for Judgment on the Pleadings and Summary Judgment. (R. App. 331-339). In her Return, Rose asserted that she had complied with the bidding process for 3283 Von Ohsen Road and had acted in good faith in the purchase of the property. On July 12, 2018, Jessie and Bobby filed an Answer to Rose's Counterclaim to Petition to Enforce Sale and Petition to Remove the Personal Representative. (R. App. 567-568).

In addition to the disagreement regarding the sale of 3283 Von Ohsen, Jessie, Bobby, and Kelvin were also seeking information from Rose regarding the non-probate assets that Decedent owned at the time of her death. Kelvin had filed a Demand for Non-Probate Property Inventory on August 11, 2017, which was mailed by the Probate Court to Rose on August 15, 2017. Thus, Rose's response to Kelvin's Demand was due on or about November 13, 2017. *See*, S.C. Code §62-3-706. Thereafter, on May 3, 2018, counsel for Jessie and Bobby also filed and served on Rose a Demand for Non-Probate Property Inventory.

On July 26, 2018, Rose filed and served the Non-Probate Inventory and Appraisal. (R. App. 594-597). This document identified a list and inventory of non-probate property owned by the Decedent. (R. App. 594-597) Later in the day on July 26, 2018, counsel for Jessie and Bobby sent counsel for Rose an e-mail acknowledging that he had received the list and inventory of non-probate property. (R. App. 604-605). Counsel for Jessie and Bobby stated in his e-mail that "we will need the amount of the account on the date [Rose] was added and the date of Mrs. Crosby's passing. This should be easy to obtain." (R. App. 604-605). After sending the July 26 e-mail, counsel for Rose received by e-mail from Jessie and Bobby's counsel on August 1, 2018, a cover letter, and subpoena to The Bank of South Carolina seeking the production of the following information:

The following documents pertaining [to] account number 200007076 with portfolio number 6214 in the name of Annie Mae Crosby (DOB 5/3/1936) and Rose C. Walsh (DOB 1/4/1960):

1. Account balance/statement for September 30, 2012;
2. Account balance/statement for October 30, 2013;
3. Account balance/statement for November 29, 2016;
4. All documents pertaining to the ownership of the account including all documents pertaining to when owners were added or deleted from the account from January 1, 2010 to November 1, 2016.

5.

(R. App. 607-613). On August 7, 2018, Rose filed a Motion to Quash Subpoena and for Protective Order (the "Motion to Quash"). (R. App. 578-613).

On December 5, 2018, the Probate Court held a hearing on the following matters: (1) Jessie and Bobby's Motion to Compel and for Removal of the Personal Representative; (2) Jessie and Bobby's Petition to Enforce Sale and Petition to Remove the Personal Representative; and (3) Rose's Motion to Quash Subpoena and for Protective Order. (R. App. 12-21). On April 2, 2019, the Probate Court issued an order granting the following relief: (1) removal of Rose as personal representative of the Estate; (2) appointment of Tiffany N. Provence as successor personal representative of the Estate; (3) requiring Tiffany N. Provence to accept Jessie and Bobby's bid of \$312,000.00 for 3283 Von Ohsen Road; (4) requiring Rose to deed 3283 Von Ohsen Road back to the Estate; (5) ordering that Jessie and Bobby's notes and cashiers' checks be accepted by the Estate to go toward the purchase of 3283 Von Ohsen Road; (6) instructing Tiffany N. Provence to deed 3283 Von Ohsen Road to Jessie and Bobby; (7) instructing Tiffany N. Provence to deed the Mill Street property to Jessie as soon as practicable; and (8) requiring Rose to provide counsel for Jessie and Bobby information regarding Decedent's right of survivorship accounts. (R. App. 20-21).

This appeal was thereafter filed by Rose on April 12, 2019.

STANDARD OF REVIEW

The South Carolina Probate Code provides that the “circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law.” S.C. Code Ann. §62-1-308(i). “On appeal from the final order of the probate court, the circuit court must apply the same rules of law as an appellate court would apply on appeal.” *Wheeler v. Estate of Green*, 381 S.C. 548, 553, 673 S.E.2d 836, 839 (Ct. App. 2009). As such, “if the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them.” *Id.* “On the other hand, if the probate proceeding is equitable in nature, [an appellate court] may make factual findings according to its own view of the preponderance of the evidence.” *Id.* However, the equitable standard of review does not require the appellate court to ignore the findings of the trial judge who heard the witnesses. The veracity and credibility of witnesses can best be made by the judge who heard the witnesses and observed their demeanor. *Church v. McGee*, 391 S.C. 334, 705 S.E.2d 481 (Ct. App. 2011).

The April 2, 2019 Order removes Rose as personal representative, a proceeding that is equitable in nature. *See Dean v. Kilgore*, 313 S.C. 257, 259, 437 S.E.2d 154, 155 (Ct. App. 1993) (action to remove a personal representative appointed pursuant to the terms of a will is equitable in nature). The April 2, 2019 Order also orders the equitable relief of requiring Rose to deed 3283 Von Ohlsen Road back to the Estate as a result of her alleged breach of fiduciary duty. *See Wheeler*, 381 S.C. at 554, 673 S.E.2d at 839 (a “breach of fiduciary duty [claim] may sound in equity if the relief sought is equitable.”). The appellate court may, therefore, make factual findings according to its own view of the preponderance of the evidence with regard to the removal of Rose as personal representative and the sale of 3283 Von Ohlsen Road. However, the equitable standard of review does not require the appellate court to ignore the findings of the trial judge. *Lollis v. Dutton*, 421 S.C. 467, 478 807 S.E.2d 723, 728 (Ct. App. 2017) (“this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the [circuit court] was in a better position to assess the credibility of the witnesses”).

As to the Motion to Quash and that portion of the Order that requires Rose to provide information regarding the non-probate assets of the Estate, an appellate court will not interfere with discovery decisions unless the lower court abused its discretion. *Griffin Grading &*

Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

ISSUES ON APPEAL

1. Did the Probate Court properly remove the Personal Representative for breaching her fiduciary duty?
2. Did the Probate Court correctly order the sale of the property located at 3283 Von Ohsen Road for the sale price that provided the maximum benefit to all beneficiaries of the Estate?
3. Did the Probate Court properly require the Personal Representative to provide information regarding the right of survivorship accounts?

LAW/ANALYSIS

I. Removal of Personal Representative

Section 62-3-611(b) of the South Carolina Probate Code provides that the court can remove a personal representative upon finding that it would serve in the best interest of the estate. In deciding whether it would serve in the best interest of the estate to remove the personal representative, the court is to consider whether the personal representative has fulfilled her fiduciary duty for the benefit of the beneficiaries. “A personal representative is a fiduciary who shall observe the standards of care described in Section 62-7-804.” S.C. Code §62-3-703(a). As a result, “[the personal representative] is to administer the [estate] as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust.” S.C. Code §62-7-804. Further, a personal representative has the “duty to settle and distribute the estate ... as expeditiously and efficiently as is consistent with the best interests of the estate.” S.C. Code §62-3-703(a) of the South Carolina Probate Code. *See also, Turpin v. Lowther*, 404 S.C. 581, 591, 745 S.E.2d 397, 401 (Ct. App. 2013). In this case, the personal representative failed to fulfill that duty based on the manner in which she handled the real estate that is property of the Decedent’s Estate.

1. Mill Street Property (TMS# 385-10-00-008). Per a specific devise of the Will, Jessie was to receive the vacant land at Mill Street. Notwithstanding this specific devise in the Will, Rose, as the personal representative, refused to execute a Deed of Distribution from the Estate to

Jessie. Counsel for Jessie made requests for Rose to deed the Mill Street property to Jessie per the Will. (R. App. 748). Rose contended that she could not transfer any property or assets of the estate due to the mounting debts of the Estate, even though the Estate had in excess of \$370,000, and less than \$20,000 worth of expenses. (Transcript of hearing dated December 5, 2018, p. 29 line 22- p. 30, line 1). Also, none of the properties of the Estate were subject to mortgages or any other liens. (Transcript of hearing dated December 5, 2018, p. 28, line 17). Yet, Rose refused to execute a Deed of Distribution for the Mill Street property to Jessie in contravention of her fiduciary duty as the personal representative.

2. 3283 Von Ohsen Road Property. Per Item II of the Will, all other property was to be devised to her children in equal shares.

Rose wanted to purchase the property at 3283 Von Ohsen Road (“Property”) (Transcript of hearing dated December 5, 2018, p. 15, lines 22-24). She told her brother Kelvin that it would be a sweet deal for her to get the Property at \$145,000. (Transcript of hearing dated December 5, 2018, p. 51, lines 10-13).

Due to the contention between Rose and her brothers concerning the Property, the Probate Court issued an Order dated May 16, 2018, whereby Rose and Jessie could bid for the Property. The highest bidder had to deposit 75% of the bid within ten days. The highest bidder was permitted to assign \$75,000 of his/her share of the expected share of the probate assets to purchase the Property. If the highest bidder failed to pay 75% of the bid within the time frame, then the other bidder would be able to purchase the Property for \$171,000. (R. App. 13-14).

Rose submitted the first bid for the Property. (Transcript of hearing dated December 5, 2018, p. 107, lines 23-24). Jessie and Bobby ultimately submitted the highest bid, a joint bid of \$312,000.00. Thereafter, they delivered \$81,000 in cashier’s check to the attorney for the Estate of Annie Mae Crosby, and they executed notes to assign \$75,000 of their expected share of the probate assets. Rose concluded that Jessie and Bobby did not comply with the Order dated May 16, 2018. Consequently, she purchased the Property for \$171,000. (R. App. 14).

Rose contended that she as the personal representative was to receive a total of \$159,000 from Respondents Jessie and Bobby Crosby for their bid. Instead, she received a \$156,000, which was \$3,000 less than she believed was due. (Transcript of hearing dated December 5, 2018, p.102, lines 1-15). Rose’s personal attorney issued an email dated June 5, 2018, to the attorney for Jessie and Bobby and to the attorney for the Estate stating that if the 75% of the bid

was not delivered by June 11, 2018, then a motion to object to the bid as being non-qualifying would be filed. (Transcript of hearing dated December 5, 2018, p. 93, line 13- p. 94, line 7; Exh. 12). In fact, on two different occasions, Rose's counsel indicated that if there was a problem with the bid, then a motion would be filed to address the issue. (Transcript of hearing dated December 5, 2018, p. 109, lines 11-15). However, after Rose received payment for the bid from Jessie and Bobby, she did not seek a court order for a clarification concerning the bid. (Transcript of hearing dated December 5, 2018, p. 56, lines 15-17). Instead, she chose to reject their bid, and within two days of such rejection, Rose deeded the Property to herself (Transcript of hearing dated December 5, 2018, p. 60, lines 5-13).

Rose acknowledged it was her job as a fiduciary to obtain the most money for the Estate. She bought the Property for \$171,000, and she used her \$75,000 credit of the share of the estate; therefore, she only had to pay \$42,750 to the Estate. (Transcript of hearing dated December 5, 2018, p. 97, lines 10-21).

Judge Condon stated in his Order that by "deeding the property to herself for \$141,000 less than the amount the [Respondents Jessie and Bobby Crosby] agreed to pay for the property, [Appellant] Walsh violated the prudent person standard." (R. App. 18). Additionally, Judge Condon concluded that "[Appellant] Walsh failed to act in the best interest of the Estate by selling the property to herself for a significant lower price than that which was offered by [Respondents Jessie and Bobby Crosby], thus this transaction caused significant harm to the Estate to Annie Mae Crosby and to Kelvin Crosby, as a beneficiary who was not involved in the bidding process." (R. App. 18).

As a result of Rose's actions and inactions in failing to perform her duties as a personal representative, such as refusing to deed the Mill Street property to Jessie and refusing to allow Jessie and Bobby to purchase the Property so she could deed it to herself, Judge Condon correctly concluded the removal of Rose as the personal representative for the Estate would serve in the best interest of the beneficiaries.

Judge Condon's Order dated April 2, 2019 was supported by the evidence and testimony of witnesses, which warranted the removal of Rose as the personal representative for the Estate of Annie Mae Crosby.

II. Sale of 3283 Von Ohsen Road Property

In order to evaluate the Order of the Probate Court with respect to 3283 Von Ohsen Road, it is important to evaluate the interests of the respective parties. Decedent's Will does not specifically devise the Property, so it is subject to the "catch all" language in Item II, paragraph 3 of the Will: "All other property I currently or may hereinafter acquire shall be shared equally by my four children." Pursuant to the South Carolina Probate Code, real property passes to the beneficiaries under a decedent's will at the death of the owner. S.C. Code §62-3-101, Reporter's Comments. Therefore, immediately upon the death of Decedent on November 29, 2016, each of the four children owned a 25% interest in the Property.

The bidding process for the Property began on May 21, 2018, and concluded on May 31, 2018. As noted above, the beginning of the bidding process, Jessie's attorney informed the attorneys for Rose that Jessie would be bidding on the Property with Bobby. In response to this information, Rose's personal attorney, sent an e-mail stating that he did not believe this complied with the bidding procedures in Judge Condon's Order, but that there was no need to address the issue "until it becomes ripe for adjudication, if and when it does." (R. App. 760-761).

Ultimately, Bobby and Jessie were the successful bidder at a price of \$312,000.00. Based on this bid amount, each beneficiary's 25% interest was worth \$78,000.00. Since Bobby and Jessie each owned 25% of the Property, they simply needed to pay for the 25% interests owned by Rose and Kelvin for \$78,000 each, for a total of \$156,000.00. In order to timely comply with their bid, Bobby and Jessie delivered to the attorney for the Estate certified checks totaling \$81,000 and an acknowledgement that \$75,000 of their expected inheritance would be applied to the purchase price, for a total payment of \$156,000.00. of that amount, Kelvin and Rose would each receive \$78,000 for their respective 25% interests in the Property.

Rose contends that Jessie and Bobby were \$3,000.00 short in complying with their bid and that she is therefore entitled to buy the Property for \$171,000.00, and she in fact issued a deed conveying the Property to herself. It is important to note that, if she was allowed to purchase the Property for \$171,000.00, Kelvin would receive only \$47,750 for his 25% interest, rather than the \$78,000 he will receive if Bobby and Jessie are allowed to buy the Property. Additionally, Rose would receive the windfall benefit of buying an asset worth \$312,000 for \$171,000, at the expense of the beneficiaries to whom she owes a fiduciary duty. In any event, the Probate Court was correct in setting aside the transfer to Rose and allowing Bobby and Jessie to purchase the Property because:

1. Rose's calculation of the amount to be paid by Bobby and Jessie was incorrect;
2. Rose's attorney acknowledged different readings of the May 16, 2018 Order, but never sought Probate Court review of the situation, although his email acknowledged that the issue would "become ripe for adjudication" if Bobby and Jessie were the high bidders for the Property; and
3. Rose's unilateral determination that Bobby and Jessie had not complied with the bid requirements and subsequent purchase of the Property for approximately 55% of the amount bid by Jessie and Bobby was a breach of her fiduciary duty to the beneficiaries.

S.C. Code Section 62-3-703 sets forth the general duties of a personal representative to an estate. Under this section of the Probate Code:

[a] personal representative is a fiduciary who shall observe the standards of care described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.

S.C. Code Ann. §62-3-703(a).

Pursuant to S.C. Code Section 62-7-804, "a trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." S.C. Code §62-7-804. Therefore, a personal representative is held to the same prudent person standard as that of a trustee. Under S.C. Code Section 62-3-712, "if the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust." S.C. Code Ann. §62-3-712.

In this case, Rose failed to exercise reasonable care, skill, and caution by not allowing the Bobby and Jessie to purchase the Property for \$312,000.00. Under S.C. Code Section 62-3-703(a), Rose has the duty to settle and distribute the Estate in the manner that is in the best interests of the Estate and its beneficiaries. The record in this matter shows that Rose exercised

the right to purchase 3283 Von Ohsen Road for \$171,000.00 on June 11, 2018, twelve days after the conclusion of the bidding process. She did not give Bobby and Jessie notice and an opportunity to cure what she believed was a shortfall in their compliance with their bid. By failing to give Bobby and Jessie such notice and opportunity, and by subsequently deeding the Property to herself for \$141,000.00 less than the amount Bobby and Jessie agreed to pay, Rose violated the prudent person standard. Furthermore, Rose failed to act in the best interests of the Estate by selling the property to herself for a significantly lower price than that which was offered by Jessie and Bobby. Thus, this transaction caused significant harm both to the Estate of Annie Mae Crosby and to Kelvin, a beneficiary who was not involved in the bidding process.¹ Therefore, Judge Condon was correct in ordering Rose to deed the Property back to the Estate so that it could be sold to Jessie and Bobby for their bid of \$312,000.00.

III. Information Regarding Survivorship Accounts

Subsection (B) of Section 62-3-706 of the South Carolina Probate Code provides that:

(B) Within ninety days of a demand by an interested person for an inventory of nonprobate property, the personal representative shall:

- (1) prepare a list of the property owned by the decedent at the time of his death that is not probate property, so far as is known to the personal representative which may, at the discretion of the personal representative, include the value and nature of the decedent's interest in the property on the date of the decedent's death;
- (2) mail a copy of the list to each interested person who has requested the list; and
- (3) file proof of the mailing with the probate court.

S.C. Code §62-3-706(B). In this case, Kelvin filed a Demand for Non-Probate Property Inventory on August 11, 2017, which was mailed by the Probate Court to Rose on August 15, 2017. Thus, Rose's response to Kelvin's Demand was due on or about November 13, 2017.

¹ In the Initial Brief of Appellant and at the oral argument, Rose's attorneys refer to the May 16, 2018 Order as a "Consent Order" and suggest that the Court should not consider the fact that Kelvin will receive significantly less money if Rose was allowed to purchase the property for \$171,000, since he consented to the bidding procedure. However, that Order was not a consent order. It was signed only by the probate judge, and not by any of the parties or their attorneys.

Thereafter, on May 3, 2018, the attorney for Jessie and Bobby also filed and served on Rose a Demand for Non-Probate Property Inventory.

A hearing was held on the Probate Court on July 11, 2018 to address various motions that were pending. As a result of that hearing, the Court issued an Order dated July 28, 2018, which stated that Rose would provide a “list and inventory of non-probate property owned by the Decedent within two weeks of July 11, 2018...” (R. App. 10). Nothing in the Order limited any beneficiary from seeking to obtain additional information regarding the non-probate assets from other sources.

On July 25, 2018, Rose filed and served the Inventory and Appraisal of the non-probate assets. The Inventory and Appraisal identified a joint bank account at The Bank of South Carolina, an IRA, and a disability plan. (R. App. 594-597). The Inventory and Appraisal did not state a value for any of the non-probate assets, which is within the discretion of the personal representative. *See*, S.C. Code §62-3-706(B)(1). On July 31, 2018, counsel for Jessie and Bobby issued a subpoena to The Bank of South Carolina requesting various documents concerning the joint account, including certain account statements. (R. App. 609-612). On August 7, 2018, counsel for Rose filed a Motion to Quash the subpoena.

Appellant correctly states that a personal representative has the discretion not to provide the value of non-probate assets. *See*, S.C. Code §62-3-706(B)(1). However, nothing in Section 62-3-706 prohibits an interested person from seeking that information from another source. Likewise, nothing in the Order dated July 28, 2018 prohibits or in any way limits the right of any interested person to seek information regarding the value of non-probate assets.

There are any number of reasons that a beneficiary may seek to obtain detailed information regarding a joint bank account that is a non-probate asset. For example, a beneficiary may want to investigate when the surviving joint account holder was added to the decedent’s account, in the event that the decedent was not competent at the time of the transaction. Additionally, a beneficiary may want to see account statements to determine if the surviving joint account holder made any withdrawals from the account prior to the death of the decedent. The South Carolina Supreme Court has held that funds withdrawn from a joint bank account by the survivor prior to the death of the decedent may be property of the decedent’s estate. *See, Vaughn v. Bernhardt*, 345 S.C. 196, 547 S.E.2d 869 (2001). As such, a beneficiary should not be

prevented from seeking discovery concerning non-probate assets, and nothing in the Probate Code prevents or limits such discovery.

An appellate court will not interfere with discovery decisions unless the trial court abused its discretion. *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). In this case, the Probate Judge ordered Rose to provide the “information regarding the Decedent’s right of survivorship accounts.” (R. App. 21). This decision is not an abuse of discretion.

CONCLUSION

Based on the foregoing, the **Order** entered by the Charleston County **Probate Court** on April 2, 2019 should be and is therefore,

AFFIRMED.

J. DERHAM COLE

Presiding Judge

Charleston County Court of Common Pleas



Charleston Common Pleas

Case Caption: Rose Mae Crosby Walsh , plaintiff, et al VS Jessie Fred Crosby ,
defendant, et al
Case Number: 2019CP1001887
Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053

Attachment A

Order filed May 7, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CASE on APPEAL

CASE NO. 2019-CP-10-01887

Rose Mae Crosby WALSH, et al.,

Jessie Fred CROSBY, et al.,

Appellant(s)

Respondent(s)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other SCRPC 56.
- ACTION STRICKEN** (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other .
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: formal order attached; Statement of Judgment by the Court:

This matter came before this court on **APPEAL** from a decision of the Probate Court. On appeal from a final order of the Probate Court, the circuit court must apply the same rules of law as an appellate court would apply on appeal. "[I]f the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *Id.* "On the other hand, if the probate proceeding is equitable in nature, [an appellate court] may make factual findings according to its own view of the preponderance of the evidence." *Id.* However, the equitable standard of review does not require the appellate court to ignore the findings of the trial judge who heard the witnesses. The veracity and credibility of witnesses can best be made by the judge who heard the witnesses and observed their demeanor. Church v. McGee, 391 S.C. 334 (Ct. App. 2011).

After consideration of the argument of counsel, memoranda submitted, and the applicable statutory and case law, this Court finds no reason which is readily apparent to reverse or alter the decision made by the Probate Court in this case, and therefore finds that the **DECISION** should be and **IS** therefore **AFFIRMED**.

J. DERHAM COLE, Presiding Judge

This judgment was entered on the _____ day of _____ and a copy mailed first class this _____ day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

CLINTON T. MAGILL, Esq.
GREGG E. MEYERS, Esq.
ATTORNEY(S) FOR APPELLANT(S)

THOMAS E. LYDON, Esq.
ATTORNEY(S) FOR THE RESPONDENT(S)

RECEIVED

Jun 09 2020

SC Court of Appeals

JULIE J. ARMSTRONG, CLERK OF COURT



Charleston Common Pleas

Case Caption: Rose Mae Crosby Walsh , plaintiff, et al VS Jessie Fred Crosby ,
defendant, et al
Case Number: 2019CP1001887
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053