THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM HORRY COUNTY
Probate Court

Carroll D. Padgett, Jr., Chief Associate Probate Judge

Case No. 2018-CP-26-06416

In the matter of the Estate of Donald M. Rothgeb

Julie Irving..... Respondent-Plaintiff,

vs.

Jeanne Poafpybitty, Personal Representative of the Estate of Donald M. Rothgeb.....Appellant-Defendant,

and

Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb.....Defendants.

ORDER DENYING APPEAL, AFFIRMING DECISIONS OF THE PROBATE COURT

Jeanne Poafpybitty, Personal Representative of the Estate of Dr. Donald M. Rothgeb (hereinafter, "Appellant") asserts that the Horry County Probate Court committed reversible error in issuing two Orders, dated March 2, 2018 and November 7, 2018, regarding trial which was held on February 17, 2017 and February 24, 2017.

The Trial Court found Appellant in breach of fiduciary duties, with her efforts using Estate resources for personal financial gain, at the expense of the Estate and its other beneficiaries. Breach of duty was also found with unreasonable delay in Estate closure, in Appellant's communications with Estate beneficiaries and with Appellant's litigation efforts, that were not in the Estate's best interests. As remedy for Appellant's breach of duties, the Trial Court ordered Estate termination, approved of and disapproved of certain financial claims, ordered equal distribution of remaining Estate resources among four equal beneficiaries, and ordered appointment of a special administrator to oversee any administration which potentially might remain after 60 days of the Court's final order. This Court affirms the Probate Court's decisions.

Facts

Dr. Donald Rothgeb died on January 26, 2014, testate, and his Will named his surviving spouse, Jeanne Poafpybitty ("Appellant"), as the Estate's Personal Representative. Julie Irving ("Respondent"), Steven Rothgeb and Donald Matthew Rothgeb ("Matthew") are Dr. Rothgeb's children from a prior marriage, and the Will names these three children, and Appellant, as equal quarter share beneficiaries.

The Probate Estate held twelve parcels of Horry County real property, including full title to Dr. Rothgeb's personal residence, and many rental units which had been owned for investment.

Two real properties were encumbered by mortgage debt. The Probate Estate did not include liquid cash assets.

More than a year after Dr. Rothgeb's death, Steven Rothgeb wrote to Appellant who, as Personal Representative, had been managing the Estate's rental properties. Steven's letter informed that he was unable to secure information, when he had inquired with Estate counsel. Steven's letter, characterized by the Trial Court as respectful and cordial, asked for financial records and about Estate activities since the beginning of administration. The Trial Court found these inquiries to be reasonable, and to be what Appellant should have been prepared to address.

In response to Steven Rothgeb's February 24, 2015 letter, Appellant sought advice of Estate counsel, and agreed to provide information. Appellant acknowledged an absence of prior information sharing, "because there are no details to give". Appellant's initial response also included a mocking of Respondent's sincere interest in receiving Estate details.

On March 19, 2015 Appellant forwarded descriptions of real properties, a listing of monthly HOA and annual tax obligations, and a listing of property locations. Appellant did not share financial records or describe Estate activities. Appellant did not share about Estate income or expense distributions, but did share her views about mortgage debt obligations, together a forecast – "Well there isn't going to be any money today or tomorrow so I guess we all just need to get a grip".

Disappointed with the sharing Appellant had forwarded in response to Stephen Rothgeb's letter, Respondent, and her brothers, engaged attorney Jack Scoville, who wrote to the Estate on April 8, 2015. Mr. Scoville, thereafter, had the Estate agree to recognize, and act upon, a portion of Dr. Rothgeb's Will, which permitted prompt real property distributions, allowing beneficiaries

to take title, subject to outstanding mortgage debt. This eliminated delays associated with property liquidations and mortgage debt payoffs. Mr. Scoville also secured a commitment for Estate income and expense sharing, that had previously not been provided by Appellant.

In contrast to the record summary described in four paragraphs, above, Appellant claims, under oath, with criticism of Respondent's behavior, that "exactly one year and one day" following Dr. Rothgeb's death, Respondent hired Attorney Scoville, because it appeared that she was not getting her fair Estate share. The Trial Court has written of its concerns, regarding Appellant's sincerity and credibility, in proceedings.

In late 2015, after information sharing between the parties, Mr. Scoville wrote to suggest appraisal of Estate real properties, to be used as part of final distributions and Estate closure. Mr. Scoville's letter of October 6, 2015 contained no details about the appraisal process, nor how the parties would proceed following the new appraisals. The three children beneficiaries, thereafter, disengaged attorney Scoville, and prepared to receive final distribution proposals from Appellant.

The first of Appellant's distribution proposals was forwarded on December 9, 2015. It included terms where, for only a $95,000.00 credit against her 25% Estate distribution share, Appellant would take title to Dr. Rothgeb's personal residence.

Appellant's $95,000.00 residence distribution proposal was forwarded to Respondent with no copy of any supporting appraisal, and no explanation of how this $95,000.00 value related to the $191,200.00 value, Appellant had previously declared for this same residence, in two separate sworn Probate Court inventory filings.

Respondent suspected that Appellant was intending to secure an unwarranted financial bargain, and arranged to receive from Appellant, a copy of the appraisal report which had been

commissioned for Dr. Rothgeb's personal residence. As it happened, appraiser James Cromartie had observed serious disrepair with Dr. Rothgeb's personal residence, and this, he says, justified the discounted $95,000.00 value.

During further proceedings, Respondent learned that, between the time of Mr. Cromartie's disrepair appraisal, and Appellant's $95,000.00 distribution proposal, Appellant used more than $20,000.00 in Estate resources to rehabilitate Dr. Rothgeb's residence. It was not in a disrepaired state, when Appellant made her December 9, 2015 $95,000.00 distribution proposal.

Respondent communicated further with the Estate, and Appellant revised her written distribution proposals on January 29, 2016. She now listed Estate repair expenses, to be part of a credit for her 25% Estate distribution share, with a revised distribution credit, now totaling $118,000.00.

Respondent, who was knowledgeable about her Father's residence, and was aware that it had mortgage debt of nearly $130,000.00, still considered Appellant's January 2016 revised distribution proposal to demonstrate Appellant's unreasonable financial bargain hunting. Prior to any litigation, Respondent forwarded settlement proposals, all of which the Estate refused. Among these proposals was that Appellant negotiate with beneficiaries, but without, what Respondent considered to be, the conflicting cost of Estate counsel. Payment for Estate counsel, when made from Estate resources, essentially meant that Respondent, and her brothers (75% interest holders), would be paying 75% of the bill for lawyers, who were working to secure the best personal value for Appellant, as a 25% beneficiary.

In February 2016, Respondent and Appellant's counsel had telephone communication, where issues of the parties were discussed. This ended with counsel proposing action to conclude

administration according to terms which Appellant considered to be appropriate. Weeks later, in April, 2016, Respondent filed suit, seeking to terminate administration, together with a motion for restraint, alleging breach of fiduciary duties.

The parties attended motion hearing on May 27, 2016, where Appellant, who had filed no responsive pleading, did not object to Estate closure, but did raise concern about Respondent's call for removing Appellant's fiduciary authority. The Trial Court granted Temporary Restraining Order, and established Respondent's financial inheritance as security, for payment of any costs and damages, should Appellant ever demonstrate that she had suffered, by having been wrongfully restrained. Further, the Court gave instructions for final accountings, as well as mediation and trial, should disagreements continue.

In June, 2016, Appellant filed Estate closing documents, including, among other items, her proposal to acquire Dr. Rothgeb's repaired personal residence at a price of $118,000.00. This is the same price proposed by Appellant, prior to suit in January, 2016. Presumably, Appellant was prepared to defend this acquisition price as being reasonable. Appellant, as part of her $118,000.00 acquisition, agreed to personally assume the residence outstanding mortgage, which in June 2016, had a balance of more than $127,000.00. Respondent and her two brothers again objected to Appellant's residence acquisition price, as well as other items, including Appellant's proposal to have the Estate pay for years of her personal utilities and cable bill expenses. The children filed demands for hearing.

Thereafter, the parties proceeded with discovery, mediation preparation and further communications with the Probate Court. Appellant filed countersuit, claiming that Respondent had abused the legal process, and was acting to seek revenge against Appellant, her stepmother.

Appellant maintained, at all times, she had performed with proper fiduciary care, and asserted that Respondent was estopped from taking legal action, based upon prior Estate negotiations.

In November, 2016, the Trial Court permitted Respondent's appraiser, Russell Burgess, to inspect the interior of Dr. Rothgeb's personal residence, and also permitted Appellant's appraiser, Mr. Cromartie, to be present for the inspection. Mr. Cromartie's prior appraisal work, had previously been in 2015, prior to residence repairs which had been made by Appellant with Estate resources.

The parties presented their competing positions, with exhibits, witnesses and arguments during two days of trial in February 2017. On February 15, 2017, just prior to trial, Appellant filed revised Estate closing proposals, including a final accounting, under oath.

According to her closing revisions, Appellant no longer sought title to Dr. Rothgeb's personal residence. She proposed that it be distributed, instead, to her stepchildren. Whatsmore, Appellant decided not to make any trial presentation which would defend/ justify her actions, in January, 2016 and June, 2016, where Appellant listed $118,000.00 as a reasonable price for Dr. Rothgeb's repaired personal residence she wished to acquire. Appellant now listed $193,900.00, as the value for Dr. Rothgeb's personal residence, the amount contained in appraiser Burgess' report, which had been shared with the parties, weeks before trial. In sworn trial testimony, Mr. Burgess presented his findings. During trial, Appellant did not support the valuation for Dr. Rothgeb's personal residence, contained in her February 14, 2017 sworn filing. The Trial Court saw Appellant's actions as abandonment of Appellant's fiduciary duties, in setting values for Estate assets.

In spite of her decision not to defend the $118,000.00 valuation, which appears to have sparked conflict and litigation, Appellant, nonetheless, called appraiser Cromartie to give trial testimony. Mr. Cromartie described his 2015 pre-repair appraisal of Dr. Rothgeb's personal residence, but when asked to opine regarding the repaired residence value, he had no opinion to offer. The Estate, Mr. Cromartie explained, had not hired him to appraise the residence, again, following its repair, and in connection with Mr. Cromartie's November 2016 post-repair inspection; an inspection which was arranged for through Court Order.

Appellant's court presentations included explanation that, in order to achieve cost savings, the Estate decided not to ask its appraiser, James Cromartie, for an opinion of Dr. Rothgeb's residence, following Estate repairs. The Court's Order of November 7, 2018 describes this explanation as neither reasonable nor credible. The case record includes written communication to the Court, from Appellant's counsel, just prior to trial. In this communication, also expressing concern about Estate expenses, the Trial Court was told to anticipate a trial with valuation testimony from Mr. Cromartie and Respondent's appraiser, which counsel advised would assist with case resolution.

The absence of a repaired residence valuation, from Appellant's appraiser, made an impression on the Trial Court. According to Trial Court conclusions, Mr. Cromartie either could not or would not support Appellant's $118,000.00 property acquisition price. Appellant's fiduciary breach is associated with her abandonment of basic obligations to be clear with values, and her failure to avoid self dealing.

In connection with findings of fiduciary breach, the Trial Court ordered remedies, as follows:

1. The balance of Estate assets, following approved fees and costs, shall be distributed, in equal shares, unto the Estate's four beneficiaries, and Estate administration would terminate.

2. Fees and costs of Appellant's counsel shall be paid by the Estate, through May 25, 2016. Any further such fees and costs shall be the personal responsibility, only, of Appellant, except that the Estate may pay for reasonable legal services associated with the Ordered Estate closure.

3. A Personal Representative's fee of $10,000.00 is approved, and $30,000.00 of additional fiduciary compensation, which had been proposed by Appellant, shall be distributed, equally, unto Dr. Rothgeb's three children.

4. Respondent's attorney fees and costs shall be reimbursed by the Estate.

5. In making final distributions, there shall be no final adjustments associated with more than four (4) years of Appellant's nearly exclusive use of a personal residence owned by the Estate. This includes no financial adjustments requiring Appellant to reimburse the Estate for personal expenses, such as electric and cable utilities, taxes and insurance for the residence. Following issuance of the Trial Court Order, Appellant, should she have continuing use of Dr. Rothgeb's personal residence as her own, shall be responsible for reasonable expense reimbursement to the Estate, as if she were a tenant.

6. Appellant's fiduciary authority shall terminate, with appointment of a Special Administrator, should proceedings continue beyond sixty (60) days from Trial Court Order.

Appellant and Respondent both filed post trial motions, the parties made post trial hearing presentations, and the Trial Court issued its Order of November 7, 2018, upholding its earlier rulings.

Standard of Review

Appeals from the Probate Court are governed by provisions of the South Carolina Probate Code, as set forth in S.C. Code Ann. §62-1-308(d) (Supp. 2013). If the proceeding in the Probate Court is in the nature of an action at law, the appellate court may not disturb the Probate Court's findings of fact, unless a review of the record discloses that there is no evidence to support these findings. Neely v. Thomasson, 365 S.C. 345, 618 S.E. 2d 884 (2005). If, however, the Probate Court proceeding is equitable in nature, an appellate court may make factual findings according to its own view of the evidence. Matter of Howard, 315 S.C. 356, 434 S.E. 2d 254 (1993). This Court finds guidance in these issues, through the Horry County case of Ex Parte Wheeler v. Estate of Green, 381 S.C. 548, 673 S.E. 2d 836 (S.C. App. 2009).

The main purpose of the action, as reflected by pleadings and proof, and also the relief sought from the Probate Court, may establish whether a suit is legal or equitable in nature. Gordon v. Drews, 358 S.C. 598, 595 S.E. 2d 864 (Ct. App. 2004). A claim regarding breach of fiduciary duty is an action at law, and the trial judge's findings, if supported by evidence, will be upheld. Jordan v. Holt, 362 S.C. 201, 608 S.E. 2d 129 (2005). This Court observes that Respondent's Complaint, in this matter, alleged breach of fiduciary duties, which the Trial Court found to be so, based upon evidence presented. As such, this Court has decided to uphold the Trial Court's findings. This Court has reviewed a voluminous record, in this matter, and determined that the Trial Court has not abused its discretion in reaching its findings, and in issuing its decisions, including remedies.

This Court is mindful, however, of Appellant's assertion that this case sounds substantially in equity, and that the appellate court should make findings according to its own views of the evidence. This Court recognizes that a breach of fiduciary duty may sound in equity, if the relief

sought is equitable in nature. Bivens v. Watkins, 313 S.C. 228, 437 S.E. 2d 132 (Ct. App. 1993). In this case, involving allegations, and findings, of breach of fiduciary duties, Respondent sought Probate Court intervention, for property distributions which Appellant would not make, but which were permitted under Dr. Rothgeb's Will. The Trial Court also exercised equitable discretion, particularly under S.C. Code Ann. §62-1-111 (Supp. 2013), to address ten of thousand of dollars in costs and expenses.

Recognizing the equitable elements in this case, and how the Wheeler case addressed the breach of fiduciary duties, when these elements exist, this Court records, here, certain findings from the record, following its own review.

Law and Analysis

I. Fiduciary Obligations. A Personal Representative is a fiduciary, with duty to settle and distribute a Decedent's Estate, expeditiously and efficiently, according to terms of the probated Will, and consistent with the Estate's best interest. S.C. Code Ann. §62-3-703 (Supp. 2013). In taking discretionary actions with assets in her custody, a fiduciary must eliminate all selfish interest and exercise the reasonable care, prudence and diligence that a reasonably prudent person would do with relation to her own affairs. Cartee v. Lesley, 209 S.C. 333, 350 S.E. 201 388 (1986), Page v. Page, 243 S.C. 312, 133 S.E. 201 829 (1963). This Court has reviewed the Record and Trial Court's findings of fiduciary breach. This Court has reached findings, as follows:

a. The Trial Court, in paragraph 18, page 21 of its March 2, 2018 Order, summarized how Appellant unjustly sparked expensive conflict by using fiduciary authority, attempting to personally acquire, at more than a $70,000.00 discount, an Estate residence which had been restored with tens of thousands of dollars in Estate resources. Aggressive defenses, including

countersuit, were launched by Appellant, because Respondent challenged Appellant's faithfulness, when Appellant continued using the once disrepaired condition of Dr. Rothgeb's personal residence, in calculating final distributions.

Appellant proposed a distribution of a restored, not a disrepaired, Estate residence. A final distribution value, based upon a prior state of residence disrepair, did not make sense to Respondent, and the Trial Court agreed that it demonstrated unfair self-dealing.

As it so happened, when given the chance at trial, Appellant backed away from any effort to defend and justify her discounted residence acquisition proposal. However, following trial, and now into her most recent appeal efforts, Appellant seeks to establish Trial Court error, by highlighting the importance of pre-repair troubles, of a restored residence, which she tried to acquire for her own.

b. Until challenged by separate counsel, hired by Estate beneficiaries, Appellant ignored that part of Dr. Rothgeb's Will which permitted prompt real property distributions, allowing Estate distributees to acquire distribution titles, subject to any outstanding mortgage debt.

Unreasonably, prior to this challenge, Appellant maintained that only one administrative option was available. The Estate had no choice but to engage in costs, efforts and delays, associated with marketing Estate properties, where sale proceeds would be used to extinguish all mortgage debt, prior to Estate closure. Appellant's only acknowledged option, carried with it opportunities for greater fiduciary compensation when she sold real property. Also, the longer the real property marketing period during Estate administration, the longer Appellant could enjoy occupancy of Dr. Rothgeb's residence, at the Estate's expense.

c. As outlined on Pages 6 and 7 of the Trial Court's March 2, 2018 Order, Appellant did not follow through with her March 8, 2015 written commitment to inform beneficiaries of Estate financial information which the beneficiaries sought. Financial information was later forwarded, but only following beneficiaries' action to hire their own attorney, who demanded answers.

During litigation discovery, in 2016, Appellant offered unreasonable objection to Respondent requests. As described, above, Appellant's ideas for valuing Dr. Rothgeb's personal residence was a significant part of the parties' conflict. In discovery, prior to trial, Appellant refused to share her valuation ideas. Later, at trial, Appellant behaved as though her prior and current valuation ideas, for Dr. Rothgeb's repaired personal residence, had no relevance to the parties' contest.

d. In Estate administration, Appellant has maintained a spirited defense, claiming that she has always acted as a fiduciary should act, in the Estate's best interests. The Trial Court ruled that Appellant had not defended her case in the Estate's best interests. It has listed, on pages 8 through 14 of its November 7, 2018 Order, analysis of how Appellants' defense efforts have missed the standards, set forth in S.C. Code Ann. §62-3-720 (Supp. 2013). Ultimately, Appellant, herself, remains responsible and accountable for defense efforts made on her behalf. Williams v. Williams, 335 S.C. 386, 517 S.E. 2d 689 (1999).

As discussed below, this Court has also observed defense efforts through Appellant's appeal. The statutory standards which permit reimbursement of defense expenditures, require, not only good faith defense efforts, but also defenses which are necessary and reasonable. According to the Trial Court, Appellant had litigated with a goal of improving her personal lot in the Estate. Appellant's claim of good faith actions is not supported by the record.

II. Trial Court Remedies. Administration of a Probate Estate is guided by the Decedent's intent, as expressed in his written Will. S.C. Code Ann. §62-2-601 (Supp. 2013). In this case, Dr. Rothgeb selected Appellant to serve as Personal Representative, and gave her fiduciary authority to be exercised for the best interests of the Estate and its beneficiaries. While Item IV of Dr. Rothgeb's Will provides sole discretion for Appellant to designate personal and real property for Estate distributions, this Item also requires that each beneficiary receive approximately equal shares of the Estate.

The Trial Court properly recognized that Dr. Rothgeb's selection of Appellant should be respected, and that Appellant's judgment shall not, for insignificant reasons, be set aside. The courts retain, however, authority to review a Personal Representative's fiduciary performance, and to take necessary corrective actions for protection of the Estate and its beneficiaries. This is judicial authority to further the decedent's intent. Blackmon v. Weaver, 366 S.C. 245, 621 S.E. 2d 42 (2005); Church v. McGee, 391 S.C. 334, 705 S.E. 2d 481 (Ct. App. 2011); Floyd v. Floyd, 365 S.C. 56, 615 S.E. 2d 465 (Ct. App. 2005); Maydwell v. Maydwell 135 Tenn 1, 185 S.W. 712 (1916). Following are findings of this Court:

a. Given the fiduciary misconduct of Appellant in this case, the Trial Court is within its discretion to restrain Appellant's further exercise of authority. This Trial Court action, to preserve the Estate, did not reform Dr. Rothgeb's Will, as Appellant claims. The Trial Court was not obligated, in furtherance of Dr. Rothgeb's intentions, to again and again, allow Appellant to try and exercise fiduciary authority.

b. The Trial Court did not abuse its discretion, according to S. C. Code Ann. §62-1-111 (Supp. 2013) to award costs and expenses. This Court acknowledges Appellant's concerns, according to S.C. Code Ann. §62-3-720 (Supp. 2013), seeking reimbursement of Appellant's legal

expenses. This Court holds, also, that the Common Fund Doctrine expressed in the case of Sullivan v. Brown (In re Estate of Kay) 418 S.C. 400, 792 S.E. 2d 907 (Ct. App. 2016) is not applicable to how the Trial Court treated Appellant. In light of Appellant's behavior, and of S.C. Code Ann. §62-1-111 and §62-3-712 (Supp. 2013), the Trial Court acted within its statutory discretion.

This Court has reviewed what the Trial Court has observed in reaching its decision, and this Court has also observed the following, regarding legal efforts with Appellant's appeal:

(i) Without addressing admissions of her own trial strategy, where she decided to withhold documents from submission, Appellant continues to blame others for the absence of exhibits, she now asserts should have become part of the Record. Further, in spite of continuing claims of Trial Court and Respondent error, Appellant has proffered no record items, where an appellate court may now examine any proposed exhibits, which Appellant considers to have been wrongfully excluded.

(ii) Appellant offers continuing concerns about the once deplorable condition of Dr. Rothgeb's residence. This she does, without addressing Trial Court findings that, following substantial repairs with Estate resources, Appellant used fiduciary powers to try and personally acquire this residence, for a price associated with its pre-repair troubles.

(iii) Appellant invites this Court to examine Respondent's citation of an old Tennessee case, as example of how flawed the Trial Court's Order has been. This, Appellant does, without acknowledging how our South Carolina Court of Appeals favorably cited Maydwell v. Maydwell, 135 Tenn. 1, 185 S.W. 712 (1916), in resolving a fiduciary removal case from our own Pawleys Island community. Floyd v. Floyd 365 S.C. 56, 615 S.E. 2d 465 (Ct. App. 2005). Maydwell, cited by the Trial Court, together with other South Carolina fiduciary removal cases,

holds that substantial conflict resolution, and fair treatment for the Estate and its beneficiaries, is so important, that fiduciary removal can be proper, even when there is no fiduciary misconduct.

(iv) Appellant continues to cite, what she claims is the opinion of interested party, Attorney Jack Scoville, although no record of this opinion exists. Appellant never called Mr. Scoville as a witness, and the Trial Court previously instructed Appellant for violating rules of heresay, when counsel wrongfully attempted to enhance the record of Mr. Scoville's contributions to this case. Mr. Scoville's letter of October 6, 2015 does not support, as Appellant claims, her January 22, 2020 argument before this Court.

(v) Without addressing Trial Court findings, of her failure to establish any binding agreement, Appellant continues arguing that Respondent has violated a previously negotiated global settlement, when Respondent questioned Appellant's 2015 and 2016 Estate closing proposals. No record shows that Respondent had ever surrendered her beneficiary rights to challenge Estate accountings; accountings which the Trial Court ultimately found to have demonstrated fiduciary misconduct. The Trial Court observed unjustified Estate hostility towards Respondent, and ruled that a proper fiduciary would not continue arguing about a pretrial settlement, which the evidence does not display.

Under the circumstances, this Court agrees with the Trial Court. Appellant has continued with defenses which are beyond the standards outlined in S.C. Code Ann. §62-3-720 (Supp. 2013), and Appellant's claim of good faith defenses has not been demonstrated. Dr. Rothgeb's children should not experience additional financial suffering, which would be the case, if the Estate was made to reimburse Appellant for greater defense expenses, than the Trial Court has permitted.

c. Given the fiduciary misconduct of Appellant in this case, which sparked unreasonable expense for all parties, the Trial Court's limited award of financial compensation to the Personal Representative is not an abuse of judicial discretion.

d. This Court finds that Appellant, who continues with concerns about harsh Trial Court treatment, has actually received substantial considerations in her favor. The Trial Court Order of March 2, 2018 outlines, in pages 39 through 42, a good measure of accommodations to Appellant, in spite of her deliberate misconduct. The Trial Court answer, about a surviving spouse's one-third elective share petition, also was well within its direction. In her arguments, Appellant chose neither to acknowledge nor address this Trial Court answer.

e. The Trial Court Order for Special Administrator is cited, as error, because this remedy, Appellant claims, was not part of Respondent's court presentations, and Appellant was not given fair notice of the issue. Respondent's Complaint sought termination of Estate administration, where Appellant's fiduciary authority would end. In addition to specific items contained in her Complaint, Respondent sought "such additional relief as the Court deems just and proper", which the Trial Court granted. Hearing transcript, and also Appellant's pretrial communications with the Trial Court, citing fiduciary removal cases, record Appellant's awareness that the Personal Representative's removal was among the contested trial issues. The Trial Court did not abuse its discretion in ruling to appoint a Special Administrator, for protection of the Estate and its beneficiaries.

III. Trial Court Error. In deciding this case, it was error for the Trial Court to cite S. C. Code Ann. §62-7-804 (Supp. 2013). As set forth in S. C. Code Ann. §62-7-102 (Supp. 2013), Article 7 of our Probate Code pertains only to Trusts and Trustees, and not to the administration of Estates. This is so, even while S. C. Code Ann. §62-3-703(a) (Supp. 2013) references Code §62-7-804 for

a standard of care, associated with Personal Representatives. Notwithstanding this error, the record of this case supports Trial Court findings, that Appellant substantially breached her fiduciary duties to the Estate and its beneficiaries.

Conclusion

In this Court's view, according to preponderance of evidence contained in the Record, Appellant substantially breached her duties as Personal Representative, in order to achieve selfish goals. The Trial Court had proper grounds for these findings, and acted within its discretion to order Estate conclusion, with distributions and settlement of costs. The Trial Court's Order for a Special Administrator was also within the Court's discretion, as a proper action to protect the Estate and its beneficiaries. The decisions of the Probate Court are therefore AFFIRMED.

AND IT IS SO ORDERED.

_____
Honorable Benjamin H. Culbertson

Dated: _____

Horry Common Pleas

Case Caption: Jeanne Poafpybitty , plaintiff, et al VS Julie Irving

Case Number: 2018CP2606416

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148