

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J. Derham Cole, Circuit Court Judge

Case No. 2019-CP-10-1887
Probate Case No. 2016-ES-10-02054
Appeal Case 2020-000853

In the Matter of re Estate of Annie Mae Crosby:

Jessie Fred Crosby and Robert Edward Crosby, Jr., Respondents

v.

Rose Mae Crosby Walsh, individually and as personal representative of the Estate
of Annie Mae Crosby, and Kelvin Wayne Crosby, Respondents,

Of Whom Rose Mae Crosby Walsh, individually and as personal representative of
the Estate of Annie Mae Crosby is the Appellant.

RECORD ON APPEAL
VOLUME FIVE

Gregg Meyers
217 Lucas Street Unit F1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com
Attorney for appellant Rose Walsh
Crosby, individually and
as personal representative

Thomas E. Lydon
McAngus, Gouldelock, & Courie, LLC
1320 Main Street, 10th Floor
PO Box 12519
Columbia SC 29211
803-779-2300
tlydon@mgclaw.com
Attorney for respondents Jessie Fred Crosby
And Robert Edward Crosby, Jr.

Kelvin Crosby, pro se
181 Azalea Drive
Waynesville NC 28786

Index

Orders, Judgments, Decrees, Decisions

- May 7, 2020, order affirming the probate court pp. 826 - 840
- October 9, 2020, order denying the SCRCP 59(e) motion pp. 841 - 842

Pleadings

- May 17, 2019, statement of issues on appeal pp. 843 - 845
- June 19, 2019, initial brief of appellants pp. 846 - 869
- May 20, 2020, Motion to Alter or Amend (SCRCP 59(e) motion) with Attachments A and B pp. 870 - 882
- October 26, 2020, Notice of Appeal pp. 883 - 886

Transcripts

- January 30, 2020, Transcript of hearing before the Circuit Court pp. 887 - 918

Certificate

- Certificate of counsel p. 919

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

In the Matter of:)
 Estate of Annie Mae Crosby,)
)
 Jessie Fred **CROSBY** and Robert)
 Edward **CROSBY**, Jr.,)
)
) Petitioners,)

-vs-)

Rose Mae Crosby **WALSH**, individually)
 And as Personal Representative of the Estate)
 of Annie Mae Crosby, and Kelvin Wayne)
CROSBY,)
) Respondents,)

ORDER

AFFIRMING PROBATE COURT

Of Whom Rose Mae Crosby **WALSH**,)
 individually and as Personal Representative)
 of the Estate of Annie Mae Crosby is the)
)
) Appellant,)

Case No. **2019-CP-10-01887**

and)

Jessie Fred **CROSBY**, Robert Edward)
CROSBY, Jr., and Kelvin Wayne)
CROSBY are)
) Respondents.)

This matter came before the Court for a hearing on January 30, 2020, for a hearing on an appeal from the Charleston County Probate Court in the matter of the Estate of Annie Mae Crosby, Probate Case No. 2016-ES-10-02054.

FACTS AND PROCEDURAL HISTORY

Annie Mae Crosby ("Decedent") died on November 29, 2016, survived by four adult children: Respondents Jessie Fred Crosby ("Jessie"), Robert Edward Crosby, Jr. ("Bobby"), Kelvin Wayne Crosby ("Kelvin"), and Appellant Rose Mae Crosby Walsh ("Rose"). (R. App. 13). The Decedent's estate is being administered by the Charleston County Probate Court in accordance with the Decedent's Last Will and Testament, dated April 15, 2009 (the "Will"). (R. App. 627-631). The Will named Rose as Personal Representative and Tiffany N.

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

Electronically signed on 2020-05-07 10:18:10 page 15 of 15

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 originally came before this court on **APPEAL** from a decision of the Probate Court. After hearing, this Court issued its Order affirming the decision of the Probate Court.

Rose Mae Crosby Walsh, by and through her counsel Gregg E. Meyers, Esq., timely filed a motion to alter or amend the judgment of this Court pursuant to Rule 59(e), SCRPC.

After consideration of the argument of counsel submitted by way of written memoranda, the applicable statutory and case law, and the applicable court rules, this Court finds no reason which is readily apparent to alter or amend the decision made in this case, and therefore finds that Rose Mae Crosby Walsh's **MOTION** pursuant to Rule 59(e), SCRPC, should be and **IS** therefore **DENIED**.

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:

GREGG E. MEYERS, Esq.

THOMAS E. LYDON, Esq.

ATTORNEY(S) FOR APPELLANT(S)

ATTORNEY(S) FOR THE RESPONDENT(S)

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/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2020-10-08 15:19:35 page 2 of 2

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO. 2019-CP-10-1887
IN THE MATTER OF: ESTATE OF ANNIE)	
MAE CROSBY)	(Probate Case No. 2016-ES-10-02054)
)	
)	
JESSIE FRED CROSBY AND ROBERT)	
EDWARD CROSBY, JR.,)	STATEMENT OF ISSUES ON APPEAL
)	
)	
PETITIONERS,)	
)	
VS.)	
)	
)	
ROSE MAE CROSBY WALSH, Individually)	
and as Personal Representative of the Estate)	
of Annie Mae Crosby, and KELVIN WAYNE)	
CROSBY,)	
)	
RESPONDENTS.)	

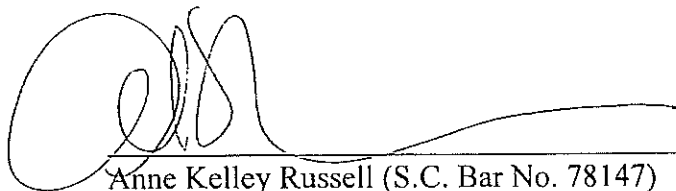
FILED
 2019 MAY 17 PM 4:34
 JULIE J. ARMSTRONG
 CLERK OF COURT

PLEASE TAKE NOTICE that, pursuant to S.C. Code Ann. § 62-1-308, Respondent Rose Mae Crosby Walsh, Individually and as Personal Representative of the Estate of Annie Mae Crosby, by and through the undersigned attorneys, hereby presents the following issues on appeal:

1. Did the Probate Court err by ruling the Personal Representative violated her fiduciary duties owed to the Estate, given that the Probate Court also ruled that the Personal Representative complied with the prior Order of the Probate Court?
2. Did the Probate Court err in failing to enforce the sale of the property located at 3283 Von Ohlsen Road, Summerville, South Carolina 29485, given that the property was sold in compliance with the Probate Court's prior Order?
3. Did the Probate Court err in ruling that the Personal Representative violated her fiduciary duties owed to the Estate, given that the Probate Court's ruling was based on erroneous factual findings?
4. Did the Probate Court err in requiring the Personal Representative to provide Petitioners' counsel information regarding the Decedent's right of

survivorship accounts, given that the Probate Court's prior Order did not require the disclosure of such information and SC Code § 62-3-706(B)(1) grants the Personal Representative the discretion to provide the information?

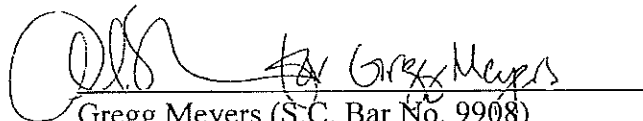
May 17, 2019
Charleston, SC



Anne Kelley Russell (S.C. Bar No. 78147)
Charles R. Scarminach (S.C. Bar No.
101582)
Moore & Van Allen PLLC
78 Wentworth Street
Charleston, SC 29401
PH. (843) 579-7000
E-mail: akrussell@mvalaw.com
charlesscarminach@mvalaw.com

*Attorneys for Appellant Rose Mae Crosby
Walsh, as Personal Representative*

May 17, 2019
Charleston, SC



Gregg Meyers (S.C. Bar No. 9908)
217 Lucas Street Box 10
Mount Pleasant, SC 29464
PH. (843) 324-1589
E-mail:

*Attorney for Appellant Rose Mae Crosby
Walsh, Individually*

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

IN THE MATTER OF: ESTATE OF ANNIE)
MAE CROSBY)

CASE NO. 2019-CP-10-1887)

(Probate Case No. 2016-ES-10-02054)

JESSIE FRED CROSBY AND ROBERT)
EDWARD CROSBY, JR.,)

PETITIONERS,)

CERTIFICATE OF SERVICE

VS.)

ROSE MAE CROSBY WALSH, Individually)
and as Personal Representative of the Estate)
of Annie Mae Crosby, and KELVIN WAYNE)
CROSBY,)

RESPONDENTS.)

FILED
2019 MAY 17 PM 4:34
JULIE J. ARMSTRONG
CLERK OF COURT

This is to certify that on May 17, 2019, I served a true and correct copy of the Statement of Issues on Appeal on the parties identified below by electronic mail and/or by U.S. mail, postage prepaid, addressed as follows:

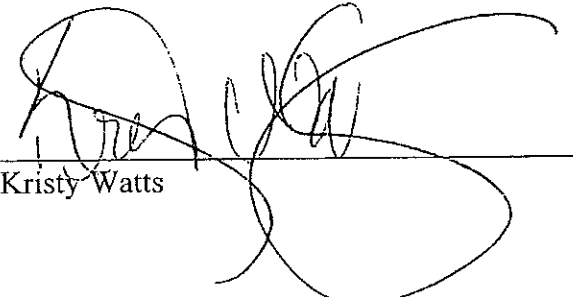
David L. Michel, Esq.
Michel Law Firm, LLC
751 Johnnie Dodds Blvd.
Mount Pleasant, SC 29464

ATTORNEY FOR PETITIONERS
JESSIE FRED CROSBY AND ROBERT EDWARD CROSBY, JR.

Dennis O'Neill, Esquire
Dennis O'Neill Law Firm
1473 Stuart Engals Blvd.
Mount Pleasant, SC 29464

ATTORNEY FOR RESPONDENT
KELVIN WAYNE CROSBY

May 17, 2019
Charleston, South Carolina



Kristy Watts

Gregg Meyers (S.C. Bar No. 9908)
217 Lucas Street Box 10
Mount Pleasant, SC 29464
PH. (843) 324-1589
E-mail: attygm@gmail.com

*Attorney for Appellant Rose Mae Crosby
Walsh, Individually*

Other Counsel of Record:

Thomas E. Lydon, Esquire
McAngus Goudelock & Courie
Post Office Box 12519, Capital Station
Columbia, South Carolina 29211-2519
(803) 779-2300

David L. Michel, Esquire
Michel Law Firm, LLC
751 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

*Attorneys for Respondents Jessie Fred
Crosby and Robert Edward Crosby, Jr.*

C. Mac Gibson, Jr., Esquire
1473 Stuart Engals Boulevard
Mt. Pleasant, South Carolina 29464

Dennis E. O'Neil, Esquire
O'Neil Law Firm
1473 Stuart Engals Boulevard
Mount Pleasant, South Carolina 29464

Attorneys for Respondent Kelvin Wayne Crosby

TABLE OF CONTENTS

Table of Authorities	iv
Statement of Issues on Appeal	1
Statement of the Case	2
Standard of Review	7
Argument	8
I. The probate court erred by ruling the personal representative violated her fiduciary duties owed to the estate.	8
A. The probate court’s ruling was based on erroneous factual findings.....	8
B. The probate court ruled that the personal representative complied with the prior order of the probate court and breached her fiduciary duty when she complied...	10
II. The probate court erred in failing to enforce the sale of the property located at 3283 Von Ohsen Road, Summerville, South Carolina 29485 because the property was sold in compliance with the probate court’s prior order.....	12
III. The probate court erred in requiring the personal representative to provide Respondents’ counsel information regarding the Decedent’s right of survivorship accounts because the probate court’s prior order did not require the disclosure of such information and SC Code § 62-3-706(B)(1) grants the personal representative the discretion to provide the information.....	15
Conclusion	16

TABLE OF AUTHORITIES

CASES

Blackmon v. Weaver, 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005).....8, 9

Crayton v. Fowler, 140 S.C. 517, 139 S.E. 161 (1927).....13

Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993).....7

Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005)13, 14

Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999)8

Smith v. Heyward, 115 S.C. 145, 105 S.E. 275 (1920).....9

Wheeler v. Estate of Green, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009)7, 8

STATUTES AND RULES

S.C. Code Ann. § 62-1-308.....7

S.C. Code Ann. § 62-3-611.....8, 9, 13, 14

S.C. Code Ann. § 62-3-703.....12

S.C. Code Ann. § 62-3-706.....6, 15, 16

S.C. Code Ann. § 62-7-804.....12

STATEMENT OF ISSUES ON APPEAL

1. Did the probate court err by ruling the personal representative violated her fiduciary duties owed to the estate, given that the probate court also ruled that the personal representative complied with the prior order of the probate court?
2. Did the probate court err in ruling that the personal representative violated her fiduciary duties owed to the estate, given that the probate court's ruling was based on erroneous factual findings?
3. Did the probate court err in failing to enforce the sale of the property located at 3283 Von Ohlsen Road, Summerville, South Carolina 29485, given that the property was sold in compliance with the probate court's prior order?
4. Did the probate court err in requiring the personal representative to provide Respondents' counsel information regarding the Decedent's right of survivorship accounts, given that the probate court's prior order did not require the disclosure of such information and SC Code § 62-3-706(B)(1) grants the personal representative the discretion to provide the information?

STATEMENT OF THE CASE

Anne Mae Crosby (the “Decedent”) died on November 29, 2016, survived by four adult children: Respondents Jessie Fred Crosby (“Jessie”), Robert Edward Crosby, Jr. (“Bobby”), Kelvin Wayne Crosby (“Kelvin”), and Appellant Rose Mae Crosby Walsh (“Rose”). (Order, April 2, 2019, p. 2). The Decedent’s estate was administered by the Charleston County Probate Court in accordance with the Decedent’s Last Will and Testament, dated April 15, 2009 (the “Will”). (Ex. A to Mem. in Opp’n, *Will*). The Will states, in relevant part, that the Decedent bequeaths “[t]he vacant land on Mill Street bearing tax number 385-10-00-018 to my son, Jessie Fred Crosby.” (*Id.* at p. 2). Rose was appointed as personal representative of the estate on January 26, 2017. (Ex. D to Mem. in Opp’n, *Consent Order*, p. 2).

The Decedent owned a 100% interest in 3283 Von Ohsen Road, Summerville, South Carolina 29485 (“3283 Von Ohsen Road”) which she used as her primary residence until a few years before her death. (*Id.*) According to appraisals performed by disinterested qualified appraisers, 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. (Ex. B to Mem. in Opp’n, *Appraisals*). Rose filed an Amended Petition for Approval of Sale of Real Estate on April 12, 2018, seeking approval from the court to sell 3283 Von Ohsen Road to herself. (Ex. C to Mem. in Opp’n, *Amended Petition*).

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. As such, at the hearing for the Amended Petition on April 23, 2018, all of the parties agreed that only Rose and Jessie would bid on 3283 Von Ohsen Road pursuant to parameters agreed upon by the parties and the court. (Ex. D to Mem. in Opp’n, *Consent Order*). The agreement and parameters were ultimately memorialized by a Consent Order dated May 16, 2018 (the “Consent Order”). (*Id.*)

The Consent Order included, in relevant part, the following parameters with regard to the bidding:

(e) The person submitting the highest bid to purchase 3283 Von Ohsen Road must pay to the Personal Representative of the Decedent's Estate a sum equal to seventy-five percent (75%) of the highest bid within ten (10) days of making the final bid. The highest bidder may only assign up to \$75,000 of his or her expected share of the estate to the purchase.

(f) If the highest bidder cannot make such payment within ten (10) days of making the final bid, then the other party may submit a bid equal to One Hundred Seventy One Thousand Dollars (\$171,000.00) and shall be the highest bidder.

(*Id.* at p. 5).

On April 25, 2018, and for the first time, counsel for Jessie and Bobby requested that Rose deed the Mill Street property to Jessie. (Ex. E to Mem. in Opp'n, *April 25-May 21, 2018 E-mails*). On May 15, 2018, counsel for Jessie and Bobby sent a subsequent e-mail requesting that the Mill Street property be deeded to Jessie. (*Id.*) Counsel for Rose responded on May 18, 2018, and stated that Rose "cannot make a distribution to only Jessie at this time. We would prefer that the remaining outstanding issues of the estate be resolved before further distributions are made from the estate." (*Id.*) Counsel for Jessie and Bobby responded on May 21, 2018, and stated that he would file a motion to compel if counsel for Rose did not deed the Mill Street property. (*Id.*) Counsel for Rose replied on the same day and stated that Rose was in the process of selling various properties owned by the estate and making copies of family photographs, all pursuant to the Consent Order, and that she would make final distribution of estate assets after those matters were handled. (*Id.*)

The bidding for 3283 Von Ohsen Road began on May 21, 2018. (Ex. F to Mem. in Opp'n, *May 21-31, 2018 Bidding E-mails*). Jessie made numerous bids during the bidding period and never requested that the bidding be stayed so that the Court could address the Mill Street property.

(*Id.*) The bidding ultimately concluded on May 31, 2018, with a winning bid from Jessie in the amount of \$312,000.00. (*Id.*) As such, pursuant to the terms of the Consent Order, Jessie was required to pay \$159,000.00 to Rose, in her role as personal representative, by June 11, 2018. (Ex. D to Mem. in Opp'n, *Consent Order*). Rose ultimately received the following from Jessie on June 11, 2018: (1) a check from Jessie in the amount of \$3,000; (2) a note from Bobby assigning \$75,000 of his expected share of the estate to the purchase; (3) a check from Bobby in the amount of \$3,000; and (4) a check from Bobby in the amount of \$75,000. (Ex. G to Mem. in Opp'n, *June 11, 2018 E-mail*).

After receiving the above from Jessie, Rose informed him that he had not complied with the terms of the Consent Order because: (1) the Consent Order did not authorize Rose to accept payments and credits from Bobby towards the purchase of 3283 Von Ohsen Road; and (2) even if Rose was authorized to accept payments and credits from Bobby, she had only received a total of \$156,000, which was \$3,000 short of the required \$159,000. (*Id.*) Thereafter, Rose followed the terms of the Consent Order and submitted her own bid of \$171,000, the default sales price, and effectuated such bid pursuant to the terms of the Consent Order. (*Id.*)

On May 23, 2018, Jessie and Bobby filed a Motion to Compel and For Removal of the Personal Representative (the "Motion to Compel") seeking an order: (1) requiring Rose to deed the Mill Street property to Jessie; and (2) removing Rose as personal representative. (Mot. to Compel). The Court held a hearing on the Motion to Compel on July 11, 2018, during which the parties agreed that the Motion to Compel would be continued to a later date. (Ex. A to Mot. to Quash, *July 28 Order*). The parties also agreed that:

13. [T]he specific devises will be made, as directed by the Will, as soon as possible.
14. [T]he Personal Representative shall provide a list and inventory of non-probate property owned by the Decedent within two weeks of July 11, 2018, giving

deference to the fact that some documents may need to be requested from third parties. The information provided shall include when the Personal Representative was added or named as beneficiary.

(*Id.*) In accordance with this agreement, Rose deeded the Mill Street property to Jessie on July 19, 2018. (Ex. H to Mem. in Opp'n, *Deed of Distribution*).

On June 20, 2018, Jessie and Bobby filed a Petition to Enforce Sale and Petition to Remove the Personal Representative (the "Petition"). (Petition). The Petition requested removal of Rose as personal representative because she: (1) "began the bidding process for 3283 Von Ohsen Road knowing that Jessie would be at a financial disadvantage because of her failure to deed the Mill Street Property"; and (2) "denied [Bobby's] request to pledge his \$75,000.00 in credit towards [Jessie's] purchase of said property." (*Id.* at ¶¶ 21-22).

On July 26, 2018, Rose provided Jessie and Bobby with a document titled Non-probate Inventory and Appraisal. (Ex. B to Mot. to Quash, *Non-probate Inventory*). Pursuant to the parties' agreement at the July 11, 2018, status conference, this document identified a list and inventory of non-probate property owned by the Decedent. (*Id.*) 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. (Ex. C to Mot. to Quash, *July 26, 2018, E-mails*). Contrary to the parties' agreement at the July 11, 2018, status conference and the court's July 28, 2018, order, however, counsel for Jessie and Bobby also 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." (*Id.*)

Counsel for Rose subsequently responded to counsel for Jessie and Bobby and stated the following:

I understand that we have provided your clients a list/inventory of all non-probate assets, which includes documentation of when Rose was added to each account or named as a beneficiary. Rose in her capacity as PR agreed to provide this to your clients at the July 11, 2018 hearing. Rose did not, however, agree to provide

account values. Pursuant to Section 62-3-706(B)(1) of the Code, she is exercising her discretion in not providing such values.

(*Id.*) 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 by August 22, 2018:

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.

(Ex. D to Mot. to Quash, *Aug. 1, 2018, E-mail and Subpoena*). On August 7, 2018, Rose filed a Motion to Quash Subpoena and for Protective Order (the "Motion to Quash"). (Mot. to Quash).

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. (Order, April 2, 2019). On April 2, 2019, the probate court issued an order holding, in relevant part, the following: (1) removing Rose as personal representative of the estate; (2) appointing Tiffany N. Provence, Esquire, as successor personal representative of the estate; (3) requiring Tiffany N. Provence, Esquire, 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 towards the purchase of 3283 Von Ohsen Road; (6) requiring Tiffany

N. Provence, Esquire, to deed 3283 Von Ohsen Road to Jessie and Bobby; (7) requiring Tiffany N. Provence, Esquire 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 the Decedent's right of survivorship accounts. (*Id.*)

STANDARD OF REVIEW

“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.* (internal quotation marks and citation omitted). “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.* (citation omitted).

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 Ohsen 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.”) (citation omitted). The 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 Ohsen Road. *Id.* at 553, 673 S.E.2d at 839.

As to the Motion to Quash, 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).

ARGUMENT

I. The probate court erred by ruling the personal representative violated her fiduciary duties owed to the estate.

A. The probate court's ruling was based on erroneous factual findings.

The April 2, 2019, Order (the "Order") holds "that it is in the best interest of the Estate to remove Rose Mae Crosby Walsh as Personal Representative of the Estate of Annie Mae Crosby and to appoint Tiffany N. Provence, Esquire as successor Personal Representative pursuant to the Last Will and Testament of the Decedent." (Order, April 2, 2019, p. 9). The Order further provides that the removal is the result of "emotional and financial harm to Kelvin Crosby" and "significant delays in the administration of this Estate." (*Id.*) As explained below, the probate court erred in removing Rose as personal representative because she acted in the best interest of the Estate and any harm to Kelvin is the result of actions by Jessie, Bobby, and Kelvin.

Section 62-3-611 of the South Carolina Probate Code "governs removal of a personal representative" *Blackmon v. Weaver*, 366 S.C. 245, 250, 621 S.E.2d 42, 45 (Ct. App. 2005).

Section 62-3-611(b) provides that:

Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

S.C. Code § 62-3-611(b). “However, there is a strong deference shown to the personal representative chosen by the testator.” *Blackmon*, 366 S.C. at 251, 621 S.E.2d at 45. The South Carolina Supreme Court has previously stated that “[t]he Courts have ever been reluctant to take the management of an estate from those to whom it is has been confided by the testator, for to that extent the intention expressed in his will would be defeated.” *Id.* (citing *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

The analysis in *Blackmon v. Weaver* is helpful in understanding how the probate court erred in removing Rose as personal representative. In *Blackmon*, the trial court removed the decedent’s widow as personal representative because: (1) she requested the court to construe a will in a manner that favored her own interests; (2) she failed to timely collect a debt to the estate; and (3) she was hostile towards the other beneficiaries. *Blackmon*, 366 S.C. at 251, 621 S.E.2d at 45. The South Carolina Court of Appeals subsequently reversed the trial court’s removal because it agreed with the personal representative’s construction of the will, found the personal representative properly managed the debt collection, and found the personal representative was not at fault in the conflict with the beneficiaries. *Id.* The Court of Appeals further explained that “[t]he mere existence of conflict between a personal representative and a beneficiary is an inadequate reason for removal of the personal representative. Without a showing of fault, the court will not remove a personal representative simply because the parties do not get along.” *Id.* at 251-52, 621 S.E.2d at 45. Here, as in *Blackmon*, the lower court removed the personal representative because of a “conflict between the beneficiaries” and the removal was improper because there was no showing of fault. (Order, April 2, 2019, p. 8).

The evidence in the record shows that the administration of the estate has been delayed at various points because of intimidation and delay tactics utilized by Jessie and Bobby, and not

because of Rose. Specifically, Rose testified about “the promise from the boys that they would keep us embattled in court until the estate was fully drained.” (Hr’g Tr., Dec. 5, 2018, p. 29, lines 18-20). She further stated that Jessie and Bobby’s “intention was to drain the estate and keep me in court until there was nothing left.” (*Id.* at p. 46, lines 10-12). She also testified that “[e]verything I’ve tried to do as personal representative, they have tried to counteract, even as far as the grass cutting at my mother’s home. Everything has been an argument and a court battle.” (*Id.* at p. 48, lines 5-8). Rose also testified about death threats relayed to her from Kelvin on behalf of Jessie:

Kelvin called me, and he told me that he couldn’t repeat exactly how Jess[i]e wanted to kill me, but Jess[i]e told him he was going to hide in the bushes and that he had a gun. He said, Rose, don’t argue with him. Don’t have a disagreement with him. He wants to kill you. And at that point, I quit carrying my children in my car with me. I had to take them to school every day, so we had to find other means for that, because Kelvin said he was telling me because he didn’t want to be a party to it. And once Jess[i]e told him his intention, that he felt that he had to tell me.

(*Id.* at p. 64, line 18-p. 65, line 4). In addition, Rose testified that “Jess[i]e knocked out most of my baby teeth. They have always been extremely rough with me. They fought me like I was a man. There were other things done to me.” (*Id.* at p. 69, lines 16-19). The evidence in the record shows that Jessie and Bobby are at fault for the conflict among the parties, and, therefore, pursuant to the holding in *Blackmon*, it was improper to remove Rose as personal representative.¹

B. The probate court ruled that the personal representative complied with the prior order of the probate court and breached her fiduciary when she complied.

Regardless of the intimidation and delay tactics utilized by Jessie and Bobby, the record also shows that Rose acted in the best interest of the Estate and performed her duties as personal

¹ The record also shows that the alleged emotional distress on behalf of Kelvin was the result of his fear of Jessie. Specifically, Rose testified that, “Kelvin also, through text messages, told me he was afraid at that point that Jess[i]e was also going to come to North Carolina and hurt both he and his wife.” (*Id.* at p. 65, lines 15-18).

representative by complying with the Consent Order. For example, when Rose was questioned about her actions, she testified as follows:

- Q You've been personal representative since January 2017, correct?
A Yes.
Q Have you – any of your actions been to intentionally harm your brothers?
A No.
Q Do you want them to get an equal portion of the estate?
A Yes.
Q Do you believe you've worked hard to make that possible?
A I have worked very hard to keep costs down and to get as much as I could get for the properties to add back into the estate so that it could be distributed.
Q So you believe you've given a good faith effort?
A Yes. And I've kept extremely good records of everything I have done.

(*Id.* at p. 70, lines 4-22). Furthermore, Rose testified, and the probate court held, that Rose complied with the Consent Order in not allowing Jessie and Bobby to purchase 3283 Von Ohsen Road:

- Q And is it fair to say that the purpose of having the consent order was to let you reconcile your personal interest in owning the house with your obligations to the estate as personal representative?
A That's right.
Q So here's a structure approved by the Court, based on the consent of everybody, that let's you take off your fiduciary hat and try to pursue something individually for you by a bid process?
A Yes.
Q Is that fair? Your brother won the bidding but failed—your brother won the bidding, right?
A Yes, he did.
Q But then he failed to comply with the rest of the provisions of the order?
A That's right.
Q And what you did in that capacity was effectuate the consent order as it applied to the home sale; is that fair?
A Yes.
Q And was it your obligation to follow through on the consent order in your PR capacity even though it resulted in less benefit for the estate?
A Yes.
Q Everybody agreed to that should that condition not be met as the fallback provision; is that fair?
A That's right.

(*Id.* at p. 104, line 5-p. 105, line 7) (*see also* Order, April 2, 2019, p. 7) (holding that Rose “complied with the terms of the May 15, 2018 [Consent] Order”). In sum, the testimony from the hearing shows that Rose acted in the best interest of the estate at all times, including when she did not allow Jessie and Bobby to purchase 3283 Von Ohsen Road in violation of the Consent Order, and, therefore, the probate court erred in removing her as personal representative.

II. The probate court erred in failing to enforce the sale of the property located at 3283 Von Ohsen Road, Summerville, South Carolina 29485 because the property was sold in compliance with the probate court’s prior order.

The Order states that Rose breached her fiduciary duty and improperly exercised her power as personal representative in failing to sell 3283 Von Ohsen Road to Jessie and Bobby. (Order, April 2, 2019, p. 7). The Order further holds, however, that Rose “complied with the terms of the May 15, 2018 [Consent] Order” in not allowing Jessie and Bobby to purchase 3283 Von Ohsen Road. (*Id.*) As explained below, these rulings are contradictory and the probate court’s failure to enforce the sale of 3283 Von Ohsen Road to Rose should be reversed.

S.C. Code § 62-3-703(a) provides that:

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 § 62-3-703. Furthermore, S.C. Code § 62-7-804 states “[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.” Ultimately, and as stated in the Order, “a personal

representative is held to the same prudent person standard of that of a trustee.” (Order, April 2, 2019, p. 7).

In analyzing the standard of care required by a trustee, the South Carolina Court of Appeals has previously stated that “a trustee may be removed . . . for refusal to obey orders of a court directed to the trustee in his role as trustee.” *Floyd v. Floyd*, 365 S.C. 56, 98, 615 S.E.2d 465, 487 (Ct. App. 2005). In *Floyd*, a beneficiary of a trust brought an action against the trustee seeking, in part, an accounting of the trust. *Id.* at 69, 615 S.E.2d at 472. The court subsequently entered an interim order requiring the trustee to provide the accounting to the beneficiary. *Id.* The trustee failed to provide the accounting and the court, therefore, entered a final order removing the trustee for failure to comply with the court’s order. *Id.* at 93, 615 S.E.2d at 484. On appeal, the South Carolina Court of Appeals held that the “trial judge did not err in removing [the trustee] for his contempt.” *Id.* at 98, 615 S.E.2d at 487; *see also Crayton v. Fowler*, 140 S.C. 517, 522, 139 S.E. 161, 162 (1927) (holding that trustee would be removed as trustee if he failed to comply with the court’s order). *Floyd* and *Crayton*, therefore, dictate that a trustee is required to comply with court orders and that they may be removed from their position for failure to do so. Notably, S.C. Code § 62-3-611(b) also provides that “[c]ause for removal [of a personal representative] exists when . . . the personal representative has disregarded an order of the court”

Here, in contradiction to the mandate of *Floyd*, *Crayton*, and S.C. Code § 62-3-611(b), the probate court vacated the sale of 3283 Von Ohlsen and punished Rose for complying with the Consent Order. As described in the Order, the Consent Order established “a bidding process between [Jessie] and [Rose] . . . for 3283 Von Ohlsen,” under which the highest bidder was required to “deposit a sum of 75% of their bid to the Personal Representative within 10 days” of the final bid. (Order, April 2, 2019, p. 2). Furthermore, “if the highest bidder could not make the payment

to the Personal Representative, then the other bidder would be able to purchase 3283 Von Ohsen for \$171,000.00.” (*Id.* at pp. 2-3). In addition, the “bidding process also allowed the highest bidder to assign \$75,000.00 of their expected share of the Estate of Annie Mae Crosby to the purchase of 3283 Von Ohsen.” (*Id.* at p. 3) (emphasis added).

The bidding commenced on May 21, 2018, and concluded on May 31, 2018, with a winning bid from Jessie in the amount of \$312,000.00. (*Id.*) As such, Jessie was required to pay Rose, as personal representative, \$159,000 within 10 days.² (Ex. I to Mem. in Opp’n, *May 31, 2018 Confirmation E-mails*). Jessie ultimately paid a total of \$156,000 to Rose on June 11, 2018, which was \$3,000 short of the required \$159,000. (Ex. G to Mem. in Opp’n, *June 11, 2018 E-mail*). Because Jessie failed to make the full payment within ten (10) days of making the final bid, Rose was allowed to purchase 3283 Von Ohsen Road for \$171,000.00, as stipulated in the Consent Order. (Ex. D to Mem. in Opp’n, *Consent Order*). Rose, therefore, submitted the \$171,000 bid on June 11, 2018, and effectuated such bid pursuant to the terms of the Consent Order. (Ex. G to Mem. in Opp’n, *June 11, 2018 E-mail*).

The Order provides that “[Rose], as Personal Representative of the Estate of Annie Mae Crosby, complied with the terms of the [Consent Order], however, [Rose] failed to exercise reasonable care, skill, and caution in not allowing [Jessie and Bobby] to purchase the property jointly for \$312,000.00.” (Order, April 2, 2019, p. 7) (emphasis added). As explained in *Floyd, Crayton*, and S.C. Code § 62-3-611(b), however, if Rose had allowed Jessie and Bobby to purchase the property in violation of the terms of the Consent Order, she would have been in breach of a

² The parties calculated \$159,000 by taking seventy-five percent (75%) of \$312,000, which is \$234,000, and reducing it by \$75,000, which represented the maximum amount of Jessie’s share of the estate that the Consent Order allowed him to apply to the purchase. (Ex. I to Mem. in Opp’n, *May 31, 2018, Confirmation E-mails*).

court order directed to her as personal representative and subject to removal. In other words, because Jessie and Bobby failed to pay the full \$159,000.00, it was impossible for Rose to simultaneously comply with the Consent Order and allow Jessie and Bobby to purchase the property. The probate court therefore erred in failing to enforce the sale of 3283 Von Ohsen to Rose and the Order should be reversed.

III. The probate court erred in requiring the personal representative to provide Respondents' counsel information regarding the Decedent's right of survivorship accounts because the probate court's prior order did not require the disclosure of such information and SC Code § 62-3-706(B)(1) grants the personal representative the discretion to provide the information.

The Order requires Rose to “provide to David Michel, Esquire, as attorney for [Jessie and Bobby], information regarding the Decedent’s right of survivorship accounts.” (Order, April 2, 2019, p. 10). The specific information at issue is the value of the right of survivorship accounts. As explained below, the probate court’s ruling is improper because: (1) SC Code § 62-3-706(B)(1) grants Rose the discretion to provide the account information; and (2) the probate court’s July 28, 2018 order does not require disclosure of the account information.

The value of the right of survivorship accounts is protected by the South Carolina Probate Code and the discretion of the personal representative. SC Code § 62-3-706(B)(1) states that:

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.

(emphasis added). Rose has provided Jessie and Bobby with a list of the non-probate property and exercised her discretion to decline to provide the values. (*See* Ex. C to Mot. to Quash, *July 26*,

2018, E-mails). The probate court's Order requiring Rose to produce the values is therefore in violation of SC Code § 62-3-706(B)(1) and should be reversed.

The Order should also be reversed because Jessie and Bobby previously agreed that Rose would only be required to disclose a list of non-probate property and not the value of the property. On July 28, 2018, following a status conference with all parties, the probate court entered an order ruling that:


14. The parties have agreed that the Personal Representative shall provide a list and inventory of non-probate property owned by the Decedent within two weeks of July 11, 2018, giving deference to the fact that some documents may need to be requested from third parties. The information provided shall include when the Personal Representative was added or named as beneficiary.

(Ex. A to Mot. to Quash, *July 28, 2018, Order*). Notably, the order did not require Rose to provide Jessie and Bobby with the value of the non-probate property. (*Id.*) As such, it is improper to require Rose to provide values of the non-probate property after the parties agreed, and the agreement was reduced to a court order, that Rose would only have to provide a list of the property.

CONCLUSION

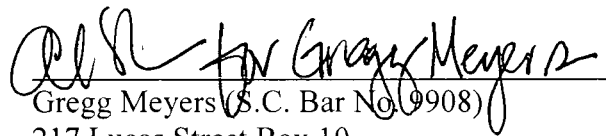
For the foregoing reasons, Rose requests that the Court: (1) reinstate her as personal representative; (2) require that 3283 Von Ohlsen Road, Summerville, South Carolina 29485 be deeded to her immediately in exchange for payment to the estate of \$171,000.00; and (3) reverse the probate court's ruling that she provide Jessie and Bobby's counsel with information regarding the Decedent's right of survivorship accounts.

[Signature Page Follows]



Anne Kelley Russell (S.C. Bar No. 78147)
Charles Scarminach (S.C. Bar No. 101582)
MOORE & VAN ALLEN PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
PH: 843-579-7000
E-mail: akrussell@mvalaw.com
charlesscarminach@mvalaw.com

*Attorneys for Appellant Rose Mae Crosby
Walsh, as Personal Representative*



Gregg Meyers (S.C. Bar No. 9908)
217 Lucas Street Box 10
Mount Pleasant, SC 29464
PH: (843) 324-1589
E-mail: attygm@gmail.com

*Attorney for Appellant Rose Mae Crosby
Walsh, Individually*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN THE MATTER OF: ESTATE OF ANNIE)
 MAE CROSBY)
)
)
 JESSIE FRED CROSBY AND ROBERT)
 EDWARD CROSBY, JR.,)
)
)
 PETITIONERS,)
)
 VS.)
)
 ROSE MAE CROSBY WALSH, Individually)
 and as Personal Representative of the Estate of)
 Annie Mae Crosby, and KELVIN WAYNE)
 CROSBY,)
)
 RESPONDENTS,)
)
)
 Of whom ROSE MAE CROSBY WALSH,)
 Individually and as Personal Representative of)
 the Estate of Annie Mae Crosby is the)
)
)
 APPELLANT.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO. 2019-CP-10-1887
 (Probate Case No. 2016-ES-10-02054)

CERTIFICATE OF SERVICE

FILED
 2019 JUN 19 PM 3:17
 JULIE J. ARNSTRONG
 CLERK OF COURT

This is to certify that on June 19, 2019, I served a true and correct copy of the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal on the parties identified below by electronic mail and/or by U.S. mail, postage prepaid, addressed as follows:

Thomas E. Lydon, Esquire
 McAngus Goudelock & Courie
 Post Office Box 12519, Capital Station
 Columbia, South Carolina 29211-2519
 (803) 779-2300

David L. Michel, Esquire
 Michel Law Firm, LLC
 751 Johnnie Dodds Boulevard
 Mount Pleasant, South Carolina 29464

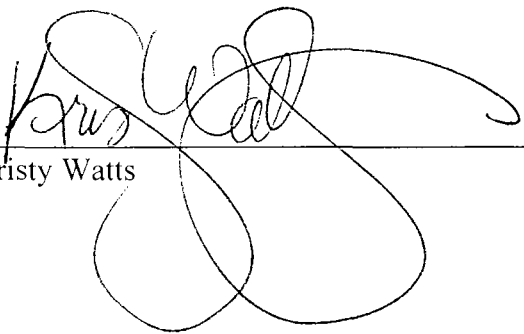
Attorneys for Respondents Jessie Fred Crosby and Robert Edward Crosby,
 P. App. 0867

C. Mac Gibson, Jr., Esquire
1473 Stuart Engals Boulevard
Mt. Pleasant, South Carolina 29464

Dennis E. O'Neil, Esquire
O'Neil Law Firm
1473 Stuart Engals Boulevard
Mount Pleasant, South Carolina 29464

Attorneys for Respondent Kelvin Wayne Crosby

June 19, 2019
Charleston, South Carolina


Kristy Watts

June 19, 2019

Moore & Van Allen

VIA HAND DELIVERY

Common Pleas and General Sessions
Julie J. Armstrong, Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Anne Kelley Russell
Attorney at Law

T 843 579 7095
F 843 579 8737
annekrussell@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

**Re: Estate of Annie Mae Crosby
Case No. 2019-CP-10-1887
Probate Court Case No. 2016ES10-02054
Our File No. 044205.1**

Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the following documents in the above-referenced matter:

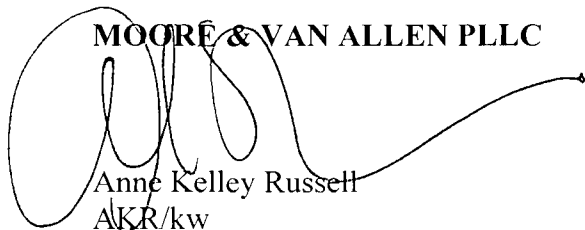
1. Initial Brief of Appellant;
2. Appellant's Designation of Matter to be Included in the Record on Appeal; and
3. Certificate of Service.

Should you find these documents to be in order, please file in your usual manner and return a time stamped copy to our courier.

If you have any questions or require any additional information, please feel free to contact me.

Very truly yours,

MOORE & VAN ALLEN PLLC



Anne Kelley Russell

AKR/kw

Enclosures

cc: Ms. Rose Mae Crosby Walsh
Gregg Meyers, Esquire
Thomas E. Lydon, Esquire
David L. Michel, Esquire
C. Mac Gibson, Jr., Esquire
Dennis E. O'Neil, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN THE MATTER OF: ESTATE OF ANNIE)
 MAE CROSBY)
)
)
 JESSIE FRED CROSBY AND ROBERT)
 EDWARD CROSBY, JR.,)
)
 PETITIONERS,)
)
 VS.)
)
 ROSE MAE CROSBY WALSH, Individually)
 and as Personal Representative of the Estate)
 of Annie Mae Crosby, and KELVIN WAYNE)
 CROSBY,)
 RESPONDENTS,)
)
 Of whom ROSE MAE CROSBY WALSH,)
 Individually and as Personal Representative of)
 the Estate of Annie Mae Crosby is the)
)
 APPELLANT.)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

(Probate Case No. 2016-ES-10-02054)

CASE NO. 2019-CP-10-1887

MOTION TO ALTER OR AMEND

Rose Mae Crosby Walsh in both her individual capacity and as Personal Representative of the Estate of Annie Mae Crosby moves pursuant to SCRCP 59(e) to alter or amend the May 7, 2020 order of the circuit court to reconsider the following aspects of the order.

1. On page 2 of the order the court refers to the May 16, 2018 order of the Probate Court which established the bidding process for the property at 3283 Von Oshen Road, but the court omitted that the order was a consent order among all interested beneficiaries, reflecting an agreement that had been placed on the record in April 2018. In the footnote on page 12 the court

went further, despite no beneficiary disputing that the May 16, 2018 order was a consent order, concluding that the May 16, 2018 order was *not* a consent order.

In the footnote on p. 12 the court based its conclusion on the order having been signed by only the probate judge. But at the April 23, 2018 hearing which preceded that order, all beneficiaries consented to the essential terms for the property bidding process that the order contained, as the transcript of that hearing, Attachment A to this motion reflects on pages 3 - 5. The agreement about the bid process was placed on the record and explicitly agreed to by all counsel. See also, R. App. 814, 821 – 822, where the order is referred to as a consent order. At Attachment B is the email which forwarded the consent order to the law clerk for the Probate Court, after the consent order had been circulated among counsel for approval.

There is a reason that no party disputed that the order reflected consent as to the bidding for the property at 3283 Von Oshen Road, and the court has erred in concluding otherwise.

A consent order can be entered by agreement of the parties:

Ordinarily, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties either by direct appeal or in a collateral proceeding. *Jones Parker v. Webb*, 8 S.C. 202 (1876). However, a consent order is an agreement of the parties, under the sanction of the court, and is to be interpreted as an agreement. *Id.*

Johnson v. Johnson, 310 S.C. 44, 46 (S.C. App. 1992). Attachment A reflects that all beneficiaries consented to the bid process, including its possible outcomes, and without any preconditions to the bid process. Attachment B reflects that the consent order was sent to the court after all counsel had reviewed its terms.

All beneficiaries had consented, and had done so without pre-conditions, to both the method of bidding and the possible outcome of one bidder purchasing the property for its undisputed market value should the other bidder drive up the price without perfecting that bid

price, as happened during this bidding. The court has erred in not ruling on Ms. Walsh's contention that no beneficiary was aggrieved by the outcome of the bid process, so had no standing to object to either the bid outcome when the consent order was fully complied with by Ms. Walsh in her capacity as personal representative, or to move for her removal as personal representative.

2. On pages 3, 8 – 9, 10 and 11 the court referred to email of Ms. Walsh's individual counsel giving notice about a potential issue as to the bidding method (three persons bidding when the order permitted two). The court erred in considering that contingent issue in any way, as the issue was never reached. As set out below, not only was the \$159,000.00 amount needed to perfect the bid undisputed, and undisputedly not paid, but the calculation of that amount by Jessie Crosby's counsel undisputedly assigned only Jessie Crosby's \$75,000 credit to the calculation. R. App. 771. The contingent issue referred to in counsel's emails never became ripe for adjudication. The court erred in using counsel's emails about the potential issue to find that the personal representative had a duty to make further inquiry of the Probate Court, particularly where the consent order required Ms. Walsh to act within two days to effectuate the fallback provision of the bid process by submitting her competing bid for the property's agreed-upon fair market value. The court erred in not recognizing that limitation, and in faulting Ms. Walsh when she had complied with the consent order. The failure to perfect the bid was not her responsibility.

3. On page 3 the court erred in concluding "there were disputes between the parties as to the amount of money that should be deposited with the Personal Representative." Similarly, on page 8 the court erred in concluding that "Rose contended" and "she believed" that the sum required to perfect the bid was \$159,000. (See also the similar conclusion on page 10 and the

court's conclusion on page 11 that Ms. Walsh had made a "unilateral determination" about the sum due).

In fact, the Record reflects there was no dispute whatever as to what the consent order required to perfect the bid, as the emails among counsel when the bidding concluded reflect that all counsel agreed, and confirmed, that the proper calculation for the payment to perfect the bid was \$159,000. See, R. App. 771 to 773. R. App. 771 is the May 31, 2018 email from Jessie Crosby's counsel at the time, David Michel, which states, in pertinent part:

It is my understanding that Jessie is the high bidder for 3283 VO at \$312,000.
I want to confirm the breakdown of what he needs to pay within the next 10 days.

	Bid	75% of Bid
	\$312,000	\$234,000
Minus \$75,000 credit Jessie		-\$75,000
To Shelly All within 10 days		\$159,000

At p. 772 of the Record is the email from Rose Walsh's individual counsel confirming that same \$159,000 calculation. No beneficiary disagreed. All agreed to what the consent order required in the form of a payment to perfect the bid. The court has erred at pages 10 and 11 in disregarding the requirements of the consent order, ignoring the agreement among the bidders as to the sum due, in changing the calculation from that in the consent order, and doing so based on an after-the-fact rationale of a lesser sum due so as to create a dispute which did not exist at the time of the bidding. The consent order detailed the amount due to perfect the bid; the amount due was undisputed; the amount due was not paid; and the consent order specified what was to happen in that circumstance.

4. On pages 3 and 9, the court erred in concluding that Ms.. Walsh as the Personal Representative should have consulted the Probate Court for "guidance or approval" in complying with the consent order under which the bidding had occurred. As noted above, the parties had

consented to the bid process and its various outcomes, the bidders had explicitly agreed on the amount needed to perfect the bid, and the consent order set out the procedure and the two day timetable for the property to be sold at the agreed-upon market price once Mr. Crosby failed to perfect his bid. At page 12 of its order the court imposed on Ms. Walsh as personal representative obligations apart from those in the consent order with which she was obligated to comply. And, as noted above, it is error to place on Ms. Walsh the burden of Jessie Crosby failing to perfect his bid with the payment that his own counsel calculated was due.

5. On page 7 the court erred in concluding that Rose Walsh failed to fulfill her fiduciary duty as Personal Representative when her “failure” consisted of complying with a consent order as to the sale of the property at 3283 Von Oshen Road. The court erred in not ruling on her argument that she was obligated to comply with that consent order, and in removing her as personal representative for complying with the consent order.

6. On pages 7 – 8 the court erred in finding that Rose Walsh breached a duty to “execute a Deed of Distribution for the Mill Street Property,” without considering or ruling on (a) her contention that the consent order had been entered without preconditions as to the Mill Street Property, or (b) that she had similarly withheld deeding to herself a property specifically devised to her, (c) that she wanted an order authorizing her to deed each property, as she testified, R. App. 780, (d) that two of her siblings had stated their intention to “drain the estate and keep me in court until there was nothing left,” R. App. 783, and that (e) Jessie Crosby had threatened her life over the estate. R. App. 788 - 789. See, e.g., R. App. 784 (“Everything I’ve tried to do as a personal representative, they have tried to counteract, even as far as the grass cutting at my mother’s house. Everything they has been an argument and a court battle.”) The

consent order for the bidding on the property at 3283 Von Oshen Road was entered without any precondition applicable to the Mill Street property or any other specific devise from the will.

7. At page 8 the court erred in (a) going outside the Record on Appeal to find, and (b) contrary to the Record on Appeal, that Rose Walsh testified about a “sweet deal” on the Von Oshen property. Her testimony in the Record is undisputed that in her individual capacity she sought only to purchase the property at fair market value. E.g., R. App. 781.¹

8. On page 9 the court erred in affirming Ms. Walsh’s removal as personal representative without ruling on her obligations as personal representative to comply with the consent order. The Probate Court order acknowledged she had complied with the terms of the order as to the bidding on the property at 3283 Von Oshen Road. Nor has the court ruled on her contention that the beneficiaries having consented to the property sale method and outcome meant none was an “aggrieved” person to support standing to object to the property sale to Ms. Walsh or to her removal as personal representative. Once Jessie Crosby failed to perfect his bid, a failing over which Ms. Walsh had no control, her obligations were defined by the consent order. The court erred in imposing on her an obligation different from that imposed by the consent order.

Conclusion

The court should alter or amend its order consistent with this motion, order that Ms. Walsh made no error as personal representative in complying with a consent order. She should be

¹ Should be record be supplemented, the appellants would seek to include Ms. Walsh’s hearing testimony that the “sweet deal” referred to her offer to exchange her *entire* interest in other aspects of the estate for the 3283 Von Oshen property, as that property is adjacent to her own, an offer to exchange more than the property’s fair market value. That offer was declined in favor of the bid procedure agreed to. The testimony cited by the court is not accurate, and is not in the Record on Appeal. The court has cited to a number of pages not in the Record on Appeal.

reinstated as personal representative, but at minimum the court should order that 3283 Von Oshen Road be restored to her under the terms of the May 16, 2018 consent order of the probate court.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, S.C. bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for Rose Walsh, individually

Anne Kelley Russell (S.C. Bar No. 78147)
Clinton Magill (S.C. Bar No. 102770)
MOORE & VAN ALLEN PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
PH: 843-579-7000
E-mail: akrussell@mvalaw.com
clintonmagill@mvalaw.com

*Attorneys for Appellant Rose Mae Crosby
Walsh, as Personal Representative*

In The Matter Of:
In Re: The Estate of
Annie Mae Crosby

April 23, 2018

Janice D. Hayward, RMR
Independent Court Reporter
843.478.6756
JanHayward1@gmail.com

Original File 042318ACrosby.txt
Min-U-Script® with Word Index

R. App. 0077

1 STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
2 COUNTY OF CHARLESTON) CASE NO. 2016-ES10-2054

5 IN RE: THE ESTATE OF)
6 ANNIE MAE CROSBY)

10 BEFORE: IRVIN G. CONDON, JUDGE OF PROBATE
11 DATE: Monday, April 23, 2018
12 TIME: 1:26 p.m.
13 LOCATION: Charleston County Probate Court
14 84 Broad Street, Second Floor
Charleston, South Carolina 29401
15 REPORTED BY: Janice D. Hayward, RMR
16 NCRA Registered Merit Reporter
17 101 Dorchester Court
Charleston, South Carolina 29418
18 843.478.6756
JanHayward1@Gmail.com

1 Any Court, party, or person who has purchased
2 a transcript, may, without paying a further fee
3 to the reporter, reproduce a copy or portion
4 thereof as an exhibit pursuant to Court order
or rule or for internal use, but shall NOT
otherwise provide or sell a copy or copies to
any other party or person.

6 APPEARANCES

7 For Petitioner Anne Kelley Russell
8 Moore & Van Allen, PLLC
78 Wentworth Street
Charleston, South Carolina 29401
9 For Jessie and Robert Crosby David L. Michel
10 Michel Law Firm, LLC
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
11 For Calhoun Dennis E. O'Neill
12 Law Office of Dennis E. O'Neill
13 1473 Stuart Engles Boulevard
Mount Pleasant, South Carolina
14 29464
15 Also Present Rose Crosby Walsh
Edward Walsh

1 THE COURT: Good afternoon. Again,
2 my name is Irvin Condon. I'm the probate judge for
3 Charleston County. This is the matter of the estate
4 of Annie Mae Crosby, Charleston County Probate Case
5 Number 2016-ES10-2054. We're here on a petition for
6 the sale of real estate.

7 Counsel ready to proceed?

8 MS. RUSSELL: Yes, your Honor.

9 THE COURT: Okay. I know you had a
10 powers clause in the will, but you're asking the
11 Court for approval of the sale?

12 MS. RUSSELL: That is correct, your
13 Honor. Just for procedural issues, we filed an
14 amended petition. And I believe that all the
15 parties have approved the petition.

16 THE COURT: Okay.

17 MS. RUSSELL: And I'm actually
18 pleased to report that we have a compromise that
19 we'd like to essentially put into the record today.

20 THE COURT: Okay.

21 MS. RUSSELL: As of the time that the
22 personal representative went to sell the property,
23 there was some disagreement. So let me start -- let
24 me go through the properties as they are stated in
25 our petition and amended petition.

1 For 3283 Von Ohsen Road, as
2 referenced in the petition, the parties agree that
3 the personal representative may sell 3283 Von Ohsen
4 Road to the highest bidder between petitioner, Rose
5 Walsh, and Jessie Fred Crosby, with established
6 parameters of the bidding process as follows:

7 Rose Walsh will be the initial
8 bidder and may not bid less than \$190,000 as the
9 opening bid. Jessie Fred Crosby has 24 hours after
10 Rose's bid is made to make his written bid.

11 The written bids can be in the
12 form of attorneys -- of emails between the
13 attorneys. And every bid thereafter has to be
14 within 24 hours of each other.

15 THE COURT: Okay.

16 MS. RUSSELL: The minimum increase in
17 bids is \$2,000. Once a bid is submitted, it is not
18 retractable. The person submitting the highest bid
19 must purchase his or her share of Von Ohsen within
20 ten days of making final bid.

21 The highest bidder may only
22 assign up to 75,000 of his or her expected share of
23 the estate to the purchase.

24 And if the highest bidder cannot
25 make such payment within ten days of making the

Page 5

1 final bid, then the other party may submit a bid
 2 equal to \$171,000 and shall be the highest bidder.
 3 The \$171,000 is the amount that Rose would have
 4 otherwise been allowed to sell the property at.
 5 THE COURT: Okay.
 6 MS. RUSSELL: And this bidding
 7 process and the sale shall take place within 30 days
 8 of the signed order.
 9 THE COURT: Okay.
 10 MS. RUSSELL: With regard to
 11 Cottageville acreage --
 12 THE COURT: Do you want to do them
 13 one by one or, let me ask counsel, or do them all
 14 together?
 15 MS. RUSSELL: That sounds fine.
 16 MR. MICHEL: David Michel on behalf
 17 of Jessie and Robert Crosby, and we're in agreement
 18 regarding that process regarding this first
 19 property, your Honor.
 20 THE COURT: Okay.
 21 MR. O'NEILL: Your Honor, Dennis
 22 O'Neill for Calhoun Crosby. And we don't intend to
 23 bid on it. We have no objection to how they've
 24 arranged it between themselves.
 25 THE COURT: Okay. Thank you.

Page 5

1 starting at the value of \$22,500.
 2 And like the Cottageville
 3 property, parties agree that the personal
 4 representative may sell the property at not less
 5 than 70 percent of the fair market value, for the
 6 same reason the parties don't want to have to come
 7 back to court if we can't get 90 percent.
 8 THE COURT: That was 20,500 or
 9 20,250?
 10 MS. RUSSELL: That was 22,500.
 11 THE COURT: 22,500. I'm sorry.
 12 MR. MICHEL: Was the appraised value.
 13 MS. RUSSELL: 22,500 is 90 percent of
 14 the appraised value.
 15 THE COURT: Thank you.
 16 MR. MICHEL: To be sure, double-check
 17 your figures.
 18 MS. RUSSELL: Oh. So, excuse me,
 19 your Honor, David Michel is correct, 90 percent of
 20 the appraised value is \$20,250. I just got the
 21 numbers mixed up.
 22 THE COURT: Okay. So it's 70 percent
 23 of the fair market value or 70 percent of the
 24 20,250?
 25 MS. RUSSELL: 70 percent of the fair

Page 6

1 MS. RUSSELL: With regard to
 2 Cottageville acreage, the parties agree that the
 3 personal representative may sell the real property
 4 referenced in our petition as the Cottageville
 5 acreage starting at the sales price of 76,500.
 6 The parties also agree that the
 7 personal representative may sell the property for up
 8 to 70 percent of the fair market value.
 9 THE COURT: You said 70 percent?
 10 MS. RUSSELL: Um-hum.
 11 THE COURT: Okay.
 12 MS. RUSSELL: The purpose being that
 13 the parties do not want to have to come back to
 14 court if we are not able to sell it -- if the
 15 personal representative is not able to sell it for
 16 that amount, for the 76,500.
 17 THE COURT: Okay. Mr. Michel,
 18 Mr. O'Neill, you all are in agreement?
 19 MR. O'NEILL: Same reply, Judge.
 20 MR. MICHEL: Same reply, your Honor,
 21 on behalf of Jessie and Robert Crosby.
 22 THE COURT: Okay.
 23 MS. RUSSELL: 3303 Von Ohlsen Road,
 24 parties agree that the personal representative may
 25 sell the referenced property, 3303 Von Ohlsen Road,

Page 6

1 market value, your Honor.
 2 THE COURT: Which is 22,500.
 3 MS. RUSSELL: That's right.
 4 THE COURT: Counsel both in
 5 agreement?
 6 MR. MICHEL: Yes.
 7 MR. O'NEILL: Yes, sir.
 8 MS. RUSSELL: The next referenced
 9 property in our petition is 6613 Main Street in
 10 Bowman. The parties agree that the personal
 11 representative may sell or otherwise deed the real
 12 property referenced in our petition as 6613 Main
 13 Street to Jessie Fred Crosby in the amount of
 14 \$4,500, which shall in turn reduce the amount of
 15 cash to be distributed to Jessie Fred Crosby by, I
 16 believe, \$3,375 which is three-fourths of \$4,500.
 17 MR. MICHEL: On behalf of Jessie
 18 Crosby, his attorney, that is correct.
 19 MR. O'NEILL: No objection on behalf
 20 of Calhoun, your Honor, at this time.
 21 THE COURT: Does that take care of
 22 all the property?
 23 MS. RUSSELL: That does take care of
 24 all the real property. I have one more stipulation
 25 that we have petitioned for would be that with

1 regard to the properties of Cottageville acreage and
 2 3303 Von Ohlsen Road, that the personal
 3 representative will -- has now the power to sell.
 4 She shall be allowed to take all
 5 of the actions customary with selling the property
 6 including but not limited to hiring a listing agent,
 7 negotiating a listing agent fee, preparing the
 8 properties to sell them, and executing any and all
 9 documents necessary to close on the sale of such
 10 properties.
 11 Further, the beneficiaries of
 12 the estate other than the personal representative
 13 shall not impede any sale.
 14 MR. MICHEL: Your Honor, one thing
 15 that we will put on there about the Cottageville
 16 property, I forgot to mention this with
 17 Miss Kelley -- or excuse me, I forgot to mention
 18 this, is the -- I believe there are some deer stands
 19 on the Cottageville property that I'll get with you
 20 ahead of time that they put up some deer stands.
 21 But other than that, we will not
 22 impede or mess with or do anything to that property.
 23 They did put up some deer stands. But I think we're
 24 going to get that property hopefully worked out.
 25 THE COURT: Okay.

1 shall be at the estate expense.
 2 The personal representative also
 3 agrees to make duplicates and make -- essentially
 4 make duplicates for each beneficiary and deliver the
 5 duplicates for that beneficiary to his attorney.
 6 And the personal representative agrees to do this
 7 within 30 days of the signed order.
 8 And lastly, the parties agree
 9 that with regard to the remaining personal property
 10 at the decedent's residence, both inside and outside
 11 of the home, the parties agree to either reach an
 12 agreement within 30 days of the signed order, and if
 13 an agreement between the parties or -- among the
 14 parties, excuse me, is not reached, that the
 15 personal representative shall hire or retain a
 16 licensed estate liquidator to auction off said
 17 property at the expense of the estate.
 18 THE COURT: Mr. Michel and
 19 Mr. O'Neill, agree with that statement?
 20 MR. MICHEL: I do, your Honor. I'll
 21 point out, I believe the PR has the right to do
 22 that, but out of an abundance of caution,
 23 Miss Russell has worked very hard to kind of work
 24 out any contingencies so we avoid the expense of
 25 coming back.

1 MR. MICHEL: But I will definitely
 2 let them know not to impede -- I think one of these
 3 properties is near or one of them lives -- and we've
 4 told them, do not impede. If a professional comes
 5 to examine the property or look at the property,
 6 don't interfere. So that's -- we're well aware of
 7 that.
 8 MS. RUSSELL: And your Honor, the
 9 petitioner agrees to the removal of the deer stands
 10 prior to our sale of the property.
 11 MR. MICHEL: And I'll notify, just so
 12 you'll know, there's been some angst between one of
 13 my clients, but I'll make sure I make an effort to
 14 notify the PR's lawyer when they'll be there, when
 15 they'll be on that property so there's no confusion.
 16 THE COURT: Okay. Miss Russell,
 17 anything else?
 18 MS. RUSSELL: We actually have a few
 19 other items we would like to put on the record about
 20 the tangible personal property of the estate. The
 21 personal representative agrees to take -- to make
 22 duplicates of any family pictures left in the
 23 decedent's home and deliver a copy of those to
 24 Dennis O'Neill, the attorney for Calhoun Crosby, and
 25 that this -- the cost of making such duplicates

1 THE COURT: Okay.
 2 MR. O'NEILL: That's agreed to. We
 3 appreciate it, your Honor.
 4 MR. MICHEL: Thank you.
 5 MS. RUSSELL: One final note, if the
 6 parties agree, would it be acceptable to furnish
 7 duplicates of the photographs on CD?
 8 MR. MICHEL: Yeah.
 9 MR. O'NEILL: Sure.
 10 THE COURT: You know, technology is
 11 amazing, so --
 12 MS. RUSSELL: We'd like to take
 13 advantage of it.
 14 MR. MICHEL: Absolutely.
 15 MS. RUSSELL: I have nothing further,
 16 your Honor.
 17 THE COURT: Okay. Thank you.
 18 Mr. O'Neill?
 19 MR. O'NEILL: Nothing further for
 20 Calhoun, your Honor. Thank you.
 21 MR. MICHEL: Just appreciate Miss
 22 Russell's hard work to get us to this point, your
 23 Honor.
 24 THE COURT: Okay.
 25 MS. RUSSELL: Appreciate the hard

1 work of Dennis and David.

2 THE COURT: Okay. Do you want to do
3 it in the form of a consent order, or how would you
4 like to do it?

5 MS. RUSSELL: We would like to do it
6 in the form of a consent order and maybe email --
7 I'll guess we'll circulate that, prepare it, and
8 send you the final copy for your signatures.

9 THE COURT: Very good. I'm glad you
10 all were able to work it out. Okay.

11 Anything else?

12 MR. O'NEILL: No, sir. Thank you.

13 THE COURT: All right. Thank you.

14 MR. MICHEL: I appreciate it.

15 THE COURT: The hearing was concluded
16 at 1:42 p.m.)

17

18 ---oOo---

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing hearing, and that the transcript is
7 a true record.

8 I certify that the same was reduced to
9 typewritten form from my original stenograph notes
10 by computer-aided transcription.

11 I further certify that I am not of
12 counsel or kin to any of the parties to this cause
13 of action, nor am I interested in any manner in
14 its outcome.

15 IN WITNESS WHEREOF I have hereunto set
16 my hand and seal this the 1st day of May, 2018.

17

18

19

20 Janice D. Hayward, RMR
21 Notary Public, South Carolina
22 My Comm. Expires 10-10-22

23

24

25

From: Anne Kelley Russell
Sent: Tuesday, May 15, 2018 8:34 AM
To: ro'malley@charlestoncounty.org
Cc: david michel <david@michellawoffice.com>; Dennis O'Neill <dennis@oneilllawfirm.com>;
greggmeyers@piercesloan.com; Melissa Altman (altmanm@mvalaw.com) <altmanm@mvalaw.com>; Kristy Watts
<kristywatts@mvalaw.com>
Subject: CHARLESTON-#712549-v5-CROSBY_-_CONSENT_ORDER.doc

Bob,


Attached please find the proposed consent order that all of the parties have had the opportunity to review and edit. This is coming to you today as opposed to yesterday morning because I have had a very bad head cold and was out of the office all day yesterday. Thanks to all counsel for their patience.

My best regards,

Anne Kelley

CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication. Thank You.

Moore & Van Allen

 **CHARLESTON-#712549-v5-CROSBY_-_CONSENT_ORDER.doc**
60K

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J. Derham Cole, Circuit Court Judge

Case No. 2019-CP-10-1887
Probate Case No. 2016-ES-10-02054
Appeal Case 2020-000853

In re Estate of Annie Mae Crosby,
Jessie Fred Crosby and Robert Edward Crosby, Jr.,

Respondents

v.

Rose Mae Crosby Walsh, Individually and
as personal representative of the Estate of Annie Mae Crosby,

Appellant

Notice of Appeal

Rose Walsh hereby appeals two orders of the Honorable J. Derham Cole. The first was filed May 7, 2020 and received by counsel the same day. A rule 59(e) motion was filed after receiving that order, and Judge Cole denied that Rule 59 motion on October 9, received by counsel October 13, 2020.

Attached to this notice is a copy of each of the orders of Judge Cole referred to above, arranged in chronological order.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464

R. App. 0883

843-324-1589
attygm@gmail.com

Other counsel of Record:

Tom Lydon
McAngus, Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211
Tom Lydon, tlydon@mgclaw.com

Attachment A

Order filed May 7, 2020

(In the Record at p. 826)

Attachment B

Order of October 9, 2020 denying the Rule 59e motion

(In the Record at p. 841)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Proceedings	3
End of proceedings	31
Certificate of Reporter	32

PROCEEDINGS

1

* * *

2

THURSDAY, JANUARY 20, 2020

3

* * *

4

CHARLESTON, SOUTH CAROLINA

5

* * *

6

(The following proceedings were held in open court.)

7

THE COURT: Annie Mae Crosby.

8

MR. MACGILL: May it please the Court. Good

9

morning, Your Honor. My name is Clinton Magill.

10

I am here today on behalf of the appellant, Rose

11

Mary Crosby-Walsh in her in capacity as a personal

12

representative.

13

To my right here is Greg Meyers. He is

14

representing Rose in her individual capacity. This is an

15

appeal arising out of a probate matter, specifically an

16

order enforcing certain sale of property, removing Rose as

17

the personal representative, and also requiring the the

18

personal representative to provide certain information on

19

some survivorship claims.

20

If it's agreeable with the Court, in the capacity

21

of the PR, I will briefly make my argument as brief as I

22

can, followed by the individual capacity argument and then

23

to the defendants.

24

As I stated Your Honor, the appeal rises out of a

25

removal and unfortunately the sale of property. Before I

1 get into the facts, I would like to touch on the standard
2 of review on this appeal. Under South Carolina law with a
3 probate proceeding that is equitable in nature, the
4 standard for review, allows the Court here to make its own
5 findings of fact by the preponderance of the evidence.
6 South Carolina law has held that the removal of a personal
7 representative as well a breach of fiduciary duty that is
8 an equitable relief enforcing a sale would also be subject
9 to this same standard.

10 The third issue, Your Honor, being the requiring of
11 the personal representative to provide survivorship
12 information would be the abuse of discretion standard. I
13 do not believe that standard of review has been contested
14 by the other respondents.

15 So given that, you can make your own findings of
16 fact. If the Court will indulge me in the significant time
17 line here before I get into the arguments. Just so you can
18 understand the context of this matter, the decedent, Annie
19 Mae Crosby, passed in November 2016 and survived by four
20 adult children: Rose, Jesse, Bobby and Kelvin. The
21 decedent's estate included several pieces of property, some
22 developed some vacant. Aside from two properties under the
23 will, the remaining properties were to be divided among the
24 four children.

25 Rose was nominated as a personal representative in

1 the will, and she was given authority to buy and sell
2 property as needed for the benefit of the estate. She was
3 appointed by the probate court and was duly --
4 in January of 2017. The property underlying this dispute,
5 why we are here today, is located at 3283 Von Oshen Road in
6 Summerville. It is a meaningful property in that it was
7 the decedent's last primary residence until shortly before
8 her passing. At the time of her passing, this property had
9 a value of \$145,000. Rose in her PR capacity had it
10 reappraised in 2018 for a value of \$190,000.

11 Subsequently she petitioned the Court to enforce
12 the sale of a string of properties, 3283 Von Oshen being
13 one of them. The proposed terms was for 90 percent of the
14 fair market value. Ninety percent of 190 would be 171.
15 Before the hearing on that matter, Jesse Crosby expressed
16 an interest in also purchasing the property. When they got
17 to the hearing, a consent order an agreement for the
18 bidding process between Rose individually and Jesse
19 individually was established. All parties had
20 representation of counsel at that hearing, and a consent
21 order was eventually issued by the Court, executed, and
22 approved.

23 The specific terms of the consent order with
24 respect to the bidding process and what has led us here
25 today -- the person submitting the highest bid was required

1 to disclose a sum of 75 percent of the highest bid. The
2 highest bidder was only assigned \$75,000 of an estate share
3 credit. So their portion of the estate that they were
4 expecting was towards that 75 percent.

5 If in the event that the highest bidder could not
6 make payment within ten days, the other initially
7 nonsuccessful bidder could then place their own bid for a
8 fall-back price of \$171k, which was that 90 percent of fair
9 market value. The bidding process commenced between Rose
10 and Jesse. Jesse eventually
11 had the highest bid of \$312,000. That bid was given on May
12 31, 2018. On that same day, Jesse's counsel sent an email
13 confirming the amount of the bid at 312, the 75 percent
14 figure at 234, the \$75,000 credit, which would take it to
15 159. That was the confirmed amount that would be owed.

16 Ten days passed. A hodgepodge of payments and
17 credits came in ten days later, and they fell short of the
18 159 in total. It was 156. Also, there was a \$75,000
19 credit from Bobby, another brother, based on his expected
20 share of the estate. So instead of just Jesse's, you had
21 two different \$75,000 credits, which was a total of
22 \$150,000 in credits in derogation of the order.

23 Rose as personal representative found that the 156
24 did not comply within ten days of the 159 and also that the
25 two credits was not permitted under the order, so this was

1 in a sense a defective payment under the consent order
2 signed by the Court.

3 So the fall-back provisions were implemented, and
4 Rose as an individual submitted the fall-back bid of 171,
5 and the consent order required the PR to enforce that sale
6 at 171.

7 We are here today after a hearing was held in
8 December of 2018 in the probate court on several motions.
9 There was a motion to compel and remove Rose as personal
10 representative filed by Jesse and Bobby. There was a
11 petition to enforce the sale at their bid price and again
12 remove Rose as personal representative. That is the second
13 motion.

14 Then there was also a motion to quash filed by
15 Rose as PR related to the survivorship account
16 information.

17 After a hearing on the matter, the order that
18 is being appealed here was issued in April of 2019.
19 That order, in essence, held that Rose had complied
20 with the consent order in enforcing the sale and
21 allowing herself to bid after the defective payment.
22 However, the Court also found that despite following
23 the order, she should have exercised some additional
24 discretion and not followed the order explicitly.
25 Basically, that was the essence of it.

1 The final mandates in that order were that Rose be
2 removed as PR; that individually she deed the property back
3 to the estate; that the estate then recognized the sale to
4 Bobby and Jesse for 312
5 And that they also accept the double credit; and finally
6 that the property then be deeded back to -- deeded to Jesse
7 and Bobby.

8 The issues on appeal here is, did the probate
9 court erred by finding that Rose as personal representative
10 violated her fiduciary duties when she complied with the
11 consent order. And given that, the probate court also
12 found erroneous factual findings. Two, did the probate
13 court err in forcing the sale of the Von Oshen property
14 when Rose individually and as PR complied with all terms of
15 bidding and payment provisions.

16 Then finally, did the probate court err in
17 requiring Rose to provide certain survivorship information?

18 The Court's order -- do you have a copy in front
19 of you, Your Honor?

20 THE COURT: I might, right here.

21 MR. MAGILL: I can bring you a copy if that helps.

22 THE COURT: Yes. Go ahead and do that.

23 Maybe I can look at it that way.

24 MR. MAGILL: May I approach?

25 THE COURT: Sure.

1 MR. MAGILL: The courts -- what I would
2 address first is the Court's order on this petition to
3 enforce the sale -- which starts on Page 6 --
4 regarding the enforcement. The probate Court held
5 that Rose complied with the order but violated her
6 fiduciary duty by not allowing Jesse to confirm his
7 bid after the ten-day deadline. Notably, nothing in
8 the consent order allowed for any clear period or
9 conformity. There was no ambiguity.

10 The probate Court in its factual recitation
11 mentioned that there is a disagreement or confusion among
12 the parties about what was owed. But, in fact, Jesse and
13 Bobby's attorney sent an email confirming, as I went over
14 earlier, the exact amount that was due.

15 So there was no confusion about the amount that
16 was due, yet they did not discourage the 159.
17 So, in essence, the probate Court is asking that the PR
18 exercise some additional discretion outside of the terms of
19 the consent order. I believe that was improper in that
20 there was this insinuation that there was a confusion, and
21 there was not.

22 Under section 62-3-703, of the Probate Code, the
23 personal representative has a duty to distribute the estate
24 as expeditiously and efficiently as possible. Under
25 authority, she may do so -- under authority of any order

1 and proceedings to which she is a party. She is also held
2 by the standard of the trustee, which is a prudent person.

3 This state's high courts have held in the Floyd
4 and Clayton cases Constitutional rights and in our brief
5 that a trustee may be removed for refusing to obey the
6 orders of the Court. Section 62-3-611 of the Probate code
7 actually provides that a PR who does not follow the Court's
8 order can be removed as personal representative. So here,
9 despite approving the consent order mandating a ten-day
10 deadline and providing for the fall-back payment of 171.
11 The probate Court's opinion is an indictment of its own
12 Court-ordered process, which was also agreed to by the
13 parties, every single party, which begs the question of,
14 why would the probate Court approve a sale, a deadline, a
15 fall-back, and a credit limitation if enacting such a
16 scenario would violate one's fiduciary duty?

17 I think that the conclusion reached by the probate
18 Court in that matter sets a dangerous precedent -- a
19 personal representative who seeks Court approval for a sale
20 must then exercise some additional extraordinary discretion
21 not provided for in the order to unilaterally alter its
22 terms.

23 Finally, on this issue the Court found that Rose
24 as a personal representative failed to act in the best
25 interest of the estate by enforcing the sale pursuant to

1 the terms of the order. On this point, the probate Court
2 mentioned that Kelvin Crosby was not involved in the
3 bidding process.

4 In fact, Kelvin Crosby's attorney was at the
5 hearing where the consent order and the terms of the
6 bidding process were agreed to and where the fall-back
7 provision was agreed to. So that actually has no bearing
8 here on whether or not he was fully aware of the situation.

9 Finally, the removal of Rose as the PR. The
10 probate Court gave two reasons. First, that there was a
11 conflict that delayed the administration of the estate. It
12 does not explain what the conflict is, but the presumption
13 here is that the conflict was this bidding process and the
14 ultimate enforcement of the sale. In Blackman, which is
15 also cited in our brief, the Court of Appeals held that a
16 conflict between beneficiaries is no reason to remove a
17 personal representative without a specific finding of
18 fault.

19 Here there was no finding of fault in the Court's
20 order. They just said that because of the conflict between
21 the beneficiaries that there has been a delay in the
22 administration of the estate without a specific finding of
23 fault. To piggy-back on that last argument, it was not her
24 fault because she followed the order. She cannot be
25 removed for that reason.

1 Then the other sole testimony relied on by the
2 Court to establish that she had violated her fiduciary
3 duties and merit the removal was that Kelvin Crosby's wife
4 testified that the administration of the estate caused him
5 emotional distress and financial harm. That was the one
6 sentence evidence that was apparently considered to the
7 exclusion of all other pieces of evidence and all other
8 testimony, including Rose's own testimony that any
9 financial distress or emotional distress was caused by
10 Jesse and Bobby. They had mentioned that they
11 were going to drain the estate until there is nothing left
12 and keep her in court, and that everything she tried to do
13 as a PR they tried to counteract including grass-cutting at
14 her mother's home. There was also testimony about threats
15 relayed by Jesse and Bobby to Kelvin. None of this
16 evidence was considered by the Court. It is simply
17 disregarded it. In a removal of a personal representative,
18 it's incumbent on the Court under South Carolina law that
19 they should execute this act with great caution and
20 reluctance, and there must be a strong deference shown to
21 the personal representative. Nowhere was a strong
22 deference ever shown to the personal representative by the
23 probate Court's opinion.

24 Finally, Your Honor, there was a third issue on
25 appeal which arises out of the survivorship accounts.

1 Basically, Jesse and Bobby sought information regarding the
2 decedent's survivorship accounts. There was a court
3 conference, and Rose as PR was directed to provide a list
4 of certain inventory assets. Subsequently, Jesse and Bobby
5 requested the values of these survivorship accounts. But
6 because this was greater information, the Court directed
7 and because section 62-3-706 of the Probate Code gives the
8 personal representative discretion in providing values of
9 accounts such as that.

10 Rose advised them that she would not be providing
11 this. Subsequently they issued subpoenas trying to get
12 that information. She moved to quash. For that issue,
13 there is no explanation, but just a carte Blanche order, I
14 guess, at the end that just says that Rose is required to
15 produce that information. That is subject to an abuse and
16 discretion standard, but our position on that is that no
17 discretion whatsoever was exercised, so that in and of
18 itself is an abuse of discretion.

19 For these reasons we request that the Court
20 reinstate Rose as personal representative and require that
21 the Von Oshen property, the sale to her, be enforced and
22 reverse the probate Court's ruling regarding her
23 survivorship account information.

24 Thank you.

25 THE COURT: Thank you. Mr. Magill, do you

1 have a hard copy of your brief?

2 MR. MAGILL: Yes. Absolutely.

3 THE COURT: Mr. Meyers.

4 MR. MEYERS: Good morning, Your Honor. I
5 represent Rose Walsh in her -- which she takes off her
6 PR hat and puts on her individual hat. Because two
7 siblings wanted to bid on this property is the reason
8 I was brought into the case. I just have three points
9 to make to the Court.

10 In the record in Your Honor's possession, Page 771
11 is the email from the lawyer for Jesse and Bobby saying,
12 all right. The bidding is over. They have got the high
13 bid. Here's how much we agree they have to pay in ten days
14 to perfect the bid. That number was \$159,000. They paid
15 \$156,000.

16 They had their own idea about what they ought to
17 pay. Because everyone consented to this order, to the bid
18 structure, how it was going to do, and to the possible
19 outcomes, it's my position on her behalf individually that
20 no one is aggrieved by the outcome of this order.
21 Everybody consented to one of the forms of relief that was
22 going to happen once this property bidding was over.
23 Because the fall-back provision was used is only a function
24 of the failure to perfect the high bid, which was way over
25 market value. No one has agreed by that being the outcome

1 because everyone consented to it in the first place.

2 So that I think is a significant point. Nobody
3 can really appeal this properly. No one can object to it
4 because they all consented to all the different outcomes.
5 And she complied completely with the order, which she was
6 obligated to do. So she took the order and used it as her
7 marching orders. She followed it exactly and has been
8 penalized for it both in terms of having the property sale
9 changed and having herself removed as PR. So I think it
10 all rests on whether she has the discretion to do something
11 other than what the consent order provided, and we contend
12 she did not. The law supports it.

13 She was improperly removed. She ought to be
14 reinstated and the property sale be effectuated as it
15 happened because everyone had consented to how it should be
16 done. It was done exactly the way the Court prescribed in
17 the consent order. Those are my points, Your Honor. Thank
18 you.

19 THE COURT: Thank you.

20 MR. LYDON: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. LYDON: Tommy Lydon on behalf of Jesse
23 Crosby and Bobby Crosby. Just a preliminary matter.
24 Appellant's counsel mentioned the standard of review
25 of the appeal from the probate court as equitable in

1 nature and that the Court may make factual findings in
2 correspondence with its own view of the preponderance
3 of the evidence, which we agree is the accurate
4 standard of review.

5 I point out, as cited in my brief, the case of
6 church versus McGee. This is not a de novo review. The
7 equitable standard review does not require the Appellate
8 Court to ignore the findings of the trial judge who heard
9 the witnesses. The veracity and credibility of the
10 witnesses can best be made by the judge who heard the
11 witnesses and observed their demeanor.

12 So it's our position that the -- likewise, the
13 equitable standard of review does not require this Court to
14 ignore the findings of the probate judge.

15 Your Honor, I was not involved in this case when
16 it was in the probate court. I say that to let you know
17 that I come here with the same situation you are, which is
18 I wasn't at hearings. I didn't argue the motions. I
19 didn't hear the testimony. My knowledge of this case is
20 limited to -- limited may not be the right word -- is
21 comprised of the 800 pages of the record in this. That is
22 what is before the Court.

23 I will confess I have not read all 800 pages of
24 the record. I would suggest that you don't either because
25 actually most of the facts and the applicable law were not

1 in dispute. There are three issues on appeal which
2 appellant counsel have argued. One is whether Rose Walsh
3 should have been removed as personal representative of her
4 mother's estate.

5 Second, whether the probate judge acted correctly
6 in setting aside Rose Walsh's sale of estate property to
7 herself.

8 And third, whether it was proper for the probate
9 judge to order Rose to provide a detailed account
10 information in connection with the joint account that is
11 not a probate asset.

12 Your Honor, regarding the issue of whether Rose
13 Walsh should be removed as PR, I said that you didn't need
14 to read the entire 800 pages of the record. In fact, all
15 that you really need to read to review this issue is the
16 first three pages of Rose's brief that was just handed up
17 to you. Not my brief, her brief.

18 In the first three pages of her brief, you will
19 find plenty of evidence to support the conclusion that she
20 was acting in her own self-interest and not in the best
21 interest of the estate or the beneficiaries and that she
22 was properly removed as personal representative. The first
23 thing you will find in those three pages of her brief is
24 that she was trying to sell estate property to herself at a
25 discount. That is not per se grounds for removal, but

1 something that should certainly raise a red flag.

2 There was an appraisal of the Van Oshen property
3 that we are going to talk more about in a minute, for I
4 believe \$190,000. She was seeking to buy it from the
5 estate for \$171,000. That is what gave rise to this order
6 that set forth the bidding on the Van Oshen property. Just
7 as an initial matter, she is trying -- now she is here
8 trying to buy the property which has been bid at \$312,000
9 for \$171,000.

10 The second issue or the second factual thing in
11 her brief is there was property that her mother owned on
12 Mill Street specifically bequeathed to my client, Jesse
13 Crosby. Seventeen months into the probate of this estate,
14 Mr. Crosby -- and I believe he had asked before -- we know
15 at 17 months he asked her to go ahead and give me my
16 property.

17 It was a specific request. It's coming to me.
18 Will you give it to me? She responded that she would not
19 because she was too busy selling other estate properties
20 and making copies of family photos. So after 17 months she
21 still couldn't convey the property to my client that had
22 been specifically bequeathed to him, but within ten days
23 after the conclusion of the bidding on the Van Oshen
24 property, when there was ambiguity and confusion --
25 contrary to what appellant counsel said -- she went ahead

1 and made the decision unilaterally to convey that property
2 to herself.

3 Again, she is acting in her own best interest and
4 to the detriment of the interest of the other
5 beneficiaries. The third thing and the big issue that sort
6 of -- there was disputes all through the history of this
7 estate. If you read the transcript, you will see the
8 motions and the disagreements. What really blew this up
9 was the bidding on the Van Oshen property. She sold
10 property that my clients had bid \$312,000 on to herself for
11 \$171,000 and giving herself a \$140,000 windfall. That
12 windfall was at the expense of the beneficiaries of the
13 estate.

14 Now, my clients, Bobby and Jesse, were part of the
15 bidding process and were parties to the situation. Kelvin,
16 although he did go to a hearing, he was not part of the
17 bidding process. He is a one-fourth beneficiary of this
18 estate. If Ms. Walsh is allowed to buy this property for
19 \$171,000, and ignore the bid of her two brothers to buy it
20 for \$312,000, that is \$35,000 in real money that Kelvin is
21 not going to see.

22 So there is a -- and similarly, \$35,000 less to my
23 clients. As far as an innocent third party who was not
24 involved in the bidding, her attempt to sell this involved
25 in the bidding, her attempt to sell this property to

1 herself for \$141, 000 is going to be extremely detrimental
2 to the estate. It's going to cost each of the three
3 brothers \$35,000, one of whom was not even involved in the
4 process.

5 Your Honor, all of that is in the first three
6 pages of her brief. It clearly establishes that she was
7 acting contrary to the best interest of the estate and to
8 the beneficiaries. Likewise, her actions with respect to
9 the two other issues that they have appealed and briefed
10 and argued also support a removal as PR. I will tie that
11 in.

12 With regard to the sale of the Van Oshen property
13 itself, Judge Condon properly ordered her to set aside the
14 sale to herself and sell it to my clients. There was a
15 dispute as to the bidding procedure. There was a dispute
16 as to compliance with the bid.

17 We contend that we did comply with the bid. It's
18 set forth -- the calculations are set forth in my brief, I
19 think on Page 5 or 6. We believe that they complied in
20 full. What is important is, appellant's counsel said there
21 was no ambiguity or confusion here. The order was very
22 specific as to how it was going to be done. The record is
23 not consistent with that. In fact, the record contains two
24 emails from Ms. Walsh's personal attorney, Mr. Meyers, that
25 say we don't think this is right. We don't think you -- my

1 predecessor, Jesse and Robert's lawyer, are reading this
2 order right.

3 We don't think this is consistent with what Judge
4 Condon wanted. If we can't work this out, we are going to
5 have to take this to judge. We are going to have to get
6 clarification from him. So there was -- and the emails are
7 in the record -- one is at Page 760, then the other is at
8 Page 821. So the lawyer said, okay, we are going to take
9 this to Judge Condon to sort out. That never happened.
10 That never happened.

11 Rose Walsh unilaterally decided not to seek
12 clarification or direction from the judge as to whether the
13 bid had been complied with. Not to seek clarification from
14 the judge as to whether the two brothers could buy the
15 property together. She just decided that they hasn't
16 complied. They hadn't complied with what she understood
17 the procedures to be, and therefore, she was selling this
18 property that they had bid \$312,000 for to herself for
19 \$171,000.

20 And the fact, Your Honor -- getting back to
21 whether she should be removed as PR, the fact that we are
22 here today and she is continuing to try to buy this estate
23 asset which somebody has offered \$312,000 for, for \$171,000
24 couldn't be more crystal clear evidence that she is putting
25 her own self-interest ahead of the interest of the estate

1 and the other beneficiaries; that she should be removed and
2 that Judge Condon properly removed her as personal
3 representative.

4 Your Honor, the last issue that was raised is an
5 interesting one. It relates to Judge Condon's order that
6 Rose Walsh provide information related to a joint bank
7 account that she had with her mother. That was not
8 property of the estate or not an asset of the estate. It's
9 a non-probate asset. Life insurance, retirement accounts,
10 joint bank accounts are not property of the estate.

11 However, prior to 2014, a personal representative was
12 required to list the non-probate assets in the inventory.

13 So everybody kind of knew what else was out there
14 besides what was just in the estate effective January 1,
15 2014. The Code Section is 62-3-706. The statute was
16 amended and non-probate property does not have to be
17 listed, non-probate property like the joint account, on the
18 inventory and appraisal. But the legislature put in a
19 provision that says that an interested party can demand
20 from the personal representative an inventory of the
21 non-probate assets.

22 Upon receipt of such demand, the PR has 930 days
23 in which to provide a list of the non-probate property.
24 Kelvin Crosby made such a demand on August 11, 2017. Rose
25 Walsh never responded to that demand. Thereafter, on May

1 3, 2018, my client also filed a demand for inventory of
2 non-probate property.

3 Subsequently, as they said, in July of 2018, Rose
4 identified a joint account that she had with her mother,
5 who is the decedent, at the Bank of South Carolina. She
6 did not provide information regarding the date of death
7 balance in the account, so there was no way for the
8 beneficiaries to know how much was in the account at the
9 time that she died, that Ms. Crosby died. And, in fact,
10 she wasn't required to. I think the statute says that she
11 has the discretion to decide whether to state the amount
12 that was in the account at the time of death.

13 So my clients or my clients' attorney, sent a
14 subpoena to the Bank of South Carolina trying to get
15 account statements, account information, date of death
16 balance, all that stuff. You may be wondering, why all
17 this fuss? Why all this effort related to a joint bank
18 account that is a non-probate asset that is not part of the
19 estate?

20 It is going to go directly to Rose outside of the
21 estate. My clients don't have any claim to that money.
22 Joint accounts, Your Honor, is a specific statute that
23 governs every one of them in the Probate Code. It's
24 section 62-6-201. Under section 62-6-201, Subsection A.,
25 during the lives of the joint owners, the account belongs

1 to the joint account owners in proportion to their
2 respective contributions. Only at death does the entirety
3 of the account go to the surviving account holder.

4 So what happens is late in life a parent adds this
5 child to a joint account so that the child will have access
6 to the money if needed and also keeps it out of the estate.
7 That is what happened here. They provided us with a
8 document that shows that Rose was added to the account. I
9 think the account may have been opened in 2006, and she was
10 added to it in 2012. The dates may be wrong.

11 The documents are in the record, but that is
12 relatively correct. The way the statutes reads, even when
13 a person is added to a joint account, the ownership is in
14 proportion to their contributions. Therefore, if the
15 parent has put all the money into the account, then it's
16 the parent's account during the parent's lifetime. That is
17 critical because if the child takes money out of that
18 account before the parent dies, those funds that are
19 removed from the account don't pass with the rest of the
20 account. They actually become an asset of the estate.

21 I have cited the case of Von v. Barnhardt, which
22 is directly on point which says that if a joint account
23 holder removes money, that they don't have a claim to it
24 because they didn't put it in the account in the first
25 place. Then when the joint holder dies, even though they

1 would have gotten that money if they took it out during the
2 joint account holder's lifetime, it's property of the
3 estate and the money comes back into the estate.

4 So in this case Jesse and Bobby have every right
5 to find out how much was in that account at the time of the
6 death and whether Rose took any money out of it during
7 their mother's lifetime. Because if she did and she hasn't
8 contributed to the account, she doesn't get to keep that
9 money. Any money that she may have taken out before her
10 mother died comes back into the estate.

11 Who is going to pursue that claim? Rose, the PR
12 -- she has a conflict. She has stone-walled my clients,
13 starting with Kelvin, by not responding to the inventory
14 request for non-probate assets. Then my client
15 requested -- she gives them a one-page document, but she
16 won't tell them how much is in the account. They do what a
17 good lawyer would do. They sent a subpoena to the bank and
18 get the information. She files a motion to quash saying
19 you are not entitled. She has fought them. She has
20 stone-walled them on this joint account every step along
21 the way. That is in her best interest. That is not in the
22 best interest of the estate. That is not in the best
23 interest of the beneficiaries. It's further evidence as to
24 why Judge Condon properly removed her as personal
25 representative.

1 Your Honor, in conclusion, Ms. Walsh's actions in
2 administering this estate shows that she is putting her own
3 personal interests ahead of those of the beneficiaries and
4 of the estate. She is attempting to sell property that my
5 clients bid \$312,000 on to herself for \$171,000. We are
6 not talking about a fight over who is going to get to buy
7 the property for \$312,000. She is seeking a \$140,000
8 windfall at the expense of the estate, and she is
9 continuing to do it today in this courtroom. There could
10 not be more evidence that she is putting her own personal
11 interest ahead of the beneficiaries and of the estate.

12 Likewise, Judge Condon was correct in setting
13 aside the sale of the property and allowing my clients to
14 buy it for \$312,000. That portion of his order should be
15 upheld as well. Finally, for the reasons I have just
16 explained, it is very important that my clients be able to
17 get this joint account information and see whether there is
18 money that was removed from that account that needs to be
19 brought back into the estate. She has stone-walled them on
20 that for -- what I did I say -- August of 2017 or --
21 anyway, for more than two years, going on two-and-a-half
22 years. Again, it's evidencing her putting her
23 self-interest ahead of the estate and its beneficiaries,
24 and Judge Condon was proper in ordering her to provide the
25 detailed account information to my clients concerning that

1 bank account.

2 Therefore, we would ask that Judge Condon's order
3 be affirmed in its entirety.

4 THE COURT: Thank you.

5 MR. MEYERS: If I may Your Honor, very briefly.
6 The property sale, of course, was pursuant to a consent
7 order. So everyone had agreed that no matter what the
8 bidding was, the person didn't perfect their bid and to
9 guard against somebody just trying to run the price up to
10 unreasonably inflate it. That the fall-back price would
11 be -- it's in the order -- \$171,000. It's not a number
12 picked out of the air. It's the fair market value of the
13 property minus the commissions and expenses you would have
14 to sell it.

15 So it's the fair market value that would be
16 realized to the estate, but everyone had consented to that
17 as an outcome. So it's not the personal representative
18 acting in a personal interest. It's the personal
19 representative effectuating an order that everyone had
20 agreed to. I just think that is dispositive of the case.
21 She complied. She was found to have complied and was
22 penalized for complying with an order, and it wasn't just
23 an order out of thin air and it wasn't a blank piece of
24 paper.

25 Everyone had agreed in advance, agreed to this in

1 advance, that this is how we are going to do it. Then they
2 wanted to complain whether it was done exactly the way they
3 had agreed it would be done. That is the irony of this
4 case and the reason the probate court order needs to be
5 overturned as to the property sale.

6 THE COURT: Thank you.

7 MR. MAGILL: Real briefly, Your Honor. I
8 wanted to address the concept raised by the respondent
9 earlier on; that is, generally this idea that the PR,
10 when that person also is trying to buy property from
11 the estate, that that idea in and of itself is
12 offensive to public policy. That is just not the
13 case. The Probate Code 62-3-713 provides that the PR
14 can purchase property if there is a full disclosure
15 and consent of all interested parties or a court order
16 providing appropriate terms with notice of all
17 interested parties.

18 That is what happened. There was not only consent
19 to the order, but then there was an order actually executed
20 by the Court. So the fact that she was the PR did not mean
21 she could have no personal interest in her mother's
22 property that had some sentimental value.

23 Finally, on this point as well, the Blackman case
24 cited in our brief, in that case, the PR had devised the
25 will to herself, and she in interpreted it to mean that it

1 was a life estate. So her interpretation was that she got
2 a greater benefit. The beneficiaries, the other
3 beneficiaries, thought that that meant she only had a
4 limited use of this property.

5 The trial court removed her as PR saying that she
6 was only seeking her personal interests. But the circuit
7 court and then on appeal was affirmed. Just because the
8 interpretation may benefit you, if the interpretation of
9 the order is correct, then there is no reason to remove
10 someone as a PR if they have done nothing wrong. I think
11 that applies equally here. She in interpreted the order.
12 She enforced the order, and it's as simple as that.

13 Thank you, Your Honor.

14 THE COURT: Okay. Thank you. Mr. Meyers, do
15 you have a hard copy of your brief?

16 MR. MEYERS: I do, Your Honor.

17 THE COURT: Let me ask each of you to prepare
18 a a proposed order where each of you prevails. That
19 will expedite the decision-making in this process. I
20 will review the record and then either adopt one of
21 those orders or edit those orders as I see
22 appropriate.

23 MR. MEYERS: When would you like them, Your
24 Honor?

25 THE COURT: How much time do you think you

1 need?

2 MR. MEYERS: Fifteen days from today will be
3 whatever that Friday is, the 13th. I think February
4 13 is 15 days.

5 THE COURT: So 30 days. How about 30 days?

6 MR. MEYERS: Thirty days?

7 THE COURT: Thirty days.

8 MR. LYDON: Plenty of time Your Honor. Thank
9 you.

10 Judge, I am still getting familiar from
11 county to county on how proposed orders are to be
12 submitted.

13 MR. MAGILL: Do you want those emailed
14 directly to you?

15 THE COURT: Don't file a proposed order.
16 Email that to me. Then once I have prepared an order
17 to be filed, I will e-file it.

18 MR. MEYERS: Judge, do you want the order
19 shared with opposing counsel?

20 THE COURT: Yes.

21 MR. MEYERS: That is what we usually do.

22 THE COURT: Yes.

23 MR. MAGILL: One last thing, Your Honor.
24 When we are citing to the record, is it proper just to
25 cite to our Bates label, or would you like us to

1 include as an exhibit from the record anything that we
2 are citing?

3 THE COURT: I would suggest that you refer to
4 the exhibit.

5 Thank you.

6 MR. MAGILL: Thank you.

7 MR. MEYERS: Thank you.

8 (At 11:28 a.m. the proceedings were
9 concluded.)

10

* * *

11

END OF TRANSCRIPT

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

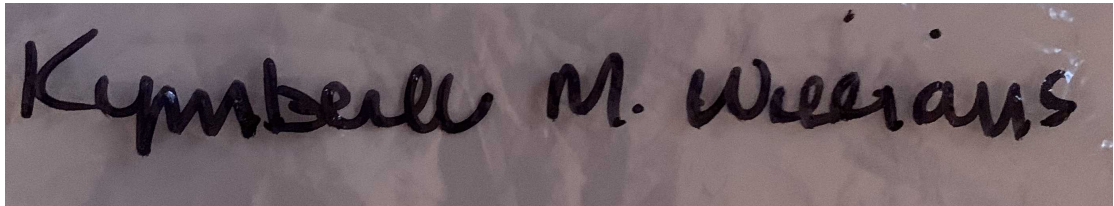
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 30th day of January, 2020.

I do further certify that I am not related, of counsel or of interest to any party hereto.

.

This, the 17th day of April, 2021.

A rectangular area containing a handwritten signature in black ink on a light-colored background. The signature reads "Kymberlee M. Williams".

Kymberlee M. Williams, CSR/RPR

.

Certificate of Counsel

I hereby certify that the enclosed Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Gregg Meyers
217 Lucas Street Unit F1
Mt. Pleasant SC 29464
843-324-1589

Attorney for Appellants