

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

Dale Atkinson, Presiding Judge

Appellate Case No. 2020-000782

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Nov 16 2020

SC Court of Appeals

In the Matter of Estate of Herbert Franklin Dickson, Jr.
Milton Oakley Dickson, Appellant,

v.

Arthur B. Beasley, Jr., as Personal Representative
of the Estate of Herbert F. Dickson, Sr., Respondent.

APPELLANT’S FINAL BRIEF

By: s/S. Jahue Moore
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AT (FOR) ~~FOR~~ ~~FOR~~ APPELLANT

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT APPLY THE APPROPRIATE BURDEN OF PROOF?
2. SHOULD RESPONDENT'S CLAIMS AGAINST THE ESTATE BE DISALLOWED AND RESPONDENT REMOVED AS PERSONAL REPRESENTATIVE DUE TO THE RESPONDENTS BREACH OF FIDUCIARY DUTIES?
3. MAY THE APPELLATE COURT MAY SUBSTITUTE ITS FINDINGS FOR THE LOWER COURT.

STATEMENT OF THE CASE

This is an appeal from the Order of the Dale Atkinson, Presiding Judge of the Third Judicial Circuit, Sumter County Probate Court Judge dated February 18, 2018. (Order of the Honorable Dale Atkinson, dated January 23, 2019). This matter was commenced pursuant to the filing of a Summons and Petition by Appellant/Petitioner Milton Oakley Dickson ("Appellant") one of the Testator (Herbert F. Dickson, Sr.) son's, on September 25, 2008 in the Sumter County Probate Court. On September 19, 2008, Appellant/Petitioner Dickson filed a Petition with this Court stating that he was not challenging the validity of his father's Will or the distribution under the Will. However, the Petition asked the Court to decide the rights of the parties and to prohibit Respondent/Appellee Arthur B. Beasley, Jr., from serving as the Personal Representative of this Estate.

This matter came before the Sumter County Probate Court on June 2, 2011. The Court ordered that Respondent Beasley should not be removed, that the Incontestable Clause contained in ITEM V of the Law Will and Testament of Herbert Franklin Dickson, Sr., (hereinafter referred "Herbert Dickson") was no longer an issue before the Court, and that the "Santee Property" was Testator's and Estate issue a Deed of Distribution in Accordance with the terms of Testator's Will. Appellant appealed this prior Order and the prior Order was affirmed by this Court and the matter remitted back to the Sumter County Probate Court. (Rec. on App., pp. 213).

Following remand, a hearing for Accounting and Distribution heard on November 13, 2018. Judge Atkinson entered an Order filed February 13, 2019. Judge Atkinson's Order declared that money be paid to Sandy Beasley for the lawn mower and HVAC expenses form the estate, the

mortgage for the Sumter property shall be deducted from Linda Chaplin's share, and the Personal Representative fee shall be reduced to \$8,092.00.

Appellant timely filed a Motion to Reconsider on February 22, 2019. A hearing on Appellant's Motion to Reconsider took place on May 20, 2019 in regards to the Order filed with the Court on February 13, 2019. Appellants filed a Notice of Appeal on May 7, 2020 appealing the Order of the Honorable Dale Atkinson, dated February 13, 2019.

STATEMENT OF FACTS

Appellant Milton Oakley Dickson is the son of the Testator, Herbert F. Dickson, Sr., who died on August 20, 2008. Respondent, Arthur B. Beasley, Jr., is the son of Melba Beasley. Herbert F. Dickson, Sr., was married to Melba Beasley. (Rec. on App., pp. 277). Both Herbert F. Dickson, Sr., and Melba Beasley appointed Arthur B. Beasley, Jr., as their personal representative. *Id.* Melba Beasley died approximately forty days prior to Herbert Dickson. (Rec. on App., pp. 277, ll. 6-25). Melba Beasley and Herbert Dickson both died with valid Wills. (Rec. on App., p. 277, ll. 25, p.278, ll. 1-3). Melba's will left everything to her husband Herbert Dickson. (Rec. on App., p. 278, ll. 17). As personal representative of Melba Beasley's Estate, Respondent had a duty way to make sure that the property and assets from Melba's estate passed into Herbert Dickson's estate. *Id.* Respondent failed at upholding this duty. *Id.*

I. Melba Beasley's Estate

Respondent failed to file a complete and accurate accounting of Melba Beasley's assets. (Rec. on App., pp. 277, ll. 8-25). Respondent claims that Melba Beasley owned a car, furniture, jewelry, and joint property in Santee with Herbert F. Dickson. (Rec. on App., pp. 288, ll. 9-25). All of the assets owned by Melba Beasley, should have either been sold, given, or in kind distributed to Herbert Dickson, while under possession and control of the personal representative. (Rec. on App., pp. 285, ll. 6-9). Respondent claims to have accounted for the assets in a lump sum

by estimating the value of the property and not using an appraiser. (Rec. on App., p. 289, ll. 12-16, p. 290, ll. 6-11). Upon her death, Melba Beasley also had a bank account with approximately \$1,000.00 (Rec. on App., pp. 291, ll. 19. Respondent claims that the money would not have belonged to Mr. Dickson the Respondents name was on the account in case something happened to Melba Beasley and claims to not have accounted for the bank account due to rights of survivorship. (Rec. on App., pp. 292, ll. 4-25). Respondent testified that prior to Melba's death he had nothing to do with the account. *Id.*

II. Herbert Dickson's Estate

Respondent was also the Personal Representative and Power of Attorney over Herbert Dickson's Estate. (Rec. on App., pp. 296, ll. 6-9). At the time of Herbert Dickson's death, Russell T. Purvis owed a significant sum of money to the Mr. Dickson. The mortgage owed by Mr. Purvis was paid by check to the Estate of Herbert Dickson mailed directly to the Respondent from July 2009 until January 2018. (Rec. on App., pp. 288, ll. 14-18). The inventory and assessment accounted for a little over \$70,000; however there was roughly \$100,000 to come into the estate from the mortgage. (Rec. on App., pp. 295, ll. 1-24, p. 296, ll. 1-25).

Respondent was also aware of insurance policies that were paid to Herbert Dickson after the death of Melba Beasley for \$12,000.00 and \$1,197.00. Respondent claims that \$700.00 was in the bank, but the inventory and appraisal actually showed that \$10,574.00 was in the account. Besides the bank accounts, the estate had also received \$100,000 worth of insurance policies. (Rec. on App., pp. 288, ll. 16-20). Respondent also failed to account for any of the antiques in the shoe shop that had been owned by Herbert F. Dickson, and was not aware of any antique coins. (Rec. on App., p. 299, ll. 15-25, p. 302, ll. 9-15). Testimony given by the Respondent stated that Mr. Dickson owned several pieces of personal property, none of which were accounted for

individually. a 1983 Pace Arrow, Jon boat, Palm Harbor, Chris-Craft, arrowroot (sp) moor, Stratos boat, Johnson boat, and Ford Explorer, none of which are listed individually under the accounting. (Rec. on App., pp. 304, ll. 4-25). The Ford Explorer was sold for \$6,000.00, but respondent listed it as \$8,000.00 on the inventory and appraisal. (Rec. on App., p. 305, ll. 11-13).

Respondent believed that he would receive the Santee property under Item 2 of the Will. (Rec. on App., p. 318, ll. 11-24). The Will stated all tangible personal property not identified in the memorandum were sold and placed into the estate, but there is no written memorandum for the mobile home. (Rec. on App., pp. 320, ll. 3-19). The boat motors and cars were sold and put into the estate, but the Respondent did not sell the mobile home, even though there was no written memorandum for the mobile home. ((Rec. on App., p. 320, ll. 9-25, p. 321, ll. 1-2).

Respondent has treated the mobile home as personal property by paying taxes on the mobile home and land from the estate. (Rec. on App., p. 322, ll. 16-17). Appellant was never provided the accounting sheet that has been consistently referenced. (Rec. on App., p. 323, ll. 11-15).

Respondent claimed to not have been paid any fees as personal representative, but paid himself \$24,444.23 out of the Estate. (Rec. on App., p. 306, ll. 9-10, p. 307, ll. 5-9). Expenses in the amount of \$176,000 were accounted for in the inventory and appraisal, and a majority of the expenses went to the property in Santee, South Carolina. (Rec. on App., p. 307, ll. 3-9).

Respondent paid taxes, power bills, and maintenance on the property in Santee and Sumter for ten years. (Rec. on App., p. 308, ll. 16-17). Respondent has paid out \$156,000. (Rec. on App., p. 314, ll. 5-7). Herbert Dickson owned a mobile home on property located on Goslin Road that was taxed as personal property on the land and taxed as real property. (Rec. on App., p. 316, ll. 8-

25). Since Herbert Dickson's death, the mobile home has been rented out by the personal representative and included it on the Inventory and Appraisal. (Rec. on App., p. 318, ll. 1-2).

III. Distribution of Expenses from the Estate of Herbert F. Dickson, Sr.

Respondent testified at the hearing on November 13, 2018, there was the following expenses distributed: \$9,906.10 USAA credit card for property taxes; \$4,200.00 on an HVAC, \$447.81 on a trip to Sumter; \$19,572.15 to the Clarendon County Treasurer; \$12,250.00 to Bob Haggerty for maintenance to the property; \$9,000 to Creech Roddey Watson Insurance; \$7,344.00 to Santee Electric; \$3,615.00 to David Rowe for yard maintenance; \$3,571.00 to Little River Electric Co-op; \$2,894.00 for a BB&T Final Mortgage payment; \$2,696.00 USAA home insurance premium; \$2,405.42 to Farmers Telephone Cooperative; \$2,554.00 to Sumter County Treasurer; \$2,468.00 to Carolina Security Systems; \$1,998.59 for a lawnmower for the Sumter house; \$1,660.00 for the water bill to the Sumter house; \$2,481.00 to appraise the properties of the estate; \$800.00 to Clarendon Exterminating; \$732 to Greens Toyota; \$765 to HR Aven and Associates; \$489.00 to Terminx; \$491 to Stukes Heating and Air; \$182.96 to Time Warner Cable; \$125.75 to Walmart; \$80.00 to Quinn Beasley for yard work. (Rec. on App., p. 326, ll. 2-3, p. 314, ll. 18-20, p. 327, ll. 22-25, p. 328, ll. 2-4, p. 329, ll. 14-23, p. 330, ll. 2-5, p. 333, ll. 1-25, p. 334, ll. 12-3, p. 334, ll. 15-16, p. 338, ll. 15-21, p. 339, ll. 5-16, p. 340, ll. 1-3, p. 341, ll. 1-25).

Respondent used the money from the estate to pay for the power bill to the Respondents personal property at the Santee property. ((Rec. on App., p. 314, ll. 19-20). The two properties left to Respondent and his sister, Linda Chaplin, came out to about \$29,000 that had been paid out by the estate. (Rec. on App., p. 328, ll. 12-16). Respondent used money from the estate to pay off the mortgage of the Sumter property that was left to Respondent's sister. (Rec. on App., p. 332, ll. 1-7). Respondent claimed the telephone bill had to stay in service at the Santee property to maintain

a security system. ((Rec. on App., p. 332, ll. 15-21). Respondent paid for the water bill at the Sumter house, even though no one was using the water and Mr. and Mrs. Dickson has passed away. ((Rec. on App., p. 336, ll. 1).

Respondent recognized that he had a fiduciary responsibility. (Rec. on App., p. 336, ll. 9-11). Respondent paid Sandy Beasley, his wife, \$2,481.00 out of the estate for 500 hours of yardwork over a ten year span. ((Rec. on App., p. 336, ll. 21-25); however, Sandy Beasley does not have a business license, was paid hourly, and no taxes were withheld from the pay. Respondent aware of his fiduciary duties, paid Sandy Beasley, his wife, \$2,481.00 out of the estate. ((Rec. on App., p. 337, ll. 7-21). Respondent paid the cable bill for one of the houses, even after the death of Mr. and Mrs. Dickson. *Id.*

Respondent paid himself \$24,444.23 for a reimbursement out of the estate for mileage and food bills. (Transcript of Hearing, November 13, 2018, p. 71, ll. 5-10). He also paid himself a personal representative fee of \$17,715.00 from logging his time and expenditures. (Transcript of Hearing, November 13, 2018, p. 72, ll. 11-25). Calculations were totaled by 1,288 hour at \$14.00 an hour, which is the equivalent of 30 weeks working full-time on the estate or as Respondent claims 120 hours a year over a court of 11 years. He averaged \$800.00 a trip. (Rec. on App., p. 352, ll. 16-20). Somewhere between \$100,000 of estate money was spent on property left to either the Respondent or Respondents sister. (Rec. on App., p. 344, ll. 3-11).

Respondent rented out the Santee property and received a total of \$16,690.00 in rental payments that allowed Respondent to pay taxes and insurance with the assets of other various assets. (Rec. on App., p. 347, ll. 5-16). Respondent testified that the assets generating income for the estate was the Santee property and the sale of the Master Shoe rebuilders. (Rec. on App., p. 348, ll. 7-16). Respondent testified that the \$10,500 listed was from the check being deposited

from Herbert Dickson' business and social security money. Respondent claimed that he did not deed out the Sumter property immediately due to the property receiving the homeowner's tax exemption. (Rec. on App., p. 351, ll. 10-12).

Over the ten years the estate has been open, Respondent stands behind his accounting and proposal for distribution. (Rec. on App., p. 356, ll. 12-14).

The Respondent request that the Judge approve \$17,750.00 to himself, and that the accounting be approved for other distribution to go to the other beneficiaries per the will. (Rec. on App., p. 358, ll. 6-21).

After Respondent's testified, Appellant called Milton Dickson to testify. ((Rec. on App., p. 359, ll. 10-11). Milton Dickson testified that Melba and Herbert had been married for 16 to 17 years. (Rec. on App., p. 360, ll. 5-9). He testified that Melba had owned a diamond ring that was a pretty good size and the ring removed off of Melba's finger by Mr. Beasley at Melba's funeral. (Rec. on App., p. 360, ll. 19-24). Herbert Dickson had a Rolex watch that was to be given to his younger brother, but Mr. Beasley presented a Timex watch and the Rolex watch has never been presented. (Rec. on App., p. 361, ll. 1-17). Milton Dickson testified to Herbert Dickson owning roughly five hundred silver dollars, which he stored in the freezer of the house. (Rec. on App., p. 361, ll. 23-24, p. 81, ll. 352). Herbert Dickson also owned hundreds of antiques in a shoe shop located in Sumter that were never accounted for after Herbert's death by Respondent. (Rec. on App., p. 362, ll. 18-21)

Milton Dickson testified that Melba's estate was left to his Dad and that Melba had a good bit of money. (Rec. on App., p. 363, ll. 21-22). The hearing occurred on November 13, 2018 was the first time the Appellant had seen a breakdown of the claims to have been spent. (Rec. on App., p. 364, ll. 12-17).

Milton Dickson expressed his concern was where the antiques were from his father's estate because after his father's death they were not allowed back in the house. (Rec. on App., p. 364, ll. 20-25). Appellant has not seen the bag of coins since his father has passed. (Rec. on App., p. 365, ll. 12-15).

Appellant testified to understanding the difference between probate property and non-probate property, specifically in regards to Herbert Dickson's life insurance. (Rec. on App., p. 367, ll. 7-12). He also understands that if Melba had her son as survivorship on the insurance account that would not get reported in her estate. (Rec. on App., p. 370, ll. 20-24).

None of the money from Melba's estate has been accounted for on Melba or Herbert's estate. (Rec. on App., p. 368, ll. 2-9). Besides the Rolex watch that was discussed previously in the testimony, no other personal property was delivered to him or his brothers. (Rec. on App., p. 370, ll. 7-9). Appellants did send a letter requesting information about where everything was located but there was never a response. (Rec. on App., p. 370, ll. 19-24).

Eugene Dickson also testified as to seeing the silver dollars owned by Herbert Dickson. (Rec. on App., p. 373, ll.15-24). The bag of coins had always been kept in the freezer. (Rec. on App., p. 375, ll.5-7).

At the end of the trial, Herbert Dickson, Jr., then testified at the hearing prior to litigation, that he wrote a letter to Mr. Seth in January of 2009, but he never received a response. (Rec. on App., p. 380, ll.5-7, p. 379, ll.10-11). The letter was in response to a meeting that had occurred between the parties in an effort to distribute property. (Rec. on App., p. 379, ll. 17-22). At the end of the hearing the Judge granted an Order for the distribution of the moneys paid to Sandy Beasley, for the lawnmower and HVAC to be deducted from the reimbursements to the personal representative, the mortgage for the Sumter property shall be deducted from Linda Chaplin's share,

and the personal representative fee was reduced to \$8,0992.00. Otherwise the application for Settlement, Proposal for Distribution and Final Accounting was approved. Appellants then moved for a Motion for Reconsideration.

STANDARD OF REVIEW

The Courts have clearly addressed the important rules concerning the standard of review of cases appealed from the probate court. *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993); *Eagles v. South Carolina Nat'l Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990). These cases hold that the determination of the standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. *Id.* To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below. If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. *Eagles*, 301 S.C. at 408, 392 S.E.2d at 191.

To determine whether a suit is legal or equitable for purposes of resolving proper standard of review, an appellate court must look to the main purpose of the action as reflected by the nature of the pleadings and proof, and the character of relief sought under them. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). Under the probate code, a Circuit Court hearing an appeal from the Probate Court must apply the same rules of law as an Appellate Court would apply on appeal.” *In Re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005).

ARGUMENT

I. THE COURT APPLIED THE IMPROPER BURDEN OF PROOF.

a. The Respondent had a fiduciary duty and breached the fiduciary duty.

The Respondent had a fiduciary duty to uphold. A fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). The Respondent breached the fiduciary duty. It is well settled in South Carolina that the burden of proof in the probate court is on the administrator, to show that he or she met the applicable fiduciary duties to the estate. *Burnside v. Robertson*, 28 S.C. 583, 6 S.E. 843 (1888). The party petitioning the court to allow the claim has the burden of proving the claim's validity. *Matter of Howard*, 315 S.C. 356 (1993). A fiduciary has the burden of proving any debt the fiduciary alleges is due to him. 315 S.C. 356, 434 S.E.2d 254 (1993). A personal representative is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703 (Supp.2008); S.C. Code Ann. § 62-1-201 (Supp.2008). In the present matter, the burden of proof should have been applied to the Respondent Beasley acting as the personal representative because the personal representative acts as the fiduciary of the Estate. *Burnside v. Robertson*, 28 S.C. 583, 6 S.E. 843 (1888). The burden of proof may not be shifted to the contestant because the Respondent's approval of his claim may not be used to show invalidity. The law puts the burden of proof on the Respondent. B *Burnside v. Robertson*, 28 S.C. 583, 6 S.E. 843 (1888). The Probate Court incorrectly applied the applicable burden of proof by placing the burden on Appellant as opposed to Respondent the Personal Representative of the Estates.

i. Respondent Breached his fiduciary duty to the Estate of Melba Beasley.

In the case before the Probate Court, Respondent could not meet the required burden of proof as personal representative of the Estate of Melba Beasley because respondent neglected to

account for all of the Estate's assets in the inventory and appraisal, including jewelry, cars, and property. Respondent failed to transfer the assets to the Estate of Herbert Dickson at the death of Melba Dickson. As personal representative of the Estate, Respondent continued to have the lights, cable, and water bill turned on at the property owned by Melba Beasley, even though he had a fiduciary duty to uphold. Respondent had a duty to uphold these responsibilities as personal representative of the state, and therefore breached the required fiduciary duties.

ii. Respondent Breached his fiduciary duty to the Estate of Herbert F. Dickson, Sr.,

In the case before the Probate Court, Respondent could not meet the meet the required burden of proof as personal representative of the estate's by neglecting to individually list the following items belonging to Herbert Dickson's estate on the inventory and appraisal: a 1983 Pace Arrow; Jon boat; Palm Harbor; Chris-Craft; arrowroot (sp) moor; Stratos boat; Johnson boat; and Ford Explorer; none of which are listed individually under the accounting. (Rec. on App., p. 304, ll. 4-25). Respondent further breached his fiduciary duty by selling the Ford Explorer was sold for \$6,000.00, but respondent listed it as \$8,000.00 on the inventory and appraisal. (Rec. on App., p. 305, ll. 11-13). The Respondent also failed to meet the required burden of proof by failing to accurately account for the estate an all pieces of personal property that was connected. The Respondent only kept the property which he felt benefited himself and failed to explain why after years of his mother's and step father's death why he continued to pay cable bills, electrical bills, and mortgage payments. The Court's Order placed the burden of proof on Appellant to demonstrate how Respondent had acted inappropriately (and in violation of his fiduciary duties) as opposed to placing the burden on Respondent to prove he acted in a manner consistent with his fiduciary duties. This is improper and the Order of the Probate Court should be reversed by this Court.

b. The Probate Court did not apply the proper Burden of Proof.

Respondent had a fiduciary duty. Respondent breached that duty in the handling of the Estate of Melba Beasley and Hebert Dickson. Probate Court did not apply the proper burden of proof to require Respondent to show how did not breach the duty but instead required Appellant to “prove” that he did; This is in direct violation of well settled South Carolina Law. The Probate Court’s Order dated February 13, 2019 is clearly erroneous and should be reversed by this Court.

II. THE RESPONDENT’S CLAIMS AGAINST THE ESTATE SHOULD BE DISALLOWED DUE TO RESPONDENTS FAILURE TO ACCOUNT AS PERSONAL REPRESENTATIVE.

In South Carolina when an administrator of an estate submits a claim against estate, he is not entitled to payment or reimbursement from the estate without full proof of the claim. *Matter of Howard*, 315 S.C. 356 (1993); *Cunningham v. Cauthen*, 37 S.C. 123 (1892); *Helvering v. Highland*, 124 F.2d 556 (4th Cir. 1942). Every man is presumed to know the law, and administrators who are in fact ignorant of the law and act upon their blind judgments without consulting attorneys allowed them at expense of the estate must bear the consequences of their actions. *Ross v. Beacham*, 33 F. Supp. 3 (W.D.S.C. 1940).

Respondent had a duty to account as personal representative of the Estate. The Respondent’s failure to accurately account and deductions from the estate for Respondent’s self-interest was a failure to perform as personal representative for the Estate.

a. Respondent’s Failure to Account as Personal Representative for the Estate of Melba Beasley

Upon her death, Melba Beasley also had a bank account with approximately \$1,000.00 (Rec. on App., p. 291, ll. 19). Respondent claims that the money would not have belonged to Mr. Dickson the Respondents name was on the account in case something happened to Melba Beasley and claims to not have accounted for the bank account due to rights of survivorship. ((Rec. on

App., p. 292, ll. 4-25). Respondent testified that prior to Melba's death he had nothing to do with the account. *Id.* Additionally, Melba Beasley owned a 1990 Delta 88 worth approximately \$700.00, which Respondent did not account for, but rather placed the \$700.00 into the estate account.

b. Respondents Failure to Account as Personal Representative for the estate of Herbert F. Dickson, Sr.,

Respondent's misconduct as personal representative of the estate, Respondent used the money from the estate to pay for the power bill to the Respondents personal property at the Santee property. (Rec. on App., p. 314, ll. 19-20). The two properties left to Respondent and his sister came out to about \$29,000 that had been paid out by the estate. (Rec. on App., p. 328, ll. 12-16). Respondent used money from the estate to pay off the mortgage of the Sumter property that was left to Respondent's sister. (Rec. on App., p. 332, ll. 1-7). Respondent claimed the telephone bill had to stay in service at the Santee property to maintain a security system. (Rec. on App., p. 332, ll. 15-21). Respondent paid for the water bill at the Sumter house, even though no one was using the water and Mr. and Mrs. Dickson has passed away. (Rec. on App., p. 336 ll. 1).

Respondent recognized that he had a fiduciary responsibility. (Transcript of Hearing, November 13, 2018, p. 65, ll. 9-11). Respondent paid Sandy Beasley, his wife, \$2,481.00 out of the estate for 500 hours of yardwork over a ten year span. (Rec. on App., p. 336, ll. 21-25); however, Sandy Beasley does not have a business license, was paid hourly, and no taxes were withheld from the pay. Respondent aware of his fiduciary duties, paid Sandy Beasley, his wife, \$2,481.00 out of the estate. (Rec. on App., p. 337, ll. 7-21). Respondent paid the cable bill for one of the houses, even after the death of Mr. and Mrs. Dickson. *Id.*

Respondent had a duty to uphold and Respondent breached that duty. The Court held in that a personal representative whom breached their fiduciary duties was to be removed. if a

personal representative of a decedent's estate develops a conflict of interest, or breaches his or her fiduciary duty after being appointed, the personal representative may be removed by the county commission, or in certain cases by a state circuit court. *Jones v. Harper*, 55 F. Supp. 2d 530 (S.D.W. Va. 1999). Respondent should therefore be removed for breaching their fiduciary duty and for their failure to accurately account for the estates under the inventory and appraisal requirements.

III. THE COURT MAY SUBSTITUTE ITS FINDINGS FOR THE LOWER COURT.

For the reasons set forth above, the Order of the Lower Court should be reversed. If this Court finds the matter under review to be “equitable,” the Court can, of course, review the record as whole and make its own findings of fact and conclusions of law. A fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). A breach of fiduciary duty claim may sound in equity if the relief sought is equitable. *Id.*

The court has held in *Ex parte Wheeler v. Estate of Green*, Probate proceeding in which personal representative petitioned for approval of contract for sale of real estate, and beneficiaries counterclaimed for breach of fiduciary duty and sought injunction to disapprove the contract, was equitable in nature, and thus equitable standard of review applied, such that circuit court was to make factual findings according to its own view of the preponderance of the evidence, though breach of fiduciary duty claim was an action at law; such claim took on an equitable form because of the injunctive relief sought. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009)

On appeal from the final order of a probate court, the circuit court must apply the same rules of law as an appellate court would apply on appeal. Id. If probate proceeding is equitable in

nature, an appellate court may make factual findings according to its own view of the preponderance of the evidence. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009)

The Court has also held *In re Estate of Weeks*, an action to remove a personal representative appointed pursuant to the terms of a will is equitable in character; thus, the circuit court could make findings in accordance with its own view of the preponderance of the evidence). *In re Estate of Weeks*, 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct. App. 1997).

This Court may review the record and make its own determination. A fiduciary relationship existed between the Appellant and Respondent. Based on the overwhelming evidence contained in the record, Respondent breached his fiduciary duty to the Estate and should be required to make a full accounting and be removed as Personal Representative. The matter is equitable in nature because of the breach of the fiduciary duty between the parties. The present matter is equitable and the Court should therefore substitute its findings for the lower court.

CONCLUSION

For the reasons given above, the Order of the Probate Court should be reversed. In the alternative this Court should review the record, and issue its Order requiring Respondent to make a full accounting and should be removed as Personal Representative of the Estate.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appellant's Final Brief complies with Rule
211(b), SCACR.

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