

Rules of Civil Procedure, including Rule 59(e) and Rule 60(b), SCRPC. In re: Estate of Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). The Court will address each Motion separately and without oral arguments.¹

Motion to Alter, Amend and/or Vacate Order

A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment, but were not. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motion to Alter, Amend and/or Vacate Order filed by Respondent Minnie Lee Newman Mevers raises no new argument and presents no new evidence, therefore, the Court respectfully **DENIES** the Motion.

Motion to Vacate Order

Pursuant to Rule 60(b), SCRPC, “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... the judgment is void or it is no longer equitable that the judgment should have prospective application.” Rule 60, SCRPC. In her Motion, the Respondent argues that this Court’s Order dated June 29, 2020 should be vacated because when the Order was issued there was a pending Motion for Removal to Circuit Court, thus, this Court lacked subject matter jurisdiction to issue the Order Granting Temporary Injunction.

¹ See Order Regarding the Operation of Trial Courts during the Coronavirus Emergency issued by the South Carolina Supreme Court on April 3, 2020 and as amended on April 14, 2020 and April 22, 2020, whereby “[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.”



Pursuant to S.C. Code Ann. § 62-1-302(a)(1), the Probate Court has exclusive original jurisdiction over all subject matter related to the estates of decedents including the determination of property which the estate of a decedent has an interest. S.C. Code Ann. § 62-1-302. Furthermore, “[t]he probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings [to] determine the existence or nonexistence of trusts created other than by will.” S.C. Code Ann. § 62-7-201. This subject matter jurisdiction is, however, subject to the provisions of section 62-1-302(d). Id.

Pursuant to S.C. Code Ann. § 62-1-302(d):

“Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo: ... (4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a “special needs trust” as described in Article 7; [and] (5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value...”

S.C. Code Ann. § 62-1-302.

In Thomas v. Gathings, the South Carolina Court of Appeals, in interpreting S.C. Code Ann. § 62-1-302, stated “[w]e interpret the statute as requiring removal only where it is raised by motion of any party or by motion of the probate judge on his own.” Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991). Although removal to circuit court is required if it is warranted under subsection (d) and upon the motion of any party, the matter is not removed until the Court grants the motion for removal. Therefore, although the Motion to Remove Action to

Circuit Court was filed prior to this Court's Order dated June 29, 2020, this Court still had proper subject matter jurisdiction since the Court had not ruled upon the Motion.

Furthermore, at the hearing on March 23, 2020, prior to the Respondent's Motion to Remove Action to Circuit Court, this Court ruled from the bench that the Petitioner's request for a temporary injunction was granted. This Court also ruled at the hearing that Respondent Minnie Lee Newman Mevers was restrained from using or disposing of any assets that were distributed under the residuary clause of the Decedent's Will and that the Respondent shall furnish a full accounting to the Special Administrator. Therefore, even if this Court was divested of subject matter jurisdiction when the Motion to Remove Action to Circuit Court was filed, this Court had proper subject matter jurisdiction when the hearing was held on March 23, 2020 and when the Court issued its ruling from the bench. Based upon the foregoing, this Court respectfully **DENIES** the Respondent's Motion to Vacate Order.

Motion to Remove Action to Circuit Court

Pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, removal of this action to Circuit Court is appropriate; therefore, the Respondent's Motion to Remove Action to Circuit Court is **GRANTED**.


Therefore, based upon the foregoing, it is now hereby:

ORDERED, ADJUDGED, AND DECREED that Respondent Minnie Lee Newman Mevers' Motion to Alter, Amend and/or Vacate Order, filed July 10, 2020, is respectfully **DENIED**; it is further

ORDERED, ADJUDGED, AND DECREED that Respondent Minnie Lee Newman Mevers' Motion to Vacate Order, filed August 28, 2020, is respectfully **DENIED**; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, the Respondent's Motion to Remove Action to Circuit Court, filed May 12, 2020, is hereby **GRANTED** and the matter shall be removed to Circuit Court.

IT IS SO ORDERED.



IRVIN G. CONDON
Judge of Probate
Charleston County

This 10th day of September, 2020
Charleston, South Carolina.

