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**May 19 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel Dewitt Hall, Circuit Court Judge

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Case No. 2019-CP-46-04238

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Philip Pringle, as the duly appointed Gurdian ad Litem for Alex Pringle,.....Respondent

v.

Janet Mewshaw, individually and as Trustee,.....Appellant

# **Exhibit B**

*Notice of Appeal*

*Probate Court Order dated December 6, 2019*

FILED RECEIVED

STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT

COUNTY OF YORK )

2019 DEC -6 CASE FILE NO.: 2018GC4600029

IN RE: ALEX PRINGLE TRUST )

CAROLYN W. ROGERS  
JUDGE OF PROBATE  
YORK COUNTY, SC

COVER SHEET

Philip Pringle, as GAL  
PETITIONER

Janet Mewshaw  
RESPONDENT

CHECK ONE:

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 \_\_\_\_\_

FILE DEFUNCTED (SCPC Rule 4) \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:  See attached Order.

Dated at York, South Carolina, this 6<sup>th</sup> day of December, 2019.

*Carolyn W. Rogers*  
Carolyn W. Rogers  
Judge of Probate

This Order was entered on the 6<sup>th</sup> day of December, 2019, and copies mailed first class mail the 6<sup>th</sup> day of December, 2019, to attorneys of record as follows:

Dan D'Agostino, Esquire  
Robert Breakfield, Esquire  
25 W. Liberty Street  
York, SC 29745  
ATTORNEYS FOR PETITIONER

Jim Honeycutt, Esquire  
P. O. Box 937  
Fort Mill, SC 29716  
ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT

COUNTY OF YORK )

2019 DEC -6 AM 9:41

Philip Pringle, as the duly appointed  
Guardian ad litem for Alex Pringle,

CAROLYN W. ROGERS  
JUDGE OF PROBATE  
YORK COUNTY, SC

RECEIVED

May 19 2022

SC Court of Appeals

Petitioner, )

ORDER

v. )

C.A.No.: 2018GC460029

Janet Mewshaw, individually and as  
trustee, )

Respondent. )

The within action was commenced by the Petitioner requesting this court to remove the Respondent and substitute BNA CPAs and Advisors as the trustee, order a transfer of all assets to BNA as trustee, order an accounting, order the production of all records associated with the trust, and to require the Respondent to pay attorney's fees and costs. The Respondent filed an initial answer admitting that the trust consisted of the property located at 507 Ann Shaw Avenue, Fort Mill, South Carolina, a timeshare in Florida, a Merrill Lynch brokerage account in the amount of \$49,655.25, an Ameritrade brokerage account with \$50,315.45, a Merrill Lynch account with \$19,670.13, and a Merrill Lynch account with \$378,010.52. The Respondent denied that she should be removed as the trustee.

The Petitioner filed a motion to remove the Respondent as Trustee. Respondent filed a motion to quash a subpoena. The court held a hearing on the motions on February 5, 2019 and entered an order which, among other matters, required the Respondent to post a bond in the amount of \$496,000. The parties continued to engage in discovery.

The Petitioner subsequently filed a motion to amend the Petition. The court granted the

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motion. In the Petition, Petitioner sought again for an accounting, the Respondent to be removed as trustee, Respondent to be required to pay reasonable rent for the Decedent's home, for judgment against the Respondent for all monies wrongfully obtained and/or taken from the Decedent or the trust, and for the same assets to be turned over to BNA as Trustee. The Respondent filed an answer to the amended Petition. The case came before the court for a trial. Both parties were present. The parties presented evidence. The court had the opportunity to evaluate the evidence, hear the testimony, and observe the demeanor of the witnesses and the manner in which each witness testified.

Based on all the evidence presented, the court makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The Petitioner Philip Pringle is the father of Alex Pringle and was appointed by this Court as his guardian *ad litem* to pursue this action.
2. The Decedent executed a will which created a trust for the benefit of Alex Pringle.
3. The will named Janet Mewshaw as the trustee of the trust. The trustee was to gather and hold all assets for the benefit of Alex Pringle.
4. At the time of her death, March 25, 2017, Sabrina Pringle had the following accounts:
  - a. Merrill Lynch brokerage account in the amount of \$49,655.25
  - b. Ameritrade brokerage account with \$50,315.45
  - c. Merrill Lynch account with \$19,670.13
  - d. Merrill Lynch account with \$378,010.52
5. In addition, Sabrina Pringle owned a home located at 507 Ann Shaw Avenue in Fort Mill, South Carolina and two Florida time shares, all of which are assets of the trust.
6. The Respondent had a duty to take possession of, hold and administer the trust assets for the benefit of Alex Pringle.

7. The Court appointed Charlene Controne of BNA, with consent of the parties, to perform a forensic accounting of the assets. The accounting demonstrates that not only were the above accounts not used for Alex Pringle's benefits, but the checking accounts which Sabrina had at the time of her passing were used improperly.

8. Subsequent to being named as the Trustee, the Respondent transferred various sums of money from the accounts to herself and used these monies for her own benefit.

9. Sabrina Pringle's estate planning documents and the testimony of the Respondent demonstrate that Sabrina Pringle intended for assets, including all accounts set forth in ¶4 above, as well as checking and savings accounts, to be held in trust for her son Alex until he reached the age of 30.

10. The Respondent testified that her daughter wanted the trustee to use her assets to take care of Alex.

11. The Respondent admitted, in her answer of June 19, 2018, that the funds from the three Merrill Lynch accounts and the Ameritrade account owned by Ms. Pringle were trust assets.

12. The Respondent admitted that she obtained a trust tax ID number in June 2018.

13. The Respondent represented to Charlene Controne, the court appointed accountant, that all these accounts were trust assets.

14. The Respondent did not present any evidence that Sabrina Pringle did not want her assets to be in the trust nor that she believed that the assets should not remain part of the trust.

15. Although Merrill Lynch did not properly comply with the designation of beneficiary, which specifically stated that the monies were to be "transferred to the trustee of the trust under will of Sabrina Cannon Pringle dated September 30, 2016 and all codicils to such will", the Respondent knew that these monies were to be held in trust.

16. Based upon the forensic accounting, the Respondent wrongfully withdrew and/or

used a total of \$116,328 from the various accounts as well as an additional \$25,000 which she transferred from the Merrill Lynch account in January 2019. The total includes the amount of \$21,141 from Sabrina Pringle's bank account which included social security benefits payable for Alex which were commingled into Sabrina Pringle's account at the time of her death. The amount also includes Respondent's spending from the Founders Federal Credit Union Account Number 3008 for her household expenses and miscellaneous expenses, and various cash withdrawals for which there was no documentation. The amount includes withdrawals from Ameritrade Account Number 32518 in the amounts of \$15,000 and \$6,536.78 as well as a \$15,000 withdrawal from the Merrill Lynch Account Number 1322. The amount also includes various living expenditures the Respondent paid for her and her husband. The accounting is set forth on attachment D to the Controne Report and was introduced through the forensic accounting. In addition, as set forth above, the Respondent withdrew \$25,000 in January, 2019.

17. The Respondent continues to hold funds which belonged to Sabrina Pringle in Merrill Lynch Accounts xxx-1322 and xxx-1336.

18. The property located at 507 Ann Shaw Avenue, Fort Mill, South Carolina is a trust asset and although Sabrina Pringle's will allows the trustee broad discretion to determine a fair market rental value for the property, the trustee has a duty of loyalty to the beneficiary of the trust which requires her, if she used the residence for her own benefit, to reimburse the trust in an amount sufficient to cover the mortgage principal and interest and any escrow, taxes and insurance together with payment of expenses of maintenance, homeowner's association fees and other fees during the period she used the property. South Carolina Code §62-7-802 describes that duty of loyalty as follows: "§62-7-802. **Duty of loyalty.** A trustee shall administer the trust solely in the interests of the beneficiaries." The statute goes on to say that "a . . . transaction involving the . . . management of trust property entered into by the trustee for the trustee's own personal account . . . is voidable." It

was clear from the testimony at trial that the trustee has been taking advantage of an opportunity to live in the residence rent free, and was acting in her own best interests and not those of the beneficiary.

19. The Respondent owes back rental payments in the amount of \$17,600.00 which shall be added to the amounts otherwise set forth in this order.

20. The timeshares are also trust assets. Within thirty (30) days of the entry of this Order, the Respondent shall provide all information in her possession as it relates to the timeshares and the trustee below named shall proceed to liquidate the timeshares.

21. The Petitioner has had to hire counsel to pursue this matter. The attorney for the Petitioner has pursued this matter, taken depositions, presented testimony, pursued various motions with the court, and tried this case. The Petitioner presented an attorney fee affidavit which requested attorney fees in the amount of \$10,612.70. The court finds that this amount is reasonable and was related to protecting the trust for the benefit of Alex Pringle. The hourly rate charged by Petitioner's counsel is a rate customarily charged in this locale. The Petitioner has obtained beneficial results. As such, the Respondent shall likewise be responsible for Petitioner's attorney's fees in the amount of \$10,612.70.

22. The Court appointed Charlene Controne, CPA, CFE, CVA of BNA CPAS & Advisors as an expert to analyze the trust and to testify in this matter. After credit for all amounts paid, a total of \$8,300.00 is due and owing to BNA CPAs for Charlene Controne's work on this case. The Respondent shall pay the total amount to BNA CPAs within 30 days of the date of this order.

23. The court is appointing Charlene Controne, CPA, CFE, CVA of BNA as the substitute trustee. In addition, Brent Cannon is appointed, if he so accepts, as a trust protector pursuant to South Carolina Code §62-7-1005(A)(B). As the trust protector, his fiduciary duty is to monitor the expenditures of the trust to assure that they are spent in a fiscally responsible manner and requesting reasonable expenditures for Alex's behalf, particularly to ensure that he has an ongoing relationship

with his grandparents.

24. The Respondent shall immediately turn over all remaining assets to the trust as set forth above to include the remaining balances in the accounts as set forth in ¶18 above.

### CONCLUSIONS OF LAW

Based on the foregoing findings of fact, it is the conclusion of the Court that:

While Respondent is a loving mother and grandmother, she has not administered the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. South Carolina law requires that in satisfying this standard, a trustee shall exercise reasonable care, skill, and caution. The credible evidence showed that the Respondent has not taken reasonable steps to control and protect the trust property. S.C. Code Ann. §§ 62-7-804 and 62-7-809.

The Respondent has wrongfully appropriated funds which the Decedent intended for the benefit of her son, and the Respondent shall (1) reimburse and pay to the trustee the amount of \$141,328.00, (2) pay to the trustee back rent in the amount of \$17,600.00, (3) pay BNA CPAs \$8,300.00 for the accounting, (4) pay the Petitioner's attorney's fees in the amount of \$10,612.70, and (5) and transfer all assets remaining in the accounts as set forth in Paragraph 17 above, and any residual amounts in the Ameritrade account.

It is in Alex's best interests to appoint BNA CPAs, acting by and through Charlene Controne, CPA, CFE, and CVA, as trustee.

It is prudent to appoint Brent Cannon, if he is willing, as the trust protector, with a fiduciary duty to monitor the expenditures of the trust to ensure the assets are used in a fiscally responsible manner and to request reasonable expenditures on Alex's behalf, particularly to ensure that he has an ongoing relationship with his grandparents.

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There are competing concerns with the trustee continuing to hold title to the residence. Although Sabrina Pringle's will expresses her intent that the residence be maintained for Alex regardless of whether he lives there and he is to be allowed to visit his grandparents there, it also could become and has been a drain on the trust corpus. Respondent may continue to reside in the home for a period of six months following the date of entry of this Order provided she reimburses the trustee on a monthly basis with sufficient funds to cover the mortgage principal, interest, property taxes, hazard insurance, homeowner's dues, pay all utilities and all repairs as well as lawn care. If she misses a monthly reimbursement payment or fail to keep the property in good condition, she must vacate the residence within thirty (30) days of receipt of written notice to vacate from the trustee

The credible evidence showed that the trustee has not kept adequate records of the administration of the trust by keeping trust income and disbursements separate from her own property. S. C. Code Ann. §62-7-810.

The credible evidence showed that trustee has not observed the notice and reporting requirements of S. C. Code Ann. 62-7-813.

It is hereby **ORDERED** that:

1. BNA, Wealth Management Division, acting by and through Charlene Controne, CPA, CFE, CVA, is appointed trustee of the Alex Pringle Trust.
2. BNA, acting by and through Charlene Controne, CPA, shall file an Acceptance of the trusteeship with the Court within thirty (30) days of the entry of this Order.
3. Within thirty (30) days of the entry of this Order, the Respondent shall repay the trust the amount of \$141,320.00 for monies wrongfully spent, repay the trust \$17,600.00 for back rent, pay \$8,300.00 to BNA CPAs, and pay the Petitioner's attorney's fees in the amount of \$10,612.70, for a total of \$177,832.70.

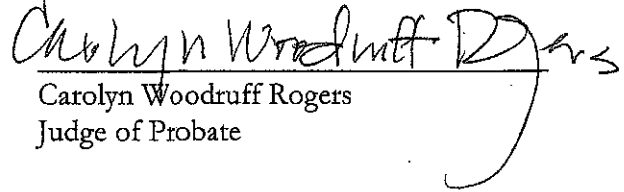
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4. If he chooses to accept the appointment, Brent Cannon is appointed trust protector in order to monitor the expenditures of the trust and to facilitate Alex's relationship with his grandparents as needed by requesting expenditures from the trust, and shall file an acceptance of same with the Court within thirty (30) days of the entry of this Order.
5. The Respondent shall turn over all records associated with 507 Ann Shaw Avenue, Fort Mill, South Carolina including mortgage information, taxes, homeowner's insurance and other relevant information to the trustee to enable the trustee to manage this asset.
6. The Respondent shall turn over all information associated with the two timeshares to the trustee.
7. The Respondent shall vacate the residence at 507 Ann Shaw Avenue, Fort Mill, South Carolina within six (6) months of entry of this Order. During the period of time the Respondent occupies the residence, the Respondent shall pay the mortgage principal and interest, property taxes, homeowner's insurance, and homeowner's dues to the trustee. She is to pay directly all utilities and maintain the property in good condition, including lawn care. If the Respondent misses a monthly payment or fails to keep the property in good condition, she must vacate the residence within thirty (30) days of receipt of written notice to vacate from the trustee.
8. The Respondent was ordered by this Court to obtain a bond and has failed to do so; the Respondent is personally liable for the monies as set forth herein.
9. The Respondent shall immediately turn over all remaining assets to the trust as set forth above to include the remaining balances in the accounts as set forth in ¶17 above and any residual amounts in the Ameritrade account.

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10. A copy of this Order shall be sent to BNA and to Brent Cannon by the Petitioner's attorney.

December 6, 2019  
York, South Carolina

  
Carolyn Woodruff Rogers  
Judge of Probate

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