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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

RECEIVED

The Honorable R. Ferrell Cothran, Circuit Court Judge MAY 08 2013

SC Court of Appeals

Appellate Case No. 2012-213564
Civil Action No. 2012-CP-43-00302

In the Matter of: Estate of Robert Ross Dinkins

Mae Lee Dinkins, Appellant,

v.

Synovus Trust Company, N.A., Respondent.

William C. Cantey, Jr., Respondent.

**RESPONDENT SYNOVUS TRUST COMPANY, N.A.'S
MOTION FOR PERMISSION TO FILE A REPLY BRIEF**

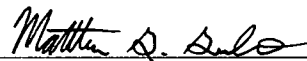
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May 8, 2013

This matter is an appeal by the Appellant, Mae Lee Dinkins, of an Order Granting Synovus Bank's Motion to Dismiss, Granting William C. Cantey, Jr.'s Motion to Intervene, Denying Petitioner's Appeal, and Affirming the Probate Court's January 3, 2012 Order, which was signed by The Honorable R. Ferrell Cothran, Jr. on September 28, 2012 and entered October 1, 2012 (the "Circuit Court Order"). The Circuit Court Order affirmed an Order Denying Petition for Removal of Personal Representative, Granting Request for Compensation, Accepting Resignation of Co-Personal Representative, and Appointing Successor Co-Personal Representative and Trustee, which was signed by The Honorable Dale Atkinson on January 3, 2012 and entered the same day (the "Probate Court Order"). Copies of the Circuit Court Order and the Probate Court Order (without exhibits) are attached hereto as Exhibits 1 and 2, respectively.

In addition to awarding the compensation sought by Synovus Trust Company, N.A. ("Synovus Trust") for its services as Co-Personal Representative of the Estate of Robert Ross Dinkins, the Probate Court Order accepted Synovus Trust's resignation as Co-Personal Representative and appointed William C. Cantey, Jr. as successor Co-Personal Representative. The Appellant appealed the Probate Court Order to the Circuit Court insofar as it awarded compensation to Synovus Trust. She filed a Notice of Intent to Appeal on or about January 9, 2012 and Grounds for Appeal on or about February 16, 2012. Mr. Cantey subsequently filed and served a Motion to Intervene in the appeal on or about May 23, 2012 and a Brief in Support of Appeal on or about June 7, 2012. Over Synovus Trust's objections, Judge Cothran granted the Motion to Intervene. Counsel for Mr. Cantey appeared at the appeal hearing on June 26, 2012 and, along with counsel for the Appellant, argued for the reversal of the Probate Court Order.

The Appellant filed her Initial Brief with this Court on April 24, 2013. One week later, on May 1, 2013, the Clerk of Court's office sent a letter (attached as Exhibit 3) to all counsel of record indicating that Mr. Cantey's party designation had been changed from "Intervenor" to "Respondent." This change presumably gives Mr. Cantey the opportunity to file a brief in this matter. In light of the fact that Mr. Cantey's interest in this matter has been and continues to be aligned with that of the Appellant—both seek the reversal of the Circuit Court Order and the Probate Court Order—Synovus Trust believes it should have the opportunity to respond to any brief which may be filed by Mr. Cantey. Accordingly, if Mr. Cantey files a brief,¹ Synovus Trust respectfully requests permission to file a Reply Brief within ten (10) days after service of Mr. Cantey's brief. Counsel for the Appellant and counsel for Mr. Cantey have indicated they do not object to this request.



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May 8, 2013

¹ After consultation with counsel for Mr. Cantey, the undersigned is informed and believes Mr. Cantey does in fact intend to file a brief seeking the reversal of the Circuit Court Order and the Probate Court Order.

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The Honorable R. Ferrell Cothran, Circuit Court Judge

Appellate Case No. 2012-213564
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In the Matter of: Estate of Robert Ross Dinkins

Mae Lee Dinkins, Appellant,

v.

Synovus Trust Company, N.A., Respondent.

William C. Cantey, Jr., Respondent.

PROOF OF SERVICE

I, the undersigned attorney with Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on May 8, 2013, served a copy of the enclosed **RESPONDENT SYNOVUS TRUST COMPANY, N.A.'S MOTION FOR PERMISSION TO FILE A REPLY BRIEF** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2012 OCT -1 PM 12:58 THE CIRCUIT COURT

In the Matter of
The Estate of Robert Ross Dinkins

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-00302

Mae Lee Dinkins, Co-Personal
Representative,

Petitioner,

Synovus Trust Company, N.A.,

Respondent,

William C. Cantey, Jr.,

Intervenor.

**ORDER GRANTING SYNOVUS
BANK'S MOTION TO DISMISS,
GRANTING WILLIAM C. CANTEY,
JR.'S MOTION TO INTERVENE,
DENYING PETITIONER'S APPEAL,
AND AFFIRMING THE PROBATE
COURT'S JANUARY 3, 2012 ORDER**

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James D. Campbell
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

On January 3, 2012, The Honorable Dale Atkinson, Sumter County Probate Judge, entered his Order Denying Petition for Removal of Personal Representative, Granting Request for Compensation, Accepting Resignation of Co-Personal Representative, and Appointing Successor Co-Personal Representative and Trustee (the "Probate Order"). Petitioner Mae Lee Dinkins ("Mrs. Dinkins") timely appealed the Probate Order to this court insofar as it awarded compensation to Synovus Trust Company, N.A. ("Synovus Trust"). The matter came before me on June 25, 2012 for hearings on a Motion to Dismiss filed by the original Respondent (referred to herein as "Synovus Bank"¹) and a Motion to Intervene filed by William C. Cantey, Jr. ("Mr. Cantey"). The matter came before me again on June 26, 2012 for a hearing on the merits of Mrs. Dinkins' appeal. After carefully reviewing the record, the briefs submitted by the parties, and the applicable law, and after considering the arguments of counsel, I hereby GRANT Synovus

¹ The original Respondent was identified as "Synovus Bank, formerly known as Columbus Bank and Trust, as Successor in interest through name Change and by merger with The National Bank of South Carolina."

Bank's Motion to Dismiss and substitute Synovus Trust as the proper Respondent, GRANT Mr. Cantey's Motion to Intervene, DENY Mrs. Dinkins' appeal, and AFFIRM the Probate Order.

FACTUAL AND PROCEDURAL BACKGROUND

On or about July 30, 1982, Robert Ross Dinkins (the "Decedent") executed the Last Will and Testament of Robert Ross Dinkins (the "Last Will"). Item VII of the Last Will named the National Bank of South Carolina and Mae Lee Dinkins, the Decedent's widow, as Co-Personal Representatives of the Estate of Robert Ross Dinkins (the "Estate").² The Decedent passed away on April 11, 2008, and on May 2, 2008, Synovus Trust, as the successor-in-interest to the National Bank of South Carolina's trust and estate business, and Mrs. Dinkins were appointed Co-Personal Representatives of the Estate.

On February 23, 2011, Synovus Trust filed a Conditional Statement of Resignation, in which it conditionally resigned as Co-Personal Representative of the Estate pending an agreement among the interested parties or an order from the Probate Court concerning the payment of reasonable compensation to Synovus Trust for its services as Co-Personal Representative and security for the compensation. On March 2, 2011, Mrs. Dinkins filed a Petition for Removal of Personal Representative, in which she sought the removal of Synovus Trust as Co-Personal Representative for cause. On June 1, 2011, Synovus Trust filed a Request for Compensation detailing the fees it was owed for its services as Co-Personal Representative and seeking the Probate Court's award of those fees.

On July 7, 2011, a hearing was held before Judge Atkinson on both Mrs. Dinkins' Petition for Removal of Personal Representative and Synovus Trust's Request for Compensation.

² Item VIII of the Last Will further nominated the National Bank of South Carolina as trustee of various trusts established by the Last Will. However, Synovus Trust rejected all trusteeships pursuant to S.C. Code § 62-7-701(b).

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On January 3, 2012, Judge Atkinson entered the Probate Order. In the Probate Order, Judge Atkinson found no evidence or testimony had been presented supporting the removal of Synovus Trust as Co-Personal Representative for cause, awarded Synovus Trust the compensation it was seeking,³ accepted Synovus Trust's resignation as Co-Personal Representative, and appointed Mr. Cantey as successor Co-Personal Representative of the Estate and sole trustee of all trusts established by the Last Will.

Mrs. Dinkins timely appealed the Probate Order to this court insofar as it awarded compensation to Synovus Trust, though she named Synovus Bank as the Respondent. She filed her Grounds for Appeal on or about February 16, 2012. On or about April 2, 2012, Synovus Bank filed its Motion to Dismiss, arguing it was not a party to the proceedings below and had been improperly named as the Respondent on appeal. On or about May 25, 2012, Mr. Cantey filed his Motion to Intervene, arguing he had an interest in the outcome of the appeal as the successor Co-Personal Representative of the Estate.

STANDARD OF REVIEW

Appeals from the Probate Court are governed by S.C. Code § 62-1-308. Subsection (d) of that statute provides that the circuit court "shall hear and determine the appeal according to the rules of law." S.C. Code § 62-1-308(d). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." In re Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 257 (1993). Thus, in the absence of a statute or rule prescribing a different standard of review, "the circuit court must apply the same standard that the appellate court would apply were the appeal taken directly to either the supreme court or court of appeals." Univ. of S.

³ The Order also directed the Estate to execute a promissory note in favor of Synovus Trust along with a mortgage securing the note.

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Cal. v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citations and quotations omitted).

“The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity.” Id. In this case, Mrs. Dinkins appealed only the Probate Order’s award of compensation to Synovus Trust. A dispute over the appropriate amount of money to be paid by one party to another is clearly a legal dispute. “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.” In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005).

FINDINGS AND CONCLUSIONS

I. SYNOVUS TRUST, NOT SYNOVUS BANK, IS THE PROPER RESPONDENT ON APPEAL.

Synovus Bank, Synovus Trust, Mrs. Dinkins, and Mr. Cantey all agree that Synovus Trust—not Synovus Bank—should have been named as the Respondent for purposes of this appeal. However, they differ regarding the proper resolution of the issue. Mrs. Dinkins and Mr. Cantey argue that the identification of Synovus Bank as the Respondent was merely a technical error and that Synovus Trust should be substituted as the Respondent because it was served with notice of the appeal and suffered no prejudice. Synovus Trust argues that no appeal has been properly perfected against it and that the appeal should be dismissed entirely. I agree with Mrs. Dinkins and Mr. Cantey. Synovus Trust was properly served with the appeal documents and suffered no prejudice as a result of the captioning error. Accordingly, Synovus Bank is dismissed and Synovus Trust is substituted as the proper Respondent.

RJC

II. MR. CANTEY IS PERMITTED TO INTERVENE.

Rule 24(a), SCRCP, provides:

Upon timely application anyone shall be permitted to intervene in an action: . . .
(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Mr. Cantey argues he has an interest in the outcome of this appeal because the Probate Order impacts his responsibilities as the successor Co-Personal Representative of the Estate. Synovus Trust does not dispute Mr. Cantey's interest in this appeal, but it argues Rule 24(a) does not authorize intervention in this case because Mr. Cantey's ultimate objective—the reversal of the Probate Order—is identical to that of Mrs. Dinkins, and thus Mr. Cantey's interest is adequately represented by Mrs. Dinkins. In response, Mr. Cantey, relying on In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004), asserts his interest is not adequately represented by Mrs. Dinkins because Mrs. Dinkins will not make all of his arguments, Mrs. Dinkins is not capable and willing to make his arguments, and he offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

The South Carolina Supreme Court has held that Rule 24(a) permits "liberal intervention," particularly where "judicial economy will be promoted by the declaration of the rights of all parties who may be affected." Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The court has also cautioned against "rigid" application of Rule 24(a) and noted that each case should be "examined in the context of its unique facts and circumstances." Id. I find that in this case, judicial economy dictates that Mr. Cantey, a person who all parties agree has an interest that may be affected by this appeal and

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whose interest I believe may not be adequately represented by Mrs. Dinkins, should be permitted to intervene.

III. THE APPEAL IS DENIED AND THE PROBATE ORDER IS AFFIRMED.

Mrs. Dinkins advances six arguments in favor of reversing the Probate Order. She is joined by Mr. Cantey as to the first of her six arguments. For the reasons discussed herein, I find that neither Mrs. Dinkins nor Mr. Cantey has established sufficient grounds for the Probate Order's reversal. Accordingly, the appeal is denied and the Probate Order is affirmed.

- A. The alleged impropriety of the Probate Order's command that the Estate execute a promissory note and mortgage in favor of Synovus Trust was not raised to or ruled upon by the Probate Court and, therefore, the issue is not preserved for appellate review. Moreover, the issue was not listed in the Grounds for Appeal and, therefore, is not among the issues to be considered by this court.

In addition to awarding compensation to Synovus Trust, the Probate Order commands the Estate to execute a promissory note and mortgage in favor of Synovus Trust.⁴ Both Mrs. Dinkins and Mr. Cantey argue it was improper for the Probate Court to make such a command. However, this issue was never raised to or ruled upon by the Probate Court. Mr. Cantey acknowledged this in his brief in support of his Motion to Intervene, stating: "Mr. Cantey's argument regarding the Probate Court's abuse of discretion by ordering the execution of the Note and Mortgage in Synovus Trust's favor was never advanced by any of the parties involved. This issue was first brought to light by Mr. Cantey's Brief in Support of the Appeal."⁵ Mrs. Dinkins herself asserts in her brief on appeal that, prior to the entry of the Probate Order, "[t]here was no indication Synovus [Trust] was seeking to force the Estate to execute a promissory note and

⁴ Copies of the promissory note and mortgage are attached to the Probate Order.

⁵ Mr. Cantey's Brief in Support of Appeal was filed on or about June 8, 2012.

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mortgage in favor of Synovus [Trust].” She also protests that “[t]he terms of these documents were never negotiated by any party” and that she “was unaware of their existence until the Probate Court commanded their execution.”

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” Nicholson v. Nicholson, 378 S.C. 523, 537, 663 S.E.2d 74, 81 (Ct. App. 2008) (citations and quotations omitted). “Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.” Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) (citations and quotations omitted). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). “An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment.” Nicholson, 378 S.C. at 537, 663 S.E.2d at 82. This principle “is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments” and “prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” I’On, 338 S.C. at 422, 526 S.E.2d at 724.

Pursuant to these well-established issue preservation rules, it was incumbent upon Mrs. Dinkins to file a Rule 59(e) motion and obtain a ruling from the Probate Court regarding the alleged impropriety of the Probate Order’s command that the Estate execute a promissory note

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and mortgage in favor of Synovus Trust. When she failed to do so, the command became the law of the case which is not preserved for review by this court.

Furthermore, the alleged impropriety of the command in question is not among the four issues listed by Mrs. Dinkins in her Grounds for Appeal. As Mr. Cantey has pointed out, that issue was first raised in his Brief in Support of Appeal, which was filed over four months after the time for filing and serving the grounds of appeal had passed.⁶

"[T]he filing and service of the grounds of appeal . . . are integral parts of the right of appeal from probate court to circuit court." Montgomery v. Keziah, 277 S.C. 84, 85, 282 S.E.2d 853, 854 (1981). The grounds of appeal is a jurisdictional document. See, e.g., Gallagher v. Evert, 353 S.C. 59, 68, 577 S.E.2d 217, 221 (Ct. App. 2002) (finding that the circuit court lacked subject matter jurisdiction to address issues not timely raised in the appellant's grounds for appeal). It provides notice to the responding party of the issues which will be presented to the appellate court and is "necessary for the orderly function of the appellate process." Montgomery, 277 S.C. at 85, 282 S.E.2d at 854.

Because the Grounds for Appeal did not mention the note/mortgage issue, this court would lack subject matter jurisdiction to consider it even if it had been properly preserved for review. See, e.g., Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004) ("A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.").

⁶ The first time Mrs. Dinkins raised the issue was at the appeal hearing on June 26, 2012.

B. There is evidence in the record to support the Probate Order's finding that Synovus Trust properly managed the Estate.

The Probate Order found that "Synovus [Trust] did not . . . mismanage the Estate" and that "Synovus [Trust] has performed all the duties of its office in a capable and competent manner." Probate Order ¶¶ 9-10. Mrs. Dinkins argues this finding was in error and that Synovus Trust mismanaged the Estate. As set forth above, the burden is on Mrs. Dinkins to establish that there is no evidence in the record supporting the Probate Order's findings. See, e.g., In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("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."). I find that she has failed to do so.

Mrs. Dinkins first argues that Synovus Trust improperly increased its fees because the fee schedule in effect on the date of the Decedent's death (referred to by the parties as the "April 2008 PR Fee Schedule") states that Synovus Trust's fees will be computed using the fee schedule in effect at the time it begins its duties. However, Item X of the Last Will directs that Synovus Trust shall receive compensation for its services as Co-Personal Representative according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." To the extent there is any tension between the Last Will and the April 2008 PR Fee Schedule, the Last Will controls, and Synovus Trust was entitled to seek fees based on the schedules in effect at the time services were performed. Because Synovus Trust's fees were established by the terms of the Last Will, Mrs. Dinkins' assent to this arrangement was not necessary.

Mrs. Dinkins next argues that Synovus Trust improperly computed its "First Annual Fee" by using the gross value of the Estate in its computation rather than the net value of the Estate.

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However, the April 2008 PR Fee Schedule called for the First Annual Fee to be calculated "on asset values as reported on [IRS Form 706—United States Estate (and Generation-Skipping Transfer) Tax Return] at [the] applicable rate" of 1.6% per annum. The only evidence in the record regarding the definition of the term "asset value" as it is used in the trust and estate industry is that it is synonymous with "gross asset value" and refers to the market value of an asset.

Third, Mrs. Dinkins argues that Synovus Trust is not entitled to real estate management fees because the April 2008 PR Fee Schedule does not call for such fees, because Synovus Trust hired another company to manage the Estate's beach house, and because Synovus Trust is not licensed to manage real estate. However, as previously mentioned, the Last Will called for Synovus Trust to receive compensation according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." The fee schedules in effect during the second and third years of Estate administration called for real estate management fees. As for the beach house, the record establishes that, while a management company was indeed retained to locate tenants and collect rent, Synovus Trust remained responsible for all other duties related to the property, including repairs, payment of taxes, maintenance of insurance, and so on. Finally, as Co-Personal Representative of the Estate, Synovus Trust did not need a license to manage or sell Estate properties because the real estate licensure statutes do not apply to "the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner's legal interest," S.C. Code § 40-57-240(1), and "a personal representative has the same power over the title to property of the estate that an absolute owner would have[.]" S.C. Code § 62-3-711(a).

Moreover, Item XIII of the Last Will gave Synovus Trust the authority to buy, sell, and lease Estate property.

Accordingly, I find there is evidence in the record to support the Probate Order's finding that Synovus Trust properly managed the Estate and that Mrs. Dinkins has not met her burden of establishing that there is no evidence in the record supporting that finding.

- C. The issue of whether Synovus Trust's fees accrued for longer than they should have was not raised to or ruled upon by the Probate Court and, therefore, it is not preserved for appellate review. Moreover, the issue was not listed in the Grounds for Appeal and, therefore, is not among the issues to be considered by this court.

Mrs. Dinkins asserts, based on her interpretation of the April 2008 PR Fee Schedule, that the accrual of Synovus Trust's fees should have ceased on or about October 28, 2009. She also asserts that, pursuant to S.C. Code § 62-3-1001, Synovus Trust had a duty to close the Estate within the earlier of one year after the first publication of notice to creditors or ninety days after receipt of the federal estate tax closing letter. However, neither issue was raised to or ruled upon by the Probate Court and Mrs. Dinkins did not assert either issue in a Rule 59(e) motion. As set forth above, "[a]n issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment." Nicholson, 378 S.C. at 537, 663 S.E.2d at 82 (citations and quotations omitted). Accordingly, these issues are not preserved for review by this court.

Moreover, these issues were not included among Mrs. Dinkins' Grounds for Appeal. Accordingly, this court would lack subject matter jurisdiction to consider them even if they had been properly preserved for review. See, e.g., Gallagher, 353 S.C. at 68, 577 S.E.2d at 221 (finding that the circuit court lacked subject matter jurisdiction to address issues not timely raised in the appellant's grounds for appeal).

- D. There is evidence in the record to support the Probate Order's finding that Synovus Trust did not make material misrepresentations amounting to a conflict of interest in violation of South Carolina law.

The Probate Order includes a finding that "Synovus [Trust] did not intentionally misrepresent material facts in the proceedings leading to its appointment[.]" Probate Order ¶ 9. However, Mrs. Dinkins argues Synovus Trust was a creditor of the Estate and that it should have revealed that information on its Probate Court application because it presented a conflict of interest.⁷ She asserts that Synovus Trust's failure to disclose its alleged creditor status was a misrepresentation constituting a fraud upon the court. However, the record evidence indicates that while Synovus Bank, a separate and distinct entity from Synovus Trust, was a creditor of the Estate, Synovus Trust has never been a creditor of the Estate. Accordingly, there was nothing for Synovus Trust to disclose on its Probate Court application. I find, therefore, that there is evidence in the record to support the Probate Order's finding that Synovus Trust did not make material misrepresentations amounting to a conflict of interest in violation of South Carolina law and that Mrs. Dinkins has not met her burden of establishing that there is no evidence in the record supporting that finding.

- B. There is evidence in the record to support the Probate Order's finding that Synovus Trust did not violate its fiduciary duty to the Estate.

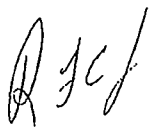
The Probate Order also includes a finding that "Synovus [Trust] did not . . . fail to perform any duty pertaining to its office." Probate Order ¶ 9. Mrs. Dinkins argues this was error because, in her view, Synovus Trust violated its fiduciary duty to the Estate when it declined to

⁷ In light of the fact that S.C. Code § 62-3-203(a)(6) authorizes creditors of an estate to serve as personal representative, Synovus Trust would not have been conflicted out of serving as Co-Personal Representative even if it was a creditor of the Estate. Cf. Tyson v. N.C. Nat'l Bank, 280 S.E.2d 478, 481 (N.C. Ct. App. 1981) modified on other grounds, 286 S.E.2d 561 (N.C. 1982) ("No conflict of interest is created by the mere fact that the executor of the estate also occupied the status of creditor.") (citing North Carolina's priority statute).

resign as Co-Personal Representative at her request until after an agreement had been reached regarding its fees. However, I am not aware of any authority, and Mrs. Dinkins has not cited any, that supports the notion that a personal representative's refusal to resign upon request constitutes a breach of fiduciary duty. Synovus Trust was the successor in interest to the entity named as Co-Personal Representative in the Last Will. As such, it was under no obligation to resign at Mrs. Dinkins' request. Cf. Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) ("The mere existence of conflict between a personal representative and a beneficiary is an inadequate reason for removal of the personal representative."). Thus, I find there is evidence in the record to support the Probate Order's finding that Synovus Trust did not violate its fiduciary duty to the Estate and that Mrs. Dinkins has not met her burden of establishing that there is no evidence in the record supporting that finding.

- F. There is evidence in the record to support the Probate Order's finding that Synovus Trust was qualified to serve as Co-Personal Representative. However, even if Synovus Trust was not qualified under South Carolina law, it was qualified under preemptive federal law.

Mrs. Dinkins asserts Synovus Trust was not properly qualified to serve as Co-Personal Representative under South Carolina law. She first cites S.C. Code § 62-3-203(e)(3) in support of this proposition. That section prohibits a person from serving as personal representative if it is: (1) a corporation created by another state of the United States or by any foreign state, kingdom, or government; or (2) a corporation created under the laws of the United States and not having a business in South Carolina. However, I find that the record evidence indicates Synovus Trust is chartered under the laws of the United States and has a business in South Carolina. Accordingly, Section 62-3-203(e)(3) is inapplicable to Synovus Trust.



Mrs. Dinkins next cites S.C. Code § 33-15-101(a), which provides that a foreign corporation may not transact business in South Carolina until it obtains a certificate of authority from the Secretary of State. Synovus Trust obtained a certificate of authority on July 7, 2011, the date of the Probate Court hearing. Assuming it was required to obtain a certificate prior to that date, its failure to do so would not disqualify it from serving as Co-Personal Representative because such a harsh remedy is not among the consequences of transacting business in South Carolina without authority listed in S.C. Code § 33-15-102. Moreover, “the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts[.]” S.C. Code § 33-15-102(e). See also Official Comment to Section 33-15-102 (stating that this section does not impose “harsh or erratic sanctions” and that it “rejects the provisions adopted in a few states that make unenforceable intrastate transactions by unqualified corporations or that impose punitive sanctions or forfeitures on nonqualifying corporations”).

Finally, Mrs. Dinkins cites S.C. Code § 34-21-10, which requires the prior written approval of the State Board of Bank Control (now known as the State Board of Financial Institutions) before an entity may conduct trust business in South Carolina (unless the entity is a national banking association with its principal place of business in South Carolina). However, this section does not apply to Synovus Trust, a national banking association,⁸ pursuant to 12 C.F.R. § 9.7(e)(2), which preempts “state laws limiting or establishing preconditions on the exercise of fiduciary powers” by national banks, stating that such laws “are not applicable to national banks.”⁹ The Office of the Comptroller of the Currency, the federal agency which

⁸ See Office of the Comptroller of the Currency’s National Bank List, <http://www.occ.treas.gov/topics/licensing/national-bank-lists/national-by-name-v2.pdf> (accessed August 27, 2012).

⁹ Mrs. Dinkins points out that the U.S. District Court for the District of South Carolina held in 1974 that a predecessor statute to Section 34-21-10 was constitutional. However, that fact has no bearing on whether Section 34-21-10 is preempted pursuant to 12 C.F.R. § 9.7(e)(2), which was not promulgated until 2001.

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regulates national banks, has specifically indicated that Section 34-21-10 does not apply to national banks in light of 12 C.F.R. § 9.7(e)(2). See Office of the Comptroller of the Currency, Interpretive Letter No. 1106, 2008 WL 7448059 at *3 (O.C.C. October 10, 2008) (stating that Section 34-21-10 is not applicable to national banks and that a national bank may exercise its federally authorized fiduciary powers in South Carolina notwithstanding any state laws conditioning the exercise of those powers).

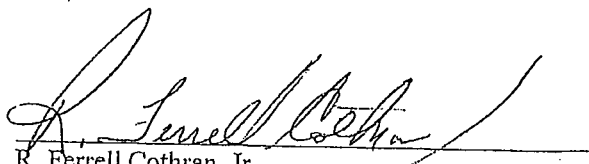
IT IS, THEREFORE, ORDERED that Synovus Bank's Motion to Dismiss is **GRANTED**. The Clerk of Court is directed to dismiss Synovus Bank as the Respondent and substitute Synovus Trust Company, N.A. as the Respondent.

IT IS FURTHER ORDERED that William C. Cantey, Jr.'s Motion to Intervene is **GRANTED**. The Clerk of Court is directed to add Mr. Cantey to the list of parties as an Intervenor.

IT IS FURTHER ORDERED that the appeal filed by Mae Lee Dinkins is **DENIED**.

IT IS FURTHER ORDERED that the Probate Court's January 3, 2012 Order Denying Petition for Removal of Personal Representative, Granting Request for Compensation, Accepting Resignation of Co-Personal Representative, and Appointing Successor Co-Personal Representative and Trustee is **AFFIRMED**.

AND IT IS SO ORDERED.


R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

Sept. 28, 2012
Manning, South Carolina

DALE ATKINSON
PROBATE COURT JUDGE

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
SUMTER COUNTY, S.C.
IN THE PROBATE COURT

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SUMTER COUNTY, S.C.

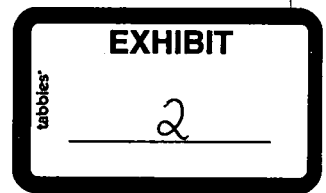
Case No. 2008-ES-43-00208

In the Matter of
The Estate of Robert Ross Dinkins

**ORDER DENYING PETITION FOR
REMOVAL OF PERSONAL
REPRESENTATIVE, GRANTING
REQUEST FOR COMPENSATION,
ACCEPTING RESIGNATION OF CO-
PERSONAL REPRESENTATIVE, AND
APPOINTING SUCCESSOR
CO-PERSONAL REPRESENTATIVE
AND TRUSTEE**

This matter came before me on July 7, 2011, for a hearing on a Petition for Removal of Personal Representative filed by Mae Lee Dinkins ("Mrs. Dinkins"), one of two Co-Personal Representatives of the Estate of Robert Ross Dinkins (the "Estate"), and a Request for Compensation filed by Synovus Trust Company, N.A. ("Synovus"), the other Co-Personal Representative of the Estate. After carefully reviewing the pleadings, the testimony and evidence presented, and the applicable law, and after considering the arguments of counsel, I hereby DENY Mrs. Dinkins' Petition for Removal of Personal Representative and GRANT Synovus' Request for Compensation. Furthermore, because all conditions set forth in Synovus's Conditional Statement of Resignation are satisfied by this Order, I hereby ACCEPT Synovus's resignation as Co-Personal Representative of the Estate. Finally, upon the consent of the parties and the agreement of William C. Cantey, Jr. ("Cantey"), I hereby APPOINT Cantey as successor Co-Personal Representative of the Estate and sole Trustee of all trusts established by the Last Will and Testament of Robert Ross Dinkins (the "Last Will").

FILED IN THE OFFICE OF ORIGINAL
FILED IN THIS OFFICE:
Gary C. King
Clerk, Judge of Probate
Sumter County
South Carolina



FINDINGS OF FACT

1. On or about July 30, 1982, Robert Ross Dinkins (the "Decedent") executed the Last Will.

2. Item VII of the Last Will named the National Bank of South Carolina ("NBSC") and Mrs. Dinkins, the Decedent's widow, as Co-Personal Representatives of the Estate.¹

3. Synovus is the successor-in-interest to NBSC's trust and estate business.

4. The Decedent died on April 11, 2008.

5. Synovus and Mrs. Dinkins were appointed Co-Personal Representatives of the Estate on May 2, 2008, and have served as Co-Personal Representatives without interruption since that date.

6. On February 23, 2011, Synovus filed its Conditional Statement of Resignation, in which it conditionally resigned as Co-Personal Representative of the Estate pending an agreement among the interested parties or an order from this Court concerning the payment of reasonable compensation to Synovus for its services as Co-Personal Representative and security for the compensation.

7. Mrs. Dinkins filed her Petition for Removal of Personal Representative on March 2, 2011.

8. Synovus filed its Request for Compensation on June 1, 2011.

9. No evidence or testimony presented by Mrs. Dinkins lends sufficient cause for the removal of Synovus as Co-Personal Representative pursuant to S.C. Code § 62-3-611. Involuntary removal of Synovus would not be in the best interests of the estate, and Synovus did not intentionally misrepresent material facts in the proceedings leading to its appointment,

¹ Item VIII of the Last Will further nominated NBSC as trustee of various trusts established by the Last Will. However, no trust has yet been funded and Synovus has indicated its desire to reject all trusteeships pursuant to S.C. Code § 62-7-701(b).

disregard a court order, become incapable of discharging the duties of its office, mismanage the Estate, or fail to perform any duty pertaining to its office.

10. Synovus has performed all the duties of its office in a capable and competent manner. Indeed, Synovus has provided extraordinary services above and beyond those typically required for an estate the size of the Estate.

11. The interested parties have been unable to reach an agreement concerning the payment of reasonable compensation to Synovus for its services as Co-Personal Representative and security for the compensation.

12. Item X of the Last Will directs that Synovus shall receive compensation for its services as Co-Personal Representative according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services."

13. The Synovus Co-Executor Compensation Schedule in effect on the date of the Decedent's death is the schedule referred to by the parties as the "April 2008 PR Fee Schedule."

14. In August 2008, Synovus revised its Co-Executor Compensation Schedule in the normal course of its business. Mrs. Dinkins signed a copy of the revised compensation schedule in January 2009. This revised compensation schedule has been referred to by the parties as the "August 2008 PR Fee Schedule."

15. In August 2010, Synovus again revised its Co-Executor Compensation Schedule in the normal course of its business, renaming the document the Co-Personal Representative Compensation Schedule. This revised compensation schedule has been referred to by the parties as the "August 2010 PR Fee Schedule."

16. Pursuant to Item X of the Last Will, Synovus's fees are to be calculated using the April 2008 PR Fee Schedule, the August 2008 PR Fee Schedule, and the August 2010 PR Fee

Schedule (collectively, the "PR Fee Schedules") for the respective periods during which each schedule was in effect.

17. According to the April 2008 PR Fee Schedule, Synovus's compensation for the first twelve months of estate administration (the "First Annual Fee") is calculated "on asset values as reported on [IRS Form 706—United States Estate (and Generation-Skipping Transfer) Tax Return] at [the] applicable rate" of 1.6% per annum.

18. The Estate's IRS Form 706 reported a gross estate value of \$7,567,376.00.

19. The First Annual Fee, pursuant to the April 2008 PR Fee Schedule, totals \$120,827.54, calculated as follows:

\$7,567,376.00 x 0.016	=	\$121,078.02
Less 25% discount for non-probate property ²		<u>(\$250.48)</u>
TOTAL FIRST ANNUAL FEE	=	\$120,827.54

20. The First Annual Fee constitutes Synovus's compensation for the first twelve months of estate administration. Thereafter, the August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule call for Synovus to be compensated via monthly fees calculated on the value of the Estate's undistributed assets (the "Monthly Fees"). The applicable provision of the August 2008 PR Fee Schedule states: "Thereafter [i.e. after the first twelve months of estate administration], Synovus Trust Company's annual prevailing Trustee rate (available as a separate schedule) will be charged on undistributed estate assets, computed and charged to the account monthly." The applicable provision of the August 2010 PR Fee Schedule similarly states: "Thereafter [i.e. after the first twelve months of estate administration], the annual prevailing Synovus Trustee rate (available as a separate schedule) will be charged on undistributed estate assets, computed and charged to the account monthly."

² The April 2008 PR Fee Schedule provides that a discount of 25% will be applied to assets payable directly to beneficiaries and not passing under the terms of the Last Will.

21. Pursuant to the August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule, the Monthly Fees are calculated monthly using the rates set forth in Synovus's Trustee Compensation Schedules. The parties have referred to two such schedules, one revised in August 2008 (the "August 2008 Trustee Fee Schedule") and one revised in June 2010 (the "June 2010 Trustee Fee Schedule") (collectively, the "Trustee Fee Schedules"), which are identical with respect to fee rates.³

22. Synovus's Monthly Fees through April 2011, pursuant to the August 2008 PR Fee Schedule, the August 2010 PR Fee Schedule, and the Trustee Fee Schedules, are \$110,984.03, itemized as follows:

May 2009	NAV ⁴ = \$5,619,119.78	\$4,731.19
June 2009	NAV = \$5,601,099.22	\$4,721.43
July 2009	NAV = \$5,486,898.70	\$4,659.57
August 2009	NAV = \$5,460,901.07	\$4,645.49
September 2009	NAV = \$5,473,084.52	\$4,652.09
October 2009	NAV = \$5,429,870.98	\$4,628.68
November 2009	NAV = \$5,443,342.94	\$4,635.98
December 2009	NAV = \$5,449,435.43	\$4,639.28
January 2010	NAV = \$5,442,669.92	\$4,635.61
February 2010	NAV = \$5,442,509.33	\$4,635.53
March 2010	NAV = \$5,414,309.77	\$4,620.25
April 2010	NAV = \$5,414,747.05	\$4,620.49
May 2010	NAV = \$5,408,812.71	\$4,617.27
June 2010	NAV = \$5,405,082.67	\$4,615.25
July 2010	NAV = \$5,401,841.51	\$4,613.50
August 2010	NAV = \$5,399,386.08	\$4,612.17
September 2010	NAV = \$5,405,183.64	\$4,615.31
October 2010	NAV = \$5,399,433.19	\$4,612.19
November 2010	NAV = \$5,403,704.76	\$4,614.51
December 2010	NAV = \$5,336,315.54	\$4,578.00
January 2011	NAV = \$5,329,332.96	\$4,574.22
February 2011	NAV = \$5,329,405.18	\$4,574.26
March 2011	NAV = \$5,315,265.42	\$4,566.60

³ The rates are: 1.5% on the first \$1,000,000.00 of undistributed Estate assets, 1.1% on the next \$1,500,000.00 of undistributed Estate assets, 0.85% on the next \$2,500,000.00 of undistributed Estate assets, and 0.65% on the next \$5,000,000.00 of undistributed Estate assets.

⁴ "NAV" (net asset value) refers to the net value of the undistributed Estate assets.

April 2011	NAV = \$5,312,606.44	<u>\$4,565.16</u>
TOTAL MONTHLY FEES THROUGH 4/11	=	\$110,984.03

23. The August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule call for additional compensation to be paid to Synovus for the maintenance, management, sale, or purchase of real property held by the Estate. The annual maintenance fee (the "Maintenance Fee") for real property held by the Estate is \$250 per parcel, the annual real estate management fee (the "Management Fee") for real property held by the Estate is 0.25% of the market value of the assets managed, and the fee for sales or purchases of real property (the "Sale/Purchase Fee") is 3% of the gross sale or purchase price if completed through a licensed broker or 6% of the gross sale or purchase price if not completed through a licensed broker.⁵

24. Synovus's Maintenance Fees for the second and third years of estate administration, pursuant to the August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule, are \$27,000.00, calculated as follows:

Second Year	55 parcels x \$250 per parcel	=	\$13,750.00
Third Year	53 parcels x \$250 per parcel	=	<u>\$13,250.00</u>
	TOTAL MAINTENANCE FEES	=	\$27,000.00

25. Synovus's Management Fees for the second and third years of estate administration, pursuant to the August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule, are \$27,106.09, calculated as follows:

Second Year	\$5,902,126.91 x 0.0025	=	\$14,755.32
Third Year	\$5,812,126.91 x 0.0025 x 0.85 ⁶	=	<u>\$12,350.77</u>
	TOTAL MANAGEMENT FEES	=	\$27,106.09

⁵ Synovus was entitled to begin accruing these real estate fees in August 2008 when the August 2008 PR Fee Schedule went into effect. However, Synovus advised it would forego real estate fees for the period from August 2008 through April 2009.

⁶ Synovus voluntarily gave a 15% discount on its third year Management Fee in recognition of the decline in the national real estate market.

26. Synovus has accrued one Sale/Purchase Fee pursuant to the August 2008 PR Fee Schedule and the August 2010 PR Fee Schedule in the amount of \$8,400.00 for the sale of 119 North Main Street, Sumter, SC, for \$140,000.00 without the assistance of a licensed broker.

27. Based on the above, the fees accrued by Synovus through April 2011 pursuant to the PR Fee Schedules (except real estate fees for the period from August 2008 through April 2009) total \$294,317.66, calculated as follows:

First Annual Fee	\$120,827.54
Monthly Fees	\$110,984.03
Maintenance Fees	\$27,000.00
Management Fees	\$27,106.09
Sale/Purchase Fee	<u>\$8,400.00</u>
TOTAL FEES ACCRUED	= \$294,317.66

28. The total fees due Synovus pursuant to the PR Fee Schedules (\$294,317.66) are reasonable, especially in light of the extraordinary services provided to the Estate by Synovus.

29. Synovus has been paid \$35,602.59 by the Estate to date. Therefore, the fees currently due Synovus total \$258,715.07, calculated as follows:

Total Fees	\$294,317.66
Less Fees Already Collected	(\$35,602.59)
TOTAL FEES CURRENTLY DUE	= \$258,715.07

30. The only Estate asset with sufficient equity to secure the compensation due Synovus is the real property located at 601 Hazard Street, Pawleys Island, SC 29585, Georgetown County Tax Map No. 42-0174-091-00-00 (the "Beach House").

31. Cantey is suitable and qualified to serve as successor Co-Personal Representative and sole Trustee of all trusts established by the Last Will.

32. Any of the conclusions of law set forth below or any portion thereof which may be considered findings of fact are incorporated herein as findings of fact.

CONCLUSIONS OF LAW

33. Synovus timely filed an Answer to Mrs. Dinkins' Petition for Removal of Personal Representative on March 31, 2011.

34. Mrs. Dinkins timely filed an Answer to Synovus's Request for Compensation on June 29, 2011.

35. No cause exists to remove Synovus as Co-Personal Representative pursuant to S.C. Code § 62-3-611.

36. Synovus is entitled to reasonable compensation for its services as Co-Personal Representative.

37. Synovus is entitled to security for its compensation from one or more Estate assets.

38. Because the Last Will provides for the compensation to be paid for Synovus's services as Co-Personal Representative, the limitations of S.C. Code § 62-3-719(a) and (b) do not apply.

39. Mrs. Dinkins' signature was not required on any of the PR Fee Schedules because Item X of the Last Will directs that Synovus shall be compensated according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services."

IT IS, THEREFORE, ORDERED that Mrs. Dinkins' Petition for Removal of Co-Personal Representative is **DENIED**.

IT IS FURTHER ORDERED that Synovus's Request for Compensation is **GRANTED**.

IT IS FURTHER ORDERED that Synovus is entitled to reasonable fees for its services as Co-Personal Representative in the total amount of \$294,317.66.

IT IS FURTHER ORDERED that, giving credit for all amounts previously paid to Synovus by the Estate, the total amount currently due Synovus is \$258,715.07.

IT IS FURTHER ORDERED that Synovus's compensation shall be secured by a promissory note and mortgage on the Beach House.

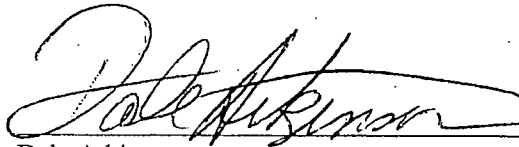
IT IS FURTHER ORDERED that, within 15 days of the date of this Order, the Estate shall execute the promissory note attached to this Order as "Exhibit A" and the mortgage attached to this Order as "Exhibit B"⁷ and deliver the same to Alan J. Reyner, Esquire, counsel for Synovus, for the safekeeping of the note and the recording of the mortgage.

IT IS FURTHER ORDERED that Synovus's Conditional Statement of Resignation is accepted.

IT IS FURTHER ORDERED that Cantey is hereby appointed as successor Co-Personal Representative of the Estate and sole Trustee of all trusts established by the Last Will.

IT IS FURTHER ORDERED that Cantey and Mrs. Dinkins, as Co-Personal Representatives of the Estate, shall timely carry out this Court's instructions with regard to the attached note and mortgage as described above.

AND IT IS SO ORDERED.



Dale Atkinson
Sumter County Probate Judge

Jan 3 2012
Sumter, South Carolina

⁷ As part of the execution, the Co-Personal Representatives shall initial the bottom of each page of the note and mortgage.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 01, 2013

Mr. W. Steven Johnson
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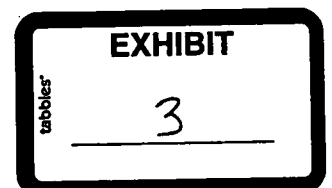
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Mr. Robert D. Hazel
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Mr. John T. Moore
PO Box 11070
Columbia SC 29211

Re: Estate of Robert Ross Dinkins v. Synovus
Appellate Case No. 2012-213564

Dear Counsel:

This is to advise that the title in the above matter has been changed to read as follows:

In the matter of: Estate of Robert Ross Dinkins

Mae Lee Dinkins, Appellant,

v.

Synovus Trust Company, N.A., Respondent,

William C. Cantey, Jr., Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allan, Deputy

CLERK