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OPINION OF THE SUPREME COURT
OF SOUTH CAROLINA
(DECEMBER 12, 2018)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BETTY FISHER AND LISA FISHER,

Appellants,

v.

BESSIE HUCKABEE, KAY PASSAILAIGUE
SLADE AND SANDRA BYRD,

Respondents.

IN THE MATTER OF THE
ESTATE OF ALICE SHAW-BAKER.

Appellate Case No. 2018-000566

Appeal From Charleston County
Thomas L. Hughston, Jr., Circuit Court Judge

Memorandum Opinion No. 2018-MO-039

PER CURIAM

Having carefully reviewed the record, and pursuant to Rule 220(b)(1), SCACR:

1. We affirm the jury verdict upholding the validity of Alice Shaw-Baker's last will pursuant to the following authorities: *In re Estate of Pallister*, 363 S.C. 437,

447, 611 S.E.2d 250, 256 (2005) (explaining an action to determine the validity of a will or to contest a will is an action at law); *York v. Conway Ford, Inc.*, 325 S.C. 170, 174, 480 S.E.2d 726, 728 (1997) (“In an action at law, on appeal of a case tried by a jury, our scope of review extends merely to the correction of errors of law; a factual finding of the jury will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the jury’s finding.”); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal). Moreover, we find that the purported erroneous exclusion of evidence in no manner affected the jury verdict upholding Shaw-Baker’s last will. *See Jenkins v. Waterfront Emp’rs-Int’l Longshoremen Ass’n Pension Welfare & Vacation Fund*, 260 S.C. 277, 282, 195 S.E.2d 598, 600 (1973) (“It is, of course, well settled that the admission or rejection of proffered testimony is largely within the sound discretion of the trial judge and that his exercise of such discretion will not be disturbed on appeal unless it can be shown that there was an abuse of discretion amounting to an error of law and that an appellant has been prejudiced thereby.”).

2. We have independently reviewed the evidence concerning Appellants’ request to impose a constructive trust over the probate and non-probate assets in favor of animal charities. Our review of the evidence is in accord with that of the trial court. Appellants have no standing to assert the imposition of a constructive trust; Lisa Fisher’s argument in support of standing

borders on frivolity. We affirm pursuant to the following authorities: *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001) (“To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. A [] person does not have standing unless he has sustained, or is in immediate danger of sustaining, prejudice from an . . . action.” (emphasis added) (internal citations omitted) (internal quotation marks omitted)); S.C. Code Ann. § 62-7-405(c) (Supp. 2018) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.”).

3. We reverse the trial court’s award of sanctions against Betty Fisher, in its entirety, for three reasons. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 538 n.11, 818 S.E.2d 758, 768 n.11 (2018) (“The decision to impose sanctions is one in equity, and thus the appellate court reviews the circuit court’s factual findings de novo. If the appellate court agrees with the factual findings, then it reviews the circuit court’s decision to impose sanctions and the amount of sanctions for an abuse of discretion.” (internal citation omitted)); *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004) (“An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support.”). First, the sanctions awarded against Betty

Fisher do not mathematically add up to the claimed total in the trial court's final order and, at times, lack factual support in the record. *See Patel*, 359 S.C. at 529, 599 S.E.2d at 121 (stating a decision that lacks factual support in the record amounts to an abuse of discretion). Second, the trial court imposed \$78,596.02 in sanctions against Betty Fisher for improper expenditure of estate assets when it is uncontroverted Betty Fisher had no control over those assets and nothing to do with any allegedly improper expenditures. Third, and perhaps most importantly, although Betty Fisher was a named party in all of the numerous actions involving Shaw-Baker's estate, she was not in charge of the actions and merely went along with what her daughter—Lisa Fisher, an attorney in California—advised her. From our review of the record, it does not appear *Betty* Fisher individually engaged in egregious, sanctionable conduct. As a result, we find the decision to impose sanctions against Betty Fisher was an abuse of discretion and vacate all judgments against her.

4. We affirm in part and reverse in part the trial court's award of sanctions against Lisa Fisher. Lisa Fisher has certainly engaged in abusive litigation tactics that amount to sanctionable conduct. However, regarding the specific sanctions amount imposed on her, we find the trial court's orders contain addition and subtraction errors, double-counting of certain portions of the award, a lack of evidence as to other portions of the award, and a number of other errors, mathematical and otherwise.¹ Nonetheless, we are

¹ We recognize the trial court drafted the orders, which Respondents' counsel lamented at oral argument. The errors in terms of the sanctions award are numerous. For example, although

able to affirm a sanctions award of \$16,680.28 against Lisa Fisher, but only to that extent. We have endeavored to further reconcile the various numbers cited in the sanctions orders, yet despite our best efforts, are unable to do so. Accordingly, we reverse the balance of the sanctions award, including the award of attorneys' fees to Respondents' counsel. *See Patel*, 359 S.C. at 529, 599 S.E.2d at 121.

In sum, we: (1) affirm the jury verdict; (2) affirm the refusal to impose a constructive trust on probate and non-probate assets; (3) reverse all judgments against Betty Fisher; (4) reverse all judgments against Lisa Fisher in favor of Respondents' counsel; and (5) affirm as modified the award of sanctions against Lisa Fisher in favor of Shaw-Baker's estate in the amount of \$16,680.28. Given the protracted litigation in this and related suits and the desperate need to finish the seemingly endless fighting over Shaw-Baker's estate, we decline to remand any of these matters to the circuit court for further consideration. This case is concluded.

AFFIRMED IN PART, REVERSED IN PART.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

this is by no means the exclusive error, in the 2018 orders dated June 29, July 9, and July 23, the trial court stated it was crediting Lisa Fisher with \$11,462.85 in proper expenditures of estate assets for certain categories of expenses, including paying the property taxes and insurance on Shaw-Baker's real property in the years following her death. However, the trial court did not actually credit her with that, or any, amount from the remaining total of improper estate expenditures it listed.

OPINION OF THE SUPREME COURT
OF SOUTH CAROLINA (REISSUED)
(JANUARY 16, 2019)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BETTY FISHER AND LISA FISHER,

Appellants,

v.

BESSIE HUCKABEE, KAY PASSAILAIGUE
SLADE AND SANDRA BYRD,

Respondents.

IN THE MATTER OF THE
ESTATE OF ALICE SHAW-BAKER.

Appellate Case No. 2018-000566

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ant to Rule 11, SCRCP, we are able to affirm a sanctions award of \$16,680.28 against Lisa Fisher, but only to that extent.² We have endeavored to further reconcile the various numbers cited in the sanctions orders, yet despite our best efforts, are unable to do so. Accordingly, we reverse the balance of the sanctions award, including the award of attorneys' fees to Respondents' counsel. *See Patel*, 359 S.C. at 529, 599 S.E.2d at 121.

In sum, we: (1) affirm the jury verdict; (2) affirm the refusal to impose a constructive trust on probate and non-probate assets; (3) reverse all judgments against Betty Fisher; (4) reverse all judgments against Lisa Fisher in favor of Respondents' counsel; and (5) affirm as modified the award of sanctions against Lisa Fisher in favor of Shaw-Baker's estate in the amount of \$16,680.28. Given the protracted litigation in this and related suits and the desperate need to finish the seemingly endless fighting over Shaw-Baker's estate, we decline to remand any of these matters to the circuit court for further consideration. This case is concluded.

June 29, July 9, and July 23, the trial court stated it was crediting Lisa Fisher with \$11,462.85 in proper expenditures of estate assets for certain categories of expenses, including paying the property taxes and insurance on Shaw-Baker's real property in the years following her death. However, the trial court did not actually credit her with that, or any, amount from the remaining total of improper estate expenditures it listed.

² Although the trial court's imposition of sanctions on Lisa Fisher was initially based on violations of Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10 to -100 (Supp. 2018), we clarify our partial affirmance of the sanctions award rests solely on Lisa Fisher's violations of Rule 11.

AFFIRMED IN PART, REVERSED IN PART.

BEATTY, C.J., KITTREDGE, HEARN, FEW
and JAMES, JJ., concur.

ORDER OF THE SUPREME COURT
OF SOUTH CAROLINA GRANTING
PETITION FOR REHEARING
(JANUARY 16, 2019)

THE SUPREME COURT OF COURT CAROLINA

BETTY FISHER and LISA FISHER,

Appellants,

v.

BESSIE HUCKABEE,
KAY PASSAILAIGUE SLADE and SANDRA BYRD,

Respondents.

No. 2018-000566

Before: Donald Wayne BEATTY, Chief Justice, Kaye
Gorenflo HEARN, John Cannon FEW, John W.
KITTRIDGE, George C. JAMES, JR., Judges.

After careful consideration of the cross petitions for rehearing, the Court grants Appellants' petition for rehearing, dispenses with further briefing, and substitutes the attached opinion for the opinion previously filed in this matter. The Court denies Respondents' petition for rehearing.

/s/ Donald Wayne Beatty
C.J.

/s/ John W. Kittredge
J.

/s/ Kaye Gorenflo Hearn
J.

/s/ John Cannon Few
J.

/s/ George C. James, Jr.
J.

Columbia, South Carolina

January 16, 2019

**ORDER OF THE COURT OF COMMON PLEAS
(JULY 23, 2018)**

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiffs,

v.

BESSIE HUCKABEE,
KAY PASSAILAGUE SLADE, and SANDRA BYRD,

Defendants.

Case No.: 2009-CP-10-3010

Before: Thomas L. HUGHSTON, Jr., Presiding Judge.

Relevant Procedural History

THIS MATTER is currently before me on both parties' post-trial motions. I previously ruled on these motions and imposed Judgments against Plaintiffs and their attorneys by Order filed March 21, 2018. Thereafter, both parties filed motions to reconsider and Plaintiffs filed for a writ of supersedeas. I ruled on those motions and amended the Judgments against Plaintiffs and their attorneys by Order filed May 29, 2018. Then on May 31, 2018, Defendants' counsel filed

a motion to reconsider the Judgments requesting a combined additional \$15,953.75 for services performed after the March 21, 2018 Order. Plaintiffs filed an objection to the current and any additional award of attorney's fees. However, unbeknownst to me, the day before my May 29th Order the Supreme Court issued a temporary stay on all Orders pending its ruling on Plaintiffs' writ of supersedeas. On June 13, 2018, the Supreme Court denied Plaintiffs' writ and vacated my May 29, 2018 Order. As a result, I revisited the parties' motions to reconsider and issued my Order on June 29, 2018. I then discovered a scrivener's error—Betty Fisher was omitted from the judgments I imposed—and corrected that in my July 9, 2018 Order. Subsequently, Defendants filed a Motion to Reconsider the issue of attorney's fees and counsel for attorney John Hughes Cooper requested clarification as to the judgments against him. I now clarify the judgments below and, for the reasons stated herein, Grant Defendants' motion.

**Defendants' Motion to Reconsider
Award of Attorney's Fees**

I initially awarded Defendants their attorneys' fees in the amount of \$157,539.93. After consideration of Plaintiffs' objections and further review of Defendants' attorneys' affidavits, I subtracted amounts that appeared to be attributable to other related actions. After review of Defendants' motion to reconsider and upon further consideration of this issue, I realize that I incorrectly evaluated Defendants' affidavits. I was under the impression that Attorney Wills substituted attorney Kouten as counsel for both the Estate and the individual Defendants. As it turns out, attorney

Kouten maintained his representation of the Personal Representative until his appointment to Probate Judge in 2017. As for the reduction of attorney Crowley's fees, I incorrectly reduced her fees for actions regarding the ejectment of the tenant at Alice Shaw-Baker's home. The actions reflected in her affidavit were in furtherance of my April 3, 2018 Order requiring the unauthorized occupant to vacate the home. The motion also maintains that she segregates and itemizes her hours related to other actions in a separate invoice and her affidavit reduces her totals fees for misattributed hours.

For these reasons, I Grant Defendants' motion and amend my award of attorney's fees for attorneys Peter Kouten and Jessica Crowley. I award attorney Peter Kouten his reasonable attorney's fees in the amount of \$78,872.43 and attorney Jessica Crowley her reasonable attorney's fees in the amount of \$32,461.75.

Clarification of Judgments

As it currently stands, the record of judgments on the Public Index page reflects two Judgments against John Hughes Cooper—\$253,969.31 and \$65,151.34. However, I intended to amend my Judgment against attorney Cooper to reflect only those Judgments listed in my July 9, 2018 Order. To clarify this, I now vacate the Judgments listed in my March 21, 2018, Order. The remainder of that Order remains effective. Likewise, my July 9, 2018 Order is also affirmed except as modified herein. To add further clarity and avoid ambiguities, the following is a current summary of the Judgments imposed by me: \$78,596.02 against Betty Fisher and Lisa Fisher, jointly and severally, in favor of The Estate of Alice Shaw-Baker; \$78,872.43

against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of Peter A. Kouten; \$59,289.50 against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of W. Westbrook Wills, III; and \$32,461.75 against Betty Fisher, Lisa Fisher, and John Hughes Cooper, jointly and severally, in favor of Jessica L. Crowley. This brings the total Judgment for improper expenditures to \$78,596.02 and the total Judgment for attorney's fees to \$170,623.68, which combines for a total Judgment of \$249,219.70.

AND IT IS SO ORDERED.

/s/ Thomas L. Hughston, Jr.
Presiding Judge

July 23, 2018
Charleston, South Carolina

**ORDER OF THE COURT OF COMMON PLEAS
(JULY 9, 2018)**

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

BETTY FISHER and LISA FISHER,
As Conservator for ALICE SHAW- BAKER,

Plaintiffs,

v.

BESSIE HUCKABEE, ET AL.,

Defendants.

Case No. 2009-CP-10-3010

Before: Thomas L. HUGHSTON, JR., Presiding Judge

This case is before me following a jury verdict upholding the Will of Alice Shaw-Baker, and my verdicts against the equitable claims of the Plaintiffs. I wrote my Order affirming the jury's decision and ruling against Plaintiffs' claims and filed it on March 21, 2018, and it was available online on March 22, 2018. I issued my next Order more than 10 days later on April 3, 2018, without Plaintiffs filing any post-trial motions. The Supreme Court issued its Order on April 10, 2018, and I conducted a hearing pursuant to it on May 21, 2018. I took additional testimony following another review by me of the entire record

pertaining to this dispute beginning with the filing for a Conservator/Guardian on July 31, 2008. One cannot fully comprehend the total waste of time and expense in this case without reading everything including all the discovery of each side. It takes me two days to read these voluminous files, and I have read them two times trying to fully understand this case, and particularly, the claims of the Plaintiffs. The bottom line of it all is that there are no facts supporting these claims made up by essentially strangers to Alice Shaw-Baker and her friends.

Prior to the non-jury trial, Defendants moved to dismiss this case following the Supreme Court's decision in the companion case involving these parties filed 2/28/18. I should have granted this. However, out of an abundance of caution, and my own preference for a full factual development, and since the parties were present and ready to proceed, I reserved ruling and took testimony. I now grant Defendants' Motion to Dismiss these equitable claims for lack of standing. Plaintiffs do not own these claims for "animal welfare" interests. One can only imagine the scope of additional litigation and attorney's fees if I should mandate a constructive trust to benefit "animal welfare and rescue organizations." Plaintiffs do not represent such groups. They have no standing to bring these claims.

I have also considered the equitable principles that relate to a constructive trust and find by the overwhelming weight of the evidence that Plaintiffs have failed to prove the need for a constructive trust. *See* Cases from S.C., re: constructive trust. Alice Shaw-Baker's property will go exactly as she intended for it to go, both by her Will and by contract.

Alice Shaw-Baker was a 79 year old lady suffering from undisputed physical and mental problems. Friends became concerned about her welfare and contacted an elder support hotline through the City of Charleston. Plaintiffs were notified in writing and this nightmare began. Plaintiffs had practically no contacts with Alice Shaw-Baker prior to this. Lisa Fisher successfully maneuvered the professional elder care Co-Conservator/Guardian, Jane Orenstein out, and her actions as sole Conservator/Guardian begin and continue to this day, according to her. It is important to read Judge Curry's November 19, 2008 Order for it is dispositive of Plaintiffs' contention that Alice Shaw-Baker revoked her Will. She was an "Incapacitated Person". Section 62-5-101 (1) S.C. Code of Laws. Among other things, Judge Curry Ordered, "neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her Will or execute a new Will, unless specifically ordered by this Court." No one sought to change this Order. This alone should have told Plaintiffs not to claim the Will was revoked under extremely suspicious and questionable circumstances shown in the record and recited in my prior Order. This Order is in addition to the settled law that a mentally incompetent person lacks capacity to revoke a Will. Without question, Alice Shaw-Baker lacked capacity to revoke her Will.

"The one who first states a case seems right, until the other comes and cross-examines." Proverbs 18:17. Or as C. Tolbert Goolsby, Jr. says in Sweet Potato Biscuits and Other Stories, p.113, "A man's story seems right, until you look into it."

In Plaintiffs twenty six page Verified Complaint they allege eleven causes of action in one hundred and forty six paragraphs. However, at the non-jury

trial Plaintiffs only claimed and presented evidence in an attempt to support a constructive trust over her entire estate. Since the Will has been upheld, this claim relates to the non-probate assets being Alice Shaw-Baker's deferred compensation, pension and life insurance. Plaintiffs claim a constructive trust to "go to animal welfare and rescue projects only." It is true that Alice Shaw-Baker had dogs as her family, and wanted to ensure that any that survived her were taken care of by Kay Passailaigue Slade. None survived her, the last pre-deceasing her in 2008. This was very upsetting to her, and is reflected in various ways in the record. However, she never changed her Will leaving the residue of her estate (after specific bequests) to Kay Passailaigue "to be hers in fee simple absolute, to include the care of my dogs . . ." It is hard to imagine anything more clear than that. Further, it is clear that Alice Shaw-Baker through notes and records regarding her deferred compensation, retirement and insurance, discussed leaving these to various "animal welfare" organizations by Will and/or by contract. However, it is finally established clearly by the memorandum of a call from her to her insurance company: "I have received your letter dated March 6, 1996 and the beneficiary forms naming the John Ancrum Society for the Prevention of Cruelty to Animals and have discussed this with my attorney. We have decided not to change the beneficiary and name my estate as beneficiary. Ok. I will order the file to make sure your estate is named as beneficiary and if it isn't, I will prepare beneficiary forms accordingly." Likewise, the beneficiary of her deferred compensation was shown on a form of 2/14/01 to be "Kay Passailaigue, Relationship Custodian of Pets and Rescue—Governed by Will." Also, a prior form of

7/24/90 had her estate as beneficiary. The combination of her Will and these contracts are entirely contrary to Plaintiffs claims of a constructive trust to benefit unnamed “animal welfare” organizations. The course of these contracts might be somewhat confusing, but the final result is not. After consulting with her attorney, she decided to leave these to her estate as governed by her Will, that is, Kay Passailaigue. As much as Plaintiffs profess it should be otherwise, it is not so by Alice Shaw-Baker’s own words spoken prior to her dementia.

I again address the issue of sanctions for this soon to be nine year old frivolous suit. The standard for determining this is an objective one. Plaintiffs may subjectively say, “We are just doing what Alice Shaw-Baker wanted us to do.” Intent and result are shown by their acts, not their words.

Frivolous determinations are governed by a reasonable attorney standard. Here, two questions arise. One, would a reasonable attorney bring and maintain a suit now in its ninth year claiming that an undoubtedly incompetent person had revoked her otherwise valid will by tearing it on January 1, 2009, following Judge Curry’s Order of November 19, 2008, when only that attorney supposedly witnessed the tearing and no proof of such an act exist other than that attorneys say so, and that attorney’s mother is an heir if the Will was revoked along with some other heirs who are not parties, or notified of this suit, and whose existence was just revealed? The answer is an unqualified “No”. Two, would a reasonable attorney bring and maintain a suit now in its ninth year claiming an equitable constructive trust over the entire Estate given all the clear facts and circumstances in the

record contrary to such a claim? Again, the answer is an unqualified “No”.

This should have been a simple guardian/conservator/personal representative case. Instead it has by Plaintiffs’ frivolous acts gone on for nine years and counting. This is unconscionable and an abuse of the court system. Every avenue available to delay has been used and abused by Plaintiffs for no good reason.

I have condensed the history of this case as follows: Over the past nine years, in this and other related cases, Plaintiffs have appealed and asked for reconsideration of almost every decision of every Court. They have filed nine appeals, four Writs of Certiorari, three petitions for rehearing, and seven motions for reconsideration. To date, they have not prevailed on any substantive matters with the exception of one remand on the issue of conservator fees. It should be noted that Plaintiffs’ first appeal was from what was essentially a mutual restraining Order. Imagine that! As I have previously written, I deeply regret signing that Order.

I now turn to the monetary figures used in factoring my sanctions award. According to Family Services’ inventory and appraisement, The Estate of Alice Shaw-Baker was originally valued at \$388,055.63. That figure includes the value of real estate, investments, life insurance, annuities, and anticipated annual receipts. After subtracting anticipated receipts, the Estate’s initial value was \$353,746.81. According to Lisa Fisher’s own accounting, \$39,549.43 was spent following Judge Curry’s May 11, 2009 Order terminating her conservatorship. She also unreasonably spent \$25,000 for an air ambulance on the day of Alice Shaw-Baker’s death, after being told by a medical

doctor that she would not survive the trip. She does, however, claim that she obtained a partial refund but such a refund is not reflected by her accounting.

Pursuant to § 62-5-424(C)(9), a conservator must obtain court approval prior to making charitable donations from the Estate. Lisa Fisher failed to observe this statute by making twenty unauthorized charitable donations in the amount of \$2,555—\$105 coming before the termination of the conservatorship—to various animal charities

The Probate Court has approved fees amounting to \$67,185.92. An additional \$20,621.34 was spent on unapproved fees, \$13,941.59 coming before the termination of the conservatorship, totaling \$87,807.26 in paid fees, which amounts to 25% of the Estate's value. However, there remains pending requests for approval of fees totaling \$74,422.00. If those requests are approved, the total fees paid would amount to \$162,229.26 or 46% of the Estate. As it currently stands, a total of \$173,148.66 from the Estate has been spent, which represents 49% of the Estate. Approval of the outstanding fee request would almost completely deprive the Estate of its value. That comes without any consideration of the amount of attorney's fees accumulated from Feb. 2009-Feb. 2018 which totals \$314,837.35 or 89.25% of the Estate. After totaling all the paid, unpaid, requested, and accumulated fees, the total amounts to \$564,873.87, which represents 160% of the Estate.

Despite the many egregious acts that occurred in this case, Lisa Fisher did care for Alice Shaw-Baker and her home by employing caregivers, landscapers, and by continuing to pay the taxes and insurance. For this, I credit her \$11,462.85 towards the sanc-

tions award—\$1,000 for the caregiver expenses after the date of Alice Shaw-Baker's death, \$200 for hair charge, \$2,370 for lawn care, and \$7,892.85 for taxes and insurance. I have also decided to remove the \$7,000 loss of opportunity costs and treble damages against Lisa Fisher. As a result, the new sanctions award comes from \$13,941.59 spent of unapproved fees after the termination of the conservatorship, \$39,549.43 for monies spent after the termination of the conservatorship, \$25,000 for an air ambulance on day of Alice Shaw-Baker's death, and \$105 for unauthorized charitable contributions before the Order terminating the conservatorship for a total of \$78,596.02. I impose this as a judgment against Betty and Lisa Fisher, jointly and severally, in favor of Defendants.

I have also decided to award the Defendants' attorneys their reasonable attorney's fees in this action. Factors to be considered by the trial court in making a determination as to attorney's fees are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained.

According the Defendants' three attorneys' affidavits, they are requesting fees in the amount of \$173,493.68 for services performed through May 30, 2018. Lisa Fisher has objected to this amount on the basis that some of the fees pertain to hours worked for the separate, but related, actions. I have subtracted the amount I believe is attributed to those actions. As for attorney Peter A. Kouten, he has requested \$78,872.43 for services rendered from February 2009—

October 2017. I have deducted those fees accumulated after the October 14, 2013 Order for Substitution of Counsel in addition to fees for services performed in relation to actions required for probating the Estate, the Conservatorship (GC) action, and the related circuit court actions. I therefore find his reasonable attorney's fees to be \$35,315.00. As for attorney W. Westbrook Will, III, he has requested \$59,289.50 in attorney's fees. I find this amount to be reasonable. As for attorney Jessica L. Crowley, she has requested \$35,331.75 in attorney's fees. After subtracting those fees related to the ejectment action and conservatorship action, I find her reasonable attorney's fees to be \$25,512.50. Thus, after careful consideration of the factors set forth above for assessing attorney's fees, I find Defendants' total attorneys' fees in the amount of \$120,117.00 are, unfortunately, justified under that analysis. I impose this as a judgment against Lisa Fisher, Betty Fisher, and John Hughes Cooper, jointly and severally, in favor of Defendants' attorneys—\$35,315.00 in favor of attorney Peter A. Kouten, \$59,289.50 in favor of attorney W. Westbrook Wills, III, and \$25,512.50 in favor of attorney Jessica L. Crowley.

Again, I reference *Bleak House. Jarndyce vs. Jarndyce* ended when the money in the estate was consumed by attorneys' fees, etc., after many years of litigation. I now doubt if even that would stop Plaintiffs from pursuing this frivolous litigation given what has now "boxed them in" . . . sanctions, damages, and costs which they must pay unless somehow they are successful on their appeals for the first time in nine years.

I cannot conclude without saying that I have sympathies for Lisa Fisher. It is painful for me to see and hear her put herself and others through this. She is well educated with a law degree and other degrees. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help-legal and perhaps otherwise. I hope she gets it.

Plaintiffs are in Contempt of Court for repeatedly refusing to supply Ordered financial information. I Order them confined in the Charleston County Detention Center and fined \$100.00 per day starting today until they comply. I have never in 33 years held an attorney or party in Contempt of Court. I stay this during the Plaintiffs' appeal.

Plaintiffs' post-trial motions are denied and my previous Order affirmed except as modified herein.

IT IS SO ORDERED.

/s/ Thomas L. Hughston, Jr.
Presiding Judge

July 9, 2018
Charleston, South Carolina

**ORDER OF THE COURT OF COMMON PLEAS
(APRIL 3, 2018)**

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiffs,

v.

BESSIE HUCKABEE,
KAY PASSAILAGUE SLADE, and SANDRA BYRD,

Defendants.

Case No.: 2009-CP-10-3010

In the Matter of the Estate of Alice Shaw-Baker.
Charleston County Probate No.: 2009-ES-10-0378

Before: Thomas L. HUGHSTON, Jr., Presiding Judge.

THIS MATTER is before me following a jury trial that resulted in a Verdict upholding the Will of Alice Shaw-Baker, and rejecting the Plaintiffs claim that she had revoked the Will by her words and acts. I denied Plaintiffs' post-trial motions regarding this, and confirmed the Verdict. Plaintiffs also made equitable claims regarding the Estate. I denied all these claims based on my findings as to the credibility of the witnesses, and totality of the evidence. In addi-

tion, I imposed sanctions against John Hughes Cooper, Lisa Fisher, and Betty Fisher. I now Order the following:

1. The Charleston County Clerk of Court, Julie J. Armstrong, is to deliver all monies being held by her in trust from National Life Insurance Company in the amount of \$22,642.76, S.C. Budget and Control Board in the amount of \$2,189.36 and \$4,000.00, and South Carolina Deferred Compensation Program in the amount of \$75,246.24, including interest to Defendant Kay Passailaigue Slade.
2. Farmers and Merchants Bank of Long Beach California is to make payable all monies held in a savings account and a checking account, both in the name of Alice Shaw-Baker Conservatorship, Lisa Fisher Conservator, to Bessie Huckabee, Personal Representative of the Estate of Alice Shaw-Baker. Additionally, Edward Jones on 1124 Sam Rittenberg Boulevard in Charleston, SC, is to make payable all monies held in the name of Alice Shaw-Baker, Lisa Fisher Conservator, to Bessie Huckabee, Personal Representative of the Estate of Alice Shaw-Baker. The monies shall be delivered to Bessie Huckabee's attorney, W. Westbrook Wills, III at P.O. Box 822, Folly Beach, SC 29439.
3. Ejectment of the occupant of the house located at 306 Cassina Road, Parkwood Estates, Charleston, South Carolina, within seven (7) days of the date of service of this Order. The occupant must turn the keys over to the Charleston County sheriff's deputy, or

deliver them to the attorney for the Defendants, W. Westbrook Wills, III.

4. I grant the Motion of John Hughes Cooper, his partner John Townsend Cooper, and his law firm John Hughes Cooper, P.C. to withdrawal as counsel for Plaintiffs. Plaintiffs are granted reasonable time to seek another South Carolina attorney, but nothing herein enlarges the time for Plaintiffs to file an appeal.
5. As Additional sanctions for Plaintiffs and their attorneys, they are enjoined and restrained from filing any motions in the Circuit Court. Any future filings in this case must be filed with the Supreme Court of South Carolina.

AND IT IS SO ORDERED.

/s/ Thomas L. Hughston, Jr
Presiding Judge

April 3, 2018
Charleston, South Carolina

**ENTRY OF JUDGMENT IN A CIVIL CASE
(MARCH 21, 2018)**

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

BETTY FISHER, ET AL.,

Plaintiffs,

v.

BESSIE HUCKABEE, ET AL.,

Defendants.

Case No. 2009-CP-10-3010

Before: Thomas L. HUGHSTON, JR., Presiding Judge

Disposition Type

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.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) by the Court:

Order Information

This order ends the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of	Judgment Against	Judgment Amount To be Enrolled
Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd	Lisa Fisher, John Hughes Cooper, & Betty Fisher	\$253,969.31
The Estate of Alice-Shaw Baker	Lisa Fisher	\$229,599.51
The Estate of Alice-Shaw Baker	John Hughes Cooper	\$65,151.34
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties the Court will electronically sign this form using a separate electronic signature page.

/s/ Thomas L. Hughston, Jr.
Circuit Court Judge
Judge Code 2008

Date: March 21, 2018

**ORDER OF THE COURT OF COMMON PLEAS
(MARCH 21, 2018)**

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

BETTY FISHER and LISA FISHER,

Plaintiffs,

v.

BESSIE HUCKABEE,
KAY PASSAILAGUE SLADE, and SANDRA BYRD,

Defendants.

Case No. 2009-CP-10-3010

In the Matter of the Estate of Alice Shaw-Baker.
Charleston County Probate No.: 2009-ES-10-0378)

Before: Thomas L. HUGHSTON, JR., Presiding Judge

“In Hell there will be nothing but law . . .” (*Grant Gilmore*). “Justice delayed is justice denied.” (*William E. Gladstone*). Also, I reference Dickens’ *Bleak House* and Kafka’s *The Trial* for what Defendants and their attorneys must feel like after nine years of this frivolous litigation.

This case is before me following a jury trial that resulted in a Verdict upholding the Will of Alice Shaw-Baker, and rejecting the claim of the Plaintiffs

that she had revoked that Will by her words and acts. I deny Plaintiffs' post-trial motions regarding this, and confirm this Verdict.

Plaintiffs made equitable claims regarding the Estate. I deny all these claims based on my findings as to the credibility of the witnesses, and totality of the evidence. Essentially, I find no reason in believable facts and equity to do any of the acts requested. I make all these decisions by a standard of overwhelmingly clear and convincing evidence considering this case as a whole, and that is the only way one can ever begin to understand this case—as a whole. (See the Appendices, testimony and evidence.)

The facts of this case began when a concerned neighbor and friends of Alice Shaw-Baker asked for help since they thought she was mentally and physically unable to care for herself, and as part of the process to appoint a conservator, notice of this proceeding was given to Plaintiffs. The actions of Plaintiffs and their attorneys resulted in this nine year legal nightmare for Defendants.

Since I am confident there will be an immediate appeal of my decisions, consistent with the prior acts of the Plaintiffs and their attorneys, I decline to write about the tortuous history and undisputed facts. I leave that to the Justices of the Supreme Court of South Carolina. They can find the facts in this equity case. It is sufficient for me to say and I do find that overwhelming facts, law and equities are against Plaintiffs' claims.

In addition to contesting the Will, Plaintiffs claim that Shaw-Baker's life insurance, S.C. Retirement Account, and Deferred Compensation account should

be given to “animal charities,” because she was an “animal lover,” raised and showed Chihuahua dogs, and had shown a longtime interest in doing something like that. Plaintiffs ignore the fact that though she often talked about doing this, she never signed the documents that would have done so. She was an intelligent, fiercely independent, and resourceful lady who executed many Wills, had many communications with her excellent attorneys and agents for her life insurance and other non-probate assets. She never changed where that money was to go and it will go as she directed and not as Plaintiffs frivolously claim it should go by their deviously concocted suit. The trust involved in this case is the trust between genuine friends established over many years, and not a half-baked scheme by people and their attorneys who had minimum contacts with her or her friends prior to this lady’s demented condition. I trust the same people she trusted to “Do right because it is right.” (*W Clement Stone*).

Remaining are issues of attorneys fees, sanctions, and other appropriate relief. Any Restraining Order restraining Defendants from acting under the Will is vacated. I deeply regret signing two Orders almost nine years ago that were meant to be temporary for Plaintiffs, except for the bond requirement. That remains. All assets in Plaintiffs possession shall be immediately delivered to the Charleston County Clerk of Court, 100 Broad Street, Suite 106 Charleston, South Carolina 29401-2258, and be held by her until further Order. This is not stayed for any appeal. Also, Plaintiffs are to deliver the keys for the house at 306 Cassina Road, Charleston, South Carolina to the Charleston County Clerk of Court. Non-rent paying

occupant shall vacate this house within one week after being notified to do so by Defendants attorney, and shall commit no waste. These actions are not stayed during an appeal under Rule 241, Rule 62, and S.C. Code Section 18-9-150.

Sanctions are governed by S.C. Code Section 15-36-10.

§ 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)

- (1) A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State and must include the address and telephone number of the attorney signing the document.
- (2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the
- (3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:
 - (a) the person has read the document;
 - (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a

good faith argument exists for the extension, modification, or reversal of existing law;

- (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and
- (d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

- (a) filing a frivolous pleading, motion, or document if:
 - (i) the person has not read the frivolous pleading, motion, or document;
 - (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
 - (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was

intended merely to harass or injure the other party; or

- (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
- (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
- (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)

- (1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.
- (2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which

the court considers just, equitable, and proper under the circumstances.

(C)

(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
- (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder

of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

(G) Sanctions may include:

- (1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;
- (2) an order for the attorney to pay a reasonable fine to the court; or
- (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

(I) This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules.

(J) The provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law.

(K) The provisions of this section apply in addition to all other remedies available at law or in equity.

(L) The amount requested for damages in a pleading may not be considered in a determination of a violation of the provisions of this section.

(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives.

Plaintiffs' commencement and continuation of this action is sanctionable under Rule 11. As is set forth herein, it is clear to me that Plaintiffs' claims were entirely frivolous and, for that reason, I find Plaintiffs and their attorneys are subject to sanction under Rule 11, and the South Carolina Frivolous Proceedings Act.

Plaintiffs and their attorneys are subject to sanctions under the Court's inherent authority. As the United States Supreme Court held, Courts have an

inherent authority to award attorney's fees where the losing party has "acted in bad faith, vexatiously, or for oppressive reasons." Plaintiffs' conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. Plaintiffs' claims were completely baseless and subject to sanctions based upon the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is, without proper grounds, or for oppressive and improper purposes. It is not their actual intent to harm, but harm is the reasonable foreseeable outcome.

Some equate the judge's job to that of an umpire to call balls and strikes, and of referees to call offsides and out of bounds—a judge of physical facts. This ignores the elements of judgment and intent. These are part of calling a bean ball in baseball, a technical foul in basketball and un-sportsman like conduct in football. A judge, like these officials, must sometimes determine intent. This is at the heart of finding a frivolous suit.

I start with a procedural timeline found in Appendix I. Plaintiffs have done nothing but delay justice and harass Defendants. As Justice Few recently wrote in a companion case: "This case was litigated in confusion from the beginning." Appellate case No. 2016-000320, filed February 28, 2018.

The jury trial and non-jury trials are perhaps the best evidence of their frivolous actions. The claim that the Will was revoked should have never been filed. The only testimony on this came from Lisa Fisher. She and only she claims to have seen Ms. Shaw-Baker destroy a copy of her Will. Nothing corroborates this.

If it did happen, I am sure Lisa Fisher would have saved every scrap, put these in an envelope, made a contemporary written summary of the events, and presented this at trial. To me, her testimony is not believable and I count it as nothing. The only reason I do not call it perjury is that Alice Shaw-Baker is now deceased and unavailable, and I am aware of the standard for proof in a criminal trial. Even if it did happen as described, this was an act of an incompetent person with no legal effect. Also, Judge Curry's Order said she could not revoke her Will due to her incapacity. These two facts alone should have been enough to tell any reasonably competent lawyer not to file this suit. These were two huge legal stop signs with bright flashing red danger lights and said to any reasonably competent attorney, "Go no further and if you do, you travel at your own peril."

I turn to the difficult issue of sanctions. This involves calculations of Defendants' losses for which Plaintiffs and their attorneys should pay, and some amount of money to tell them and persons who learn about this to not engage in similar conduct. Defendants' reasonable attorneys' fees are \$157,539.93. I Order Plaintiffs and their attorneys to pay these reasonable fees. In addition, Defendants have loss of opportunity costs of \$76,533.17 associated with all the assets they should have received almost nine years ago. Attorney's fees plus lost opportunity cost equal \$234,073.10. I Order a Judgment in favor of Defendants and against Plaintiffs and their attorneys, jointly and severally, for \$253,969.31, which includes prejudgment interest. (*See Appendix, Court's Summary of Fees*).

Sanctions for Lisa Fisher in addition to the foregoing are in the nature of punishment. The several

Unfair Trade Practices statutes and the Constitution of the United States of America provide some guidance and limits. This is the worst case of frivolous acts that I have experienced. A deterrent is necessary to warn her and others. Therefore, I award three times actual damages to the Estate from Lisa Fisher being \$229,599.51, and Order a Judgment against her for this. These calculations have had to be made despite repeated efforts to get financial information from Plaintiffs including threats of contempt of court. John Hughes Cooper complied almost immediately. Also, John Hughes Cooper is denied his requested attorney's fees and costs. Additionally, he should repay to the Estate a sum of \$65,151.34 he was paid for work he says he did during the short period of time he was involved with the conservatorship. I cannot imagine what he did to earn this in what should have been a simple matter of filling out forms if anything. Additionally, Lisa Fisher's requested fees for alleged work that she did as conservator/attorney of \$67,814.50 is denied. Also, she should repay any money she received by her involvement in this frivolous case.

Summary of monetary sanctions and Judgments: \$253,969.31 against Lisa Fisher, John Hughes Cooper, and Betty Fisher and in favor of Bessie Huckabee, Kay Passailague, and Sandra Byrd; \$229,599.51 against Lisa Fisher and in favor of The Estate of Alice Shaw-Baker; \$65,151.34 against John Hughes Cooper and in favor of the Estate of Alice Shaw Baker.

I turn to additional sanctions. Lisa Fisher and Betty Fisher are enjoined and restrained from spending any money directly or indirectly controlled by them personally or through any corporation of which she is a part, with the exception of what I have Ordered her

to immediately pay herein to the Clerk of Court. Of course, an exception is made for reasonable costs associated with their appeal, law practice, and ordinary living expenses.

The frivolous actions of the attorneys will be reported to the South Carolina Commission on Lawyer Conduct.

I cannot conclude without mentioning the most egregious waste of Alice Shaw-Baker's money. On February 24, 2009, Lisa Fisher spent \$25,000 of her own money (later reimbursed from the Estate) in an attempt to fly Alice Shaw-Baker to California from the Medical University of South Carolina from her death bed supposedly for a beneficial visit. The real purpose undoubtedly was to have her die in California, ultimately avoid the jurisdiction of South Carolina Courts, control the Estate, defeat the Will, and benefit her mother and herself.

I hope that I have ruled on everything that is before me. I give up everything to the Supreme Court of South Carolina for their greater consideration and ultimate decisions.

IT IS SO ORDERED.

/s/ Thomas L. Hughston, Jr.
Presiding Judge

March 21, 2018
Charleston, South Carolina

PER CURIAM ORDER OF THE
SUPREME COURT OF SOUTH CAROLINA
(DECEMBER 12, 2018)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BETTY FISHER,

Petitioners,

v.

BESSIE HUCKABEE,

Respondent.

LISA FISHER,

Petitioners,

v.

BESSIE HUCKABEE,

Respondent.

Appellate Case No. 2017-000743
Memorandum Opinion No. 2018-MO-041

Appeal from Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Before: BEATTY, C.J., KITTREDGE,
HEARN, FEW and JAMES, JJ.

PER CURIAM:

We granted Petitioners' petition for a writ of certiorari to review the court of appeals' decision in *Fisher v. Huckabee*, Op. No. 2016-UP-528 (S.C. Ct. App. filed Dec. 21, 2016). In an opinion filed contemporaneously with this one, the Court affirmed the jury's verdict upholding the validity of Alice Shaw-Baker's last will, which renders moot Petitioners' challenge to the appointment of Respondent Bessie Huckabee to serve as her personal representative. *See Fisher v. Huckabee*, Appellate Case No. 2018-000566 (the will contest). The gravamen of this case was whether Lisa Fisher or a court-appointed special fiduciary should retain the estate assets until the propriety of Huckabee's appointment could be finally determined in the will contest. Because Respondent Huckabee's status as personal representative has been finally determined, we affirm that part of the court of appeals' decision which would require all estate assets to be delivered to Huckabee, in her capacity as Shaw-Baker's personal representative.

We affirm the lower courts' determination that Lisa Fisher is not entitled to any additional conservator fees. We therefore reverse the court of appeals as to this issue, removing the need for a remand.

As a result of our decision here, this matter does not require any additional proceedings. This case is concluded.

AFFIRMED IN PART, REVERSED IN PART.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., Concur.

OPINION OF THE COURT OF APPEALS
OF SOUTH CAROLINA
(DECEMBER 21, 2016)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

BETTY FISHER,

Appellant,

v.

BESSIE HUCKABEE,

Respondent.

BETTY FISHER,

Appellant,

v.

BESSIE HUCKABEE,

Respondent.

No. 2014-002020¹

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 2016-UP-528

¹ Consolidated with Appellate Case No. 2014-002028 and Appellate Case No. 2014-002034.

PER CURIAM

In this consolidated probate case, Appellants Betty Fisher and Lisa Fisher separately appeal from the circuit court's affirmance of the probate court's orders appointing a special fiduciary, freezing assets, and denying the Fishers' motions for reconsideration, arguing twenty-two issues summarized as the following: (1) the circuit court erred in failing to consider the Fishers' Statement of Grounds or allow oral argument; (2) the probate court did not have jurisdiction because the matter was on appeal; (3) Respondent Bessie Huckabee did not have standing in the matter; (4) the probate court's order was void because Huckabee failed to provide the required notice and violated Rule 11, SCRCP; (5) the probate court erred in denying Lisa Fisher reasonable compensation; (6) the probate court erred in freezing decedent's accounts; (7) the probate court erred in appointing a special fiduciary; (8) the probate court erred in failing to grant Lisa Fisher an extension; and (9) the probate court erred in hearing the motion to appoint a special fiduciary when statutory notice was not given. We affirm in part and remand in part.

II. Background Facts²

Lisa Fisher was appointed as Alice Shaw-Baker's guardian and conservator by order dated November 19, 2008. Peter A. Kouten was appointed as Shaw-

² Additional background facts may be found in *Fisher v. Huckabee*, 415 S.C. 171, 173-75, 781 S.E.2d 156, 157-58 (Ct. App. 2015), *reh'g denied* (Jan. 21, 2016), *petition for cert. filed* (Feb. 22, 2016) and *In re Estate of Alice Shaw Baker*, Op. No. 2015-UP-359 (S.C. Ct. App. filed July 15, 2015), *reh'g denied* (Sept. 15, 2015).

Baker's guardian ad litem. After Shaw-Baker died on February 25, 2009, and Huckabee was appointed personal representative based on her nomination in the will, Lisa Fisher was discharged as the conservator by order dated May 11, 2009. The order required Fisher to provide an estate accounting and turn over all estate assets within fifteen days of the date of the order.

In May 2011, Huckabee filed a motion entitled, "Motion to Appoint Special Fiduciary for Conservatorship Assets." Huckabee alleged Lisa Fisher was discharged as the conservator of Shaw-Baker by the May 11, 2009 order, had been granted at least six extensions to turn over the estate assets, and had not filed annual accountings since 2008. Huckabee requested the court deny any further continuances, require Lisa Fisher to file the delinquent accountings for 2009 and 2010, require her to release estate funds, and to appoint a third-party special fiduciary to accept all assets of the estate. At a hearing on the motion, Huckabee argued Fisher did not appeal the order discharging her as conservator, but it had been two years and she had not turned over the estate assets.

Huckabee also argued that when Fisher finally turned in the annual accountings, "it became clear that the discharged conservator did not cease in her actions as conservator" and had disbursed \$80,500 from the estate after her authority ceased. Huckabee requested the court appoint a special fiduciary to accept the estate assets and that no further extensions be granted to Fisher.

Fisher argued she had motions pending, including a motion for a ninety-day extension and a motion to strike Huckabee's motion. Fisher also argued the

court should strike the motion to appoint a special fiduciary. Fisher's motion to strike alleged the issue was moot because she filed the missing accountings with her motion; Kouten could not represent Huckabee because he had been Shaw-Baker's guardian ad litem; and Kouten had not satisfied the Rule 11(a), SCRCP requirement that a movant attempted in good faith to resolve an issue prior to filing a motion unless the movant certified that consultation would have served no useful purpose. Fisher argued she had been granted six extensions and was waiting for the appeals in circuit court and the supreme court to be decided prior to complying with the order to turn over the estate assets. By order dated September 28, 2011, the probate court denied Fisher's motions to strike and for an extension, granted the motion to appoint a special fiduciary, and appointed Heyward Harvey, Esq. to serve as the special fiduciary. The order required Fisher to turn over the estate assets within fifteen days.

Fisher moved for reconsideration, arguing the probate court did not have jurisdiction over the matter because an appeal was pending in the supreme court; no evidence of her wrongdoing was produced at the hearing; the probate court lacked statutory authority; Fisher had no ability to transfer the estate because a motion to appoint Betty Fisher as special administrator was pending in circuit court; and the probate court order was void. Betty Fisher also filed a motion as an "Interested Party" to void the September 28, 2011 order based on lack of notice and Huckabee's lack of standing. By order dated October 14, 2011, the probate court denied the motions. The order also denied a pending "Renewed Motion for

Approval of Fees and Expenses of Guardian and Conservator.” In a separate order dated October 14, 2011, the probate court froze the assets in all of decedent’s accounts.

Lisa Fisher moved to reconsider the denial of the renewed motion for fees. Fisher argued her motion was originally filed in July 2009 and the probate code provided for fees. Fisher also moved to reconsider the freezing of the assets, arguing the following: (1) the probate court requires a conservator to deliver estate assets to a “Duly Appointed” personal representative; (2) she is entitled by the doctrine of laches to continue protecting the estate; (3) the probate court lacked jurisdiction; (4) no party sought an order freezing the assets; and (5) the orders violated due process. On November 9, 2011, the probate court denied the motions for reconsideration. Fisher and Betty Fisher appealed to the circuit court.

At a hearing in the circuit court, the Fishers argued Lisa Fisher had a statutory duty to turn over the estate assets to a duly appointed personal representative and the order appointing Huckabee the personal representative was on appeal; thus, Fisher could not turn over the assets. The Fishers also argued the probate court did not have jurisdiction to appoint a special fiduciary because an appeal was pending. Betty Fisher next argued that as an interested party, she was entitled to the statutorily-required notice of twenty days before the probate court could consider a motion to appoint a special fiduciary. Betty Fisher further argued the Attorney General was entitled to notice as an interested party (as a protector of animal charities named in a prior will). Lisa Fisher next argued the probate court refused to take any

testimony and made factual findings without any evidentiary support. Finally, Lisa Fisher argued the probate court erred in denying her motion to be paid fees as the conservator and in issuing orders freezing the assets.

Huckabee argued the issues in the current matter were unrelated to the pending appeals because they were related to conservatorship of the assets rather than personal representative matters. Huckabee also argued that although there were no affidavits or testimony before the probate court, Lisa Fisher's accountings indicated she was spending money from the estate after she was discharged, which was sufficient for the probate court to appoint a special fiduciary. In Form 4 orders, the circuit court affirmed the probate court's orders. This appeal followed.

III. Standard of Review

On appeal from a final order of the probate court, the circuit court must apply the same standard of review that an appellate court would apply on appeal. *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "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." *In re Estate of Hyman*, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). The underlying nature of the matter before the probate court was the appointment of a special fiduciary to manage the estate assets, which we find akin to the removal of a personal representative; thus, the action is in equity. *See Dean v. Kilgore*, 313 S.C. 257, 259, 437 S.E.2d 154, 155 (Ct. App. 1993) (holding an action to remove a personal representative appointed pursuant to the

terms of a will is equitable in nature). If probate proceedings are equitable in nature, then the circuit court on appeal may make factual findings according to its own view of the preponderance of the evidence. *Howard*, 315 S.C. at 361-62, 434 S.E.2d 254, 257-58.

IV. Issues on Appeal³

1. Did the circuit court err in failing to consider the Fishers' statement of grounds for appeal and failing to permit oral argument?⁴
2. Did the probate court lack jurisdiction because the matter was on appeal?⁵
3. Did Huckabee lack standing?⁶
4. Was the probate court order void because Huckabee failed to provide notice in violation of Rule 11, SCRCP?⁷
5. Did the probate court err in denying Lisa Fisher reasonable compensation?⁸

³ We have combined the Fishers' twenty-two issues on appeal into nine issues as noted. As to Lisa Fisher's brief in Appellate Case No. 2014-002034, we have listed her issues as they appear in the Statement of Issues on Appeal.

⁴ *Betty Fisher v. Huckabee*, Appellate Case No. 2014-002020 (“2020”)-issue 1; *Lisa Fisher v. Huckabee*, Appellate Case No. 2014-002028 (“2028”)-issue 1; *Lisa Fisher v. Huckabee*, Appellate Case No. 2014-002034 (“2034”)-issue 1.

⁵ 2020-issue 2; 2028-issues 2, 3, 4, 6.

⁶ 2020-issue 4; 2028-issue 5.

⁷ 2028-issue 10.

⁸ 2034-issues 2, 3, 4.

6. Did the probate court err in issuing orders freezing assets?⁹

7. Did the probate court err in appointing a special fiduciary?¹⁰

8. Did the probate court err in failing to grant Lisa Fisher an extension?¹¹

9. Did the probate court err in hearing the motion to appoint a special fiduciary when statutory notice was not given?¹²

V. Law/Analysis

1. Failure to Consider Statement of Grounds or Permit Oral Argument

The Fishers argue the circuit court erred in failing to read the briefs prior to the hearing, depriving them of further argument on the record, and failing to make findings of fact. We disagree.

At the beginning of the hearing, the circuit court noted on the record that it remembered the parties from one of the previous cases. The Fishers' attorney began arguments, stating, “[We've briefed this extensively and we assume the Court has those briefs and I'm not going to go into it.” The circuit court judge stated, “Yes, I've got the briefs. I have not looked at them but I have got them here. I will probably have to look at them before I make a deci-

⁹ 2034-issues 5, 6.

¹⁰ 2028-issues 7, 8, 9.

¹¹ 2028-issue 11.

¹² 2020-issue 3; 2028-issue 12.

sion. But go ahead. . . . If you can summarize the briefs, that would be very helpful.” The Fishers’ attorney responded, “That’s what I’m going to attempt to do, Your Honor.” The judge stated, “You don’t have to reiterate everything that’s in there . . . because I will read them . . . [o]r my law clerk and-we both will probably read them.” The court heard extensive arguments from counsel.

The hearing lasted from 10:22 a.m. until 11:13 a.m. The Fishers were permitted to fully argue the issues. At the conclusion of the hearing, the Fishers argued, “Your Honor, one thing for the record?” The judge stated, “Thank you very much. I’ve heard enough.” However, as the Fishers concede, the judge next stated, “I’ll review it. I’ll review your memorand[a]. I’ll make them a part of the record. Okay? Thank y’all very much.” The Fishers’ counsel replied, “Thank you.”

We find no error by the circuit court. Although the circuit court sitting in an appellate capacity in an equity action may make factual findings according to its own view of the preponderance of the evidence, deference to the probate court’s findings is appropriate in circumstances where it is apparent from the record that the credibility of the witnesses was a consideration. *Macaulay v. Wachovia Bank of S.C.*, 351 S.C. 287, 293-94, 569 S.E.2d 371, 375 (Ct. App. 2002). In this case, the accounting provided by Lisa Fisher established unauthorized depletion of the estate assets after Fisher was discharged as the conservator of the estate by order filed May 11, 2009. Further, the circuit court heard the Fishers’ arguments at the hearing. We find no error. *See Porter v. Labor Depot*, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007) (stating “not all situations require a detailed order,

and the trial court’s form order may be sufficient if the appellate court can ascertain the basis for the trial court’s ruling from the record on appeal”).

2. Jurisdiction of the Probate Court

The Fishers next argue the probate court did not have jurisdiction to hear the motion to appoint a special fiduciary because related matters were pending on appeal and a personal representative had already been appointed. We disagree.¹³

The jurisdiction of the probate court is governed by the Probate Code and extends to subject matter related to estates of decedents. S.C. Code Ann. § 62-1-302(a) (Supp. 2015) (“To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents. . . .”). The probate court may appoint a special administrator informally prior to the appointment of a personal representative and in a formal proceeding “on the petition of any interested person and finding . . . that appointment is necessary to preserve the estate. . . .” S.C. Code Ann. § 62-3-614 (Supp. 2015). The probate court has exclusive jurisdiction to determine the need for a conservator. S.C. Code Ann. § 62-5-402(1) (Supp. 2015).

The question of whether the probate court may proceed with a case after one of its orders has been

¹³ Huckabee argues the order appointing a special fiduciary is interlocutory and not immediately appealable. We disagree. *See Ex parte Small*, 69 S.C. 43, 46, 48 S.E. 40, 41 (1904) (finding an order appointing an administrator was a final order and was immediately appealable).

appealed is also governed by the Probate Code. Section 62-1-308(h) (Supp. 2015) of the Probate Code provides the following:

When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

In *Ulmer v. Ulmer*, our supreme court explained that this section¹⁴ “does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken.” 369 S.C. 486, 491-92, 632 S.E.2d 858, 861 (2006).

In this case, the order on appeal at the time of the probate court hearing related to the appointment of Huckabee as the personal representative under the will. The Fishers’ cause of action challenging the will remains pending in the probate court. We find Huckabee’s status under the will is not related to the discharge of Lisa Fisher as the conservator and the appointment of an unrelated, special fiduciary to marshal the estate assets and maintain authority and control of the estate pending the final distribution of the estate. Further, we find the probate court had

¹⁴ Formerly section 62-1-308(c).

jurisdiction to appoint a special fiduciary under sections 62-1-302(a) and 62-3-614.

3. Huckabee's Standing

The Fishers argue Huckabee lacked standing to file the motion to appoint a special fiduciary. We disagree.

The Probate Code defines interested persons to include the following:

heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

S.C. Code Ann. § 62-1-201(23) (Supp. 2015). “[A]ll persons having any interest [in the probate of a will] are deemed parties and concluded by the decision therein.” *Davis v. Davis*, 214 S.C. 247, 258, 52 S.E.2d 192, 197 (1949). Because Huckabee is the personal representative named in the will and is defined as an interested person, we find no merit to the Fishers’ challenge to Huckabee’s standing. As to the Fishers’ challenge to Huckabee’s standing based on the pending appeal of the order appointing her as the personal

representative, we affirm for the reasons discussed in part 2 of this opinion.

4. Rule 11, SCRC

Lisa Fisher argues the probate court's order was void because Huckabee failed to comply with the notice provisions of Rule 11, SCRC. We disagree.

Rule 11 of the South Carolina Rules of Civil Procedure provides that “[a]ll motions filed shall contain an affirmation that the movant's counsel . . . has communicated . . . with opposing counsel and has attempted in good faith to resolve the matter . . . unless the movant's counsel certifies that consultation would serve no useful purpose. . . .” Rule 11, SCRC. Rule 11 provides a motion not in compliance with the rule “shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.” *Id.* Finally, the rule provides the court “may impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .” *Id.*

In *Jackson v. Speed*, our supreme court affirmed the trial judge's refusal to strike a motion based on a similar Rule 11(a) violation, finding the trial judge did not abuse his discretion in refusing to strike the motion because an attempt to consult with opposing counsel about the matter would have been pointless. 326 S.C. 289, 31011, 486 S.E.2d 750, 761 (1997). The court noted “[t]his finding by the trial judge is adequate to cure the deficiency under the facts of this case.” *Id.* at 311, 486 S.E.2d at 761.

In this case, the Fishers argued the motion to appoint a fiduciary should have been stricken based

on the Rule 11 violation. Huckabee argued the motion was in response to Lisa Fisher's motion for an extension. In her brief, Huckabee also notes counsel had discussed the matter of the appointment of a special administrator on several occasions and the Fishers' motions for extensions likewise failed to comply with the Rule 11 affirmation requirements. The probate court did not make a specific finding on the record. However, the issue of the violation was argued to the probate court, and the court ruled at the hearing that Huckabee had "a right to file that motion with the Court." Although a specific ruling excusing the Rule 11 violation is preferable, we affirm, finding the probate court's ruling implicitly found consultation with opposing counsel would have been pointless. *See Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (stating the imposition of sanctions under Rule 11 is subjected to an abuse of discretion standard of review).

5. Denial of Lisa Fisher's Request for Fees

Fisher argues the probate court erred in denying her request for fees. We remand this issue.

Fisher was appointed as the guardian and conservator by order dated November 19, 2008. After Shaw-Baker died on February 25, 2009, Huckabee was appointed personal representative based on her nomination in the will. Fisher was discharged as the conservator of the estate by order dated May 11, 2009. Fisher moved for fees and expenses of \$67,814.50 for services rendered between August 2008 and July 2009, which is approximately 17% of the estimated value of the estate of \$395,935.39. Fisher argued entitlement to fees under the probate code. By order dated Octo-

ber 14, 2011, the probate court summarily denied the motion.¹⁵ Fisher moved to reconsider the order, arguing (1) all other guardians and attorneys had been paid their fees; thus, she was entitled to fees under the equal protection clause of the United States and South Carolina constitutions; (2) the probate code provides for reasonable compensation to guardians and conservators; and (3) the takings clauses of the constitutions require compensation.

The Probate Code provides, “[i]f not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court.” S.C. Code Ann. § 62-5-414 (2009) (emphasis added). The Probate Code also provides as follows:

Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances.

S.C. Code Ann. § 62-5-312(b) (2009) (emphasis added). In addition, the Probate Code requires a conservator to “retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto” if a protected person dies. S.C. Code Ann. § 62-5-425(d) (2009).

¹⁵ Fisher filed her motion in July 2009 and filed a renewed motion in October 2011.

In this case, Lisa Fisher was the appointed guardian and conservator until Shaw-Baker died on February 25, 2009. Some of the expenses Fisher requested reimbursement for were incurred after her conservatorship ended. However, the accountings filed by Fisher include disbursements of \$68,523.79 in “Administrative/Legal Fees” incurred between December 23, 2008 and December 31, 2009 alone. Furthermore, Huckabee alleged the accountings indicate the estate has been depleted by more than \$80,000, but the accountings in the record indicate depletion of more than \$250,000. Because the probate court’s order and the circuit court’s order only summarily address the issue, we remand to the probate court.¹⁶

6. Freezing of Assets

Lisa Fisher argues the probate court erred in freezing assets. We disagree.

Fisher argues the order(s) freezing assets were issued without notice because this relief was not requested or raised; she was required to retain the estate property until a “duly appointed” personal representative was appointed and the issue of the propriety of Huckabee’s appointment is on appeal; the doctrine of laches supports her continued protection of the estate; and the freezing of the estate assets and Fisher’s personal assets violated Fisher’s constitutional rights.

Section 62-1-302 of the Probate Code generally defines the probate court’s jurisdiction and provides in pertinent part: “(a) To the full extent permitted by

¹⁶ We make no determination of the entitlement to, or the reasonableness of, the fees claimed.

the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents. . . .” S.C. Code Ann. § 62-1-302 (a)(1) (Supp. 2015). The probate court has the authority to issue orders in the nature of injunctions. *See Greenfield v. Greenfield*, 245 S.C. 604, 611, 141 S.E.2d 920, 924 (1965) (finding the probate court had the authority to issue an order requiring relatives of a decedent to surrender the records of the decedent, and stating “[t]his power, we think, is one which is of necessity incident to the jurisdiction expressly granted the probate court over all matters of administration”).

We find no merit to Fisher’s arguments. As to her personal assets, Fisher admitted at the hearing before the circuit court that the order(s) freezing assets “didn’t have any real effect because Lisa Fisher didn’t have any accounts here in South Carolina personally.” Thus, Fisher suffered no prejudice and there is no basis for reversal. *See In re Estate of Patterson v. Palmetto Bank*, 374 S.C. 116, 120, 646 S.E.2d 885, 887 (Ct. App. 2007) (holding a probate court’s error that did not prejudice either party formed no basis for reversal). As to the estate assets, we find the probate court had the authority to freeze assets to protect the estate.

7. Appointing Special Fiduciary

Lisa Fisher next argues the probate court erred in appointing a special fiduciary. We disagree.

First, Fisher argues the probate court did not rule on her objections to the procedure and the accusations of her mismanagement of the estate. Second, she argues the probate court’s rulings are not supported

by the record. Third, relying on trust law, Fisher argues the probate court's finding that she did not have authority to pay expenses on behalf of the estate was erroneous and demonstrates no emergent need for a special fiduciary. Finally, Fisher argues Huckabee is barred from moving for the appointment of a special fiduciary under the doctrine of laches.

As to the first three issues, we find no merit. Initially, the probate court noted Fisher's continued objections to its jurisdiction. In addition, neither the probate court nor the circuit court found misconduct by Fisher in their written orders. Rather, the probate court found Fisher had been discharged in 2009; the estate contained real property assets requiring upkeep and repair; and the accounting indicated a need for authority to deal with third parties. To the extent the court's findings regarding Fisher's objections were deficient, we find adequate support in the record. *See Holcombe v. Hardee*, 304 S.C. 522, 524, 405 S.E.2d 821, 822 (1991) (allowing the appellate court to make its own findings of fact if the record is sufficient even though the family court may have failed to set forth specific findings of fact and conclusions of law to support its decision). Further, the accounting provided by Lisa Fisher established unauthorized depletion of the estate assets after Fisher was discharged as the conservator of the estate by order dated May 11, 2009. This is sufficient evidence in the record to constitute the emergent need found by the probate court. *See* S.C. Code Ann. § 62-7-704(e) (Supp. 2015) (providing the probate court with authority to appoint a special fiduciary to administer a trust whenever the court considers the appointment necessary for the administration of a trust); § 62-5-402(1) (Supp. 2015)

(providing the probate court with exclusive jurisdiction to determine the need for a conservator or other protective order). To the extent Fisher argues trust law does not apply, the probate court has jurisdiction over the estate of decedents outside of the trust provisions of the Probate Code. *See* § 62-1-302(a) (“To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents. . . .”). Thus, any erroneous reliance by the probate court on trust law is insignificant because the probate court had authority under estate law.

As to Fisher’s final issue, we find laches does not apply to bar Huckabee’s request for the appointment of a special fiduciary. “The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice.” *Robinson v. Estate of Harris*, 388 S.C. 616, 627, 698 S.E.2d 214, 220 (2010). In this case, even if Fisher can show Huckabee caused any delay, it would not be unreasonable delay. The issue of Huckabee’s appointment as the personal representative was not affirmed by this court until April 2011. Huckabee filed the Motion to Appoint Special Fiduciary for Conservatorship Assets in May 2011.

8. Denial of Lisa Fisher’s Request for Extension

Lisa Fisher argues the probate court erred in failing to grant her another extension to deliver the assets, averring the court erred in finding she did not have the duty to act once she had been discharged because she was required to protect the property until delivery. We find no reversible error.

The South Carolina Rules of Probate Court govern procedure in the probate court. *See* Rules 1-5, SCRPC. These rules address only a limited number of issues, and there is no procedural rule governing motions in probate court. However, the Probate Code provides the rules of civil procedure shall be applied in formal proceedings in the probate court. S.C. Code Ann. § 62-1-304 (Supp. 2015). “The manner of service, time for answering and other proceedings relating to the trial, except trial by jury, shall conform as nearly as may be to the practice in the courts of common pleas as provided in this Code.” *In re Estate of Weeks*, 329 S.C. 251, 258, 495 S.E.2d 454, 458 (Ct. App. 1997) (quoting S.C. Code Ann. § 14-23-280 (1976)). We find the probate court’s ruling on Fisher’s motion for an extension to turn over the estate assets was within the sound discretion of the probate court. *See generally Beckham v. Durant*, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct. App. 1989) (finding the probate court’s consideration of an enlargement of time to file an answer was within the discretion of the probate court). As to Fisher’s argument the probate court erred in finding she did not have the duty to act once she had been discharged, we note this was a statement made by the probate court during the hearing, and the probate court did not make this finding in its final order. We find no merit to this argument. *See Ford v. State Ethics Comm’n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (“Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly.”); *id.* (“The written order is the trial judge’s final order and as such constitutes the final judgment of the court.”).

9. Statutory Notice of the Hearing

The Fishers argue the probate court's order appointing a special fiduciary is void because neither Betty Fisher nor the Attorney General's office were provided notice of the Motion to Appoint Special Fiduciary for Conservatorship Assets. We disagree.

Betty Fisher again argues the probate court erred in relying on trust law to appoint a special fiduciary, which we considered above and found no reversible error. As to notice, we likewise find no reversible error. Under the Probate Code, “[a] special administrator may be appointed: (1) informally by the court on the application of an interested person when necessary . . . (c) to take appropriate actions involving estate assets; (2) in a formal proceeding by order of the court on the petition of any interested person. . . . If it appears to the court that an emergency exists, appointment may be ordered without notice.” S.C. Code Ann. § 62-3-614 (Supp. 2015). In this case, the issue before the court was the protection of the estate. Although the disposition of the estate would require notice to an “interested person,” the Probate Code provided authority for the probate court to conduct this hearing without notice to Betty Fisher or the Attorney General. *See* S.C. Code Ann. § 62-1-201(23) (Supp. 2015) (defining an “interested person” as including “heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent . . . ”). Neither Betty Fisher nor the animal charities are named in the last will.

V. Conclusion

For the foregoing reasons, we affirm in part and remand in part.

AFFIRMED IN PART and REMANDED IN PART.

HUFF and SHORT, JJ., and MOORE, A.J., concur.

ORDER OF THE SUPREME COURT OF
SOUTH CAROLINA DENYING
PETITION FOR REHEARING
(JANUARY 16, 2019)

THE SUPREME COURT OF COURT CAROLINA

BETTY FISHER,

Petitioner,

v.

BESSIE HUCKABEE,

Respondent.

LISA FISHER,

Petitioner,

v.

BESSIE HUCKABEE,

Respondent.

No. 2017-000743

Before: Donald Wayne BEATTY, Chief Justice, Kaye
Gorenflo HEARN, John Cannon FEW, John W.
KITTREDGE, George C. JAMES, Judges.

After careful consideration of the petition for
rehearing, the Court is unable to discover that any

material fact or principle of law has been either overlooked or disregarded. The petition for rehearing is denied.

/s/ Donald Wayne Beatty
C.J.

/s/ Kaye Gorenflo Hearn
J.

/s/ John Cannon Few
J.

/s/ John W. Kittredge
J.

/s/ George C. James
J.

Columbia, South Carolina
January 16, 2019

cc:

Jessica Lynn Crowley, Esquire
Betty Fisher
Lisa Fisher, Esquire
The Honorable Julie J. Armstrong

**ORDER FREEZING ASSETS
(OCTOBER 14, 2011)**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE PROBATE COURT

LISA FISHER,

Conservator,

and

ALICE SHAW-BAKER,

*Incapacitated
Person, now
Deceased.*

Case No.: 2008-GC-10-088

Before: Tamara C. CURRY, Associate Probate Judge

Lisa Fisher was appointed as Conservator or Alice Shaw-Baker, an incapacitated adult, on November 19, 2008.

Lisa Fisher was terminated as Conservator for Alice Shaw-Baker on May 11, 2009. Alice Shaw-Baker died on February 25, 2009 and her estate was opened with the Charleston County Probate Court, Estate File #2009ES10-0378. There is current ongoing litigation in Alice Shaw-Baker's estate.

The Estate of Alice Shaw-Baker currently has funds held in an account(s) with Wachovia under the name of Alice Shaw-Baker and/or Lisa Fisher or Alice Shaw-Baker individually.

The Court has received information that funds are being withdrawn without authorization from the Probate Court.

The Court has appointed J. Heyward Harvey, Jr., Esquire to serve as Special Fiduciary and he shall be the only party who is aloyered to make any transactions; therefore,

IT IS ORDERED that the assets in any and all accounts under the name of Alice Shaw-Baker and/or Lisa Fisher or Alice Shaw-Baker individually being held with Wachovia shall be frozen until J. Heyward Harvey, Jr., Esquire as Special Fiduciary takes control of the account.

AND IT IS SO ORDERED.

/s/ Tamara C. Curry

Associate Probate Judge of
Probate and for the County
of Charleston,
State of Carolina

Charleston, South Carolina
October 14, 2011

**ORDER APPOINTING SPECIAL FIDUCIARY
(SEPTEMBER 28, 2011)**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE PROBATE COURT COMMITMENT
DIVISION COUNTY OF CHARLESTON

In the Conservatorship of
ALICE SHAW-BAKER,

Deceased.
Lisa Fisher,
Conservator,
Respondent.

Case No.: 2008-GC-10-088

Before: Tamara C. CURRY, Associate Probate Judge

This matter comes before the Court on Motion of Personal Representative for Appointment of Special Fiduciary in the Estate of Alice Shaw-Baker who died testate on February 25, 2009 in Charleston County, South Carolina. Respondent has moved this Court for Extension to turn over estate assets and has filed a Motion to Strike movant Bessie Huckabee's Motion to Appoint Special Fiduciary. Present at the hearing were Bessie Huckabee, Petitioner, and Peter A. Kouten, Esquire, Lisa Fisher, Respondent, and John Hughes Cooper, Esquire.

DISCUSSION

Decedent Alice Shaw-Baker came under the jurisdiction of this Court upon appointment of guardian and conservator on her behalf. Lisa Fisher was the court-appointed guardian and conservator. Ms. Fisher filed her Petition for Discharge to terminate the guardianship and conservatorship of Alice Shaw-Baker and requested that the Court consider and approve final accounting covering the period January 1, 2009 through May 26, 2009. Lisa Fisher was discharged as the Guardian and Conservator by Order dated May 11, 2009. Ms. Fisher has held estate assets since her discharge and was granted extensions to turn over the estate assets until "resolution of the issue of who can accept the assets of the estate." The decedent's estate is seized and possessed with real estate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has jurisdiction over this matter and venue is proper. Respondent Lisa Fisher was discharged as Conservator by Order of this Court on May 11, 2009. Movant Bessie Huckabee has argued that requests for account of estate assets have been made on several occasions and these accountings had been denied. Lisa Fisher continues to object to the jurisdiction of this Court with regard to the Estate of Alice Shaw Baker, in part due to the fact that any ruling by this Court would intrude on decisions properly to be made in the Supreme Court and/or the Circuit Court. Respondent filed a final accounting on May 26, 2009. Respondent has sought and been granted extensions of time to turn over the estate and has held

these estate assets in trust. Respondent has, on June 1, 2011, filed with the Court annual accountings for the estate assets for the years 2009 or 2010.

In reviewing the 2009 and 2010 accountings, it is determined that there are real property assets in the estate of decedent Alice Shaw-Baker and there are containing requirements for upkeep and repair on this property. Further, review of the filed accountings indicate that there are needs for authority to deal with third parties with regard to this estate. Bessie Huckabee, as personal representative of the estate of decedent Alice Shaw-Baker (2009-ES-10-0378) is currently respondent to pending probate actions including action to appoint a special administrator. The Court finds an emergent need for authority as to these estate assets.

Whether or not a vacancy exists as to administration of these assets held in trust, the Court has the authority to appoint a special fiduciary. (South Carolina Probate Code 62-7-704(e))

THEREFORE, based on the forgoing, it is hereby ORDERED, ADJUDGED AND DECREED that Respondent's motion to strike and motion for extension to turn over estate assets be DENIED and that a special fiduciary be appointed, and it is further

ORDERED, ADJUDGED AND DECREED that Heyward Harvey, Esquire, be appointed Special Fiduciary for the estate assets of Alice Shaw-Baker, and it is further

ORDERED, ADJUDGED AND DECREED that Heyward Harvey receive all assets held by Lisa Fisher

within fifteen days of execution of this Order. That Mr. Harvey:

- a. marshal all assets, review accounts and 2009 and 2010 accountings with all the powers and discretions as authorized by law with regard to same.
- b. seek formal approval of the final accounting and 2009 and 2010 accountings with authority to amend same, if necessary, and further, seek to close the conservatorship estate.
- c. review needs for maintenance, taxes and insurance on real property with authority as fiduciary over same.
- d. maintain authority and control over all estate assets.
- e. keep records of his time devoted to this file and seek approval of his fees through separate order of this Court, and it is further

ORDERED, ADJUDGED AND DECREED that Mr. Harvey's appointment shall terminate upon final determination of proper authority over administration of the estate of Alice Shaw-Baker.

IT IS SO ORDERED!

/s/ Honorable Tamara C. Curry
Associate Probate Judge
County of Charleston

This 28th day of September, 2011
Charleston, South Carolina

**ORDER APPOINTING LISA FISHER AS
GUARDIAN AND CONSERVATOR
(NOVEMBER 19, 2008)**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE PROBATE COURT COMMITMENT
DIVISION COUNTY OF CHARLESTON

ELISABETH SPENCER,

Petitioner,

v.

ALICE SHAW-BAKER, an alleged Incapacitated person, and LISA FISHER, her next of kin,

Respondents.

Case No.: 2008-GC-10-088

Before: Tamara C. CURRY, Associate Probate Judge

This matter came before this Court for a hearing on appointment of Guardian and Conservator.

PROCEDURAL HISTORY

1. On July 31, 2008, Elizabeth Spencer filed Petitions for a Finding of Incapacity and for Appointment of Walter R. Kaufman, Esquire, as Guardian and for Appointment of Family Services, Inc. as Conservator.
2. On August 4, 2008 the Court appointed Walter Kaufman as Temporary Guardian.

3. After hearing on August 14, 2008 the Court appointed Walter Kaufman and Jane Orenstein as Temporary Co-Guardians and Family Services, Inc. as Conservator of Alice Shaw-Baker.

4. On August 19, 2008, Respondents filed Petitions for appointment of Alice Shaw-Baker's great-niece, Lisa Fisher, Esquire, as both Guardian and Conservator.

5. On September 4, 2008, Lisa Fisher filed a Motion for Temporary Restraining Order and a Preliminary Injunction against Removal of Alice Shaw-Baker from her home. On September 9, 2008, this Court heard Ms. Fisher's Motions.

6. By Order issued September 16, 2008, this Court:

- a. granted Lisa Fisher's Motion for a Temporary Restraining Order against Removal of Alice Shaw-Baker from her home;
- b. appointed Lisa Fisher and Jane Orenstein as Temporary Co-Guardians; and
- c. granted a request by Mr. Kaufman to be relieved as Co-Guardian.

7. By the same Order, this Court required that within two weeks Temporary Co-Guardians Lisa Fisher and Jane Orenstein:

- a. have the carpet replaced in Ms. Shaw-Baker's house;
- b. have Ms. Shaw-Baker house cleaned and organized;

- c. contact Family Services, Inc. to inventory and take possession of Ms. Shaw-Baker's financial records;
- d. make arrangements for caretakers to supervise Ms. Shaw-Baker's daily meals, hygiene, and medical needs;
- e. inform Ms. Shaw-Baker that she is not permitted to smoke cigarettes inside the house but is permitted to smoke cigarettes on the porch or the exterior of the house.

8. By various orders issued September 30, 2008 this Court:

- a. appointed Peter A. Kouten, Esquire, as Guardian ad Litem and as counsel for Alice Shaw-Baker;
- b. ordered that Mr. Kouten be sent as a visitor to Alice Shaw-Baker's residence;
- c. appointed L. William Mulbry, M.D. as a physician Examiner; and
- d. appointed Rebecca McCrudden, M.A., L.P.C., as an Examiner.

REPORTS

1. Alice Shaw-Baker was interviewed in her home by the following, who each issued a report:
 - a. court-appointed Examiner Leonard W. Mulbry, Jr., M.D. on October 7, 2008;
 - b. court-appointed Visitor Peter A. Kouten, Esquire, on October 8, 2006; and

- c. court-appointed Examiner Rebecca S. McCradden, M.A., L.P.C., on October 16, 2008.

On October 29, 2008, this Court heard the Petitions for Appointment of Guardian and Conservator. Based on the testimony of the witnesses, the reports submitted by the Examiners, the Visitor, and Ms. Shaw-Baker's physician, the Court makes the following findings of fact:

FINDINGS OF FACT

Background

1. Alice Shaw-Baker was born August 14, 1929 in San Francisco, California and is currently 79.
2. Her most closely related family members are Betty Fisher, her niece, and her great-niece, Lisa Fisher (Betty Fisher's daughter), who live in California.

Medical History

3. Ms. Shaw-Baker has diabetes, which she controls by diet.
4. She has no history of hospitalizations and only one surgery. The surgery was on her mastoid at age seven.
5. Ms. Shaw-Baker takes Boniva for her bones.
6. There is no evidence that Ms. Shaw-Baker has any history of psychiatric treatment.
7. There is no evidence that she has ever been diagnosed with depression, anxiety, or sleep disorders; however, per family members, she suffered mood deterioration after the death of her dog about a year ago.

8. She smokes approximately two packs of cigarettes a day.

9. Dr. Mulbry has diagnosed Ms. Shaw-Baker with Nicotine Dependence.

Recent Circumstances

10. Ms. Shaw-Baker resides at 306 Cassina Drive, Charleston, S.C. 29407, a single-story house which she owns with no mortgage.

11. In late December 2007, a neighbor reported that Ms. Shaw-Baker's house was becoming cluttered and unkempt.

12. She was hoarding junk mail and small items associated with Chihuahua dogs, neglecting daily hygiene, and it was not clear that she was maintaining adequate nutrition.

13. The Court intervened through this action and appointed as Temporary Co-Guardians Lisa Fisher and Jane Orenstein.

Current Circumstances

14. Ms. Shaw-Baker's house has been de-cluttered, cleaned, and repaired.

15. New fire-resistant carpeting has been installed and the home has been freshly painted.

16. A fire sprinkler system and hard-wired smoke detectors have been installed in the House.

17. A fire extinguisher is installed in the kitchen.

18. During various visits by the Court-appointed Examiners and Visitor, Ms. Shaw-Baker presented well, was well-groomed, and was properly dressed.

19. Currently she has around-the-clock caregivers who cook and clean.

20. Per the Court Order in place during the cleaning and repair of her home, she has been smoking on her back porch.

21. Ms. Shaw-Baker accepts the presence of her caregivers.

22. Ms. Shaw-Baker desires to live at home and is very opposed to moving to assisted living.

23. If at this time or in the future she must move into an assisted living or other facility, she would prefer to do so in California.

24. Dr. Mulbry has given Ms. Shaw-Baker the following diagnoses:

AXIS I: Cognitive impairment Not Otherwise Specified versus Early Dementia Nicotine Dependence

AXIS II: Deferred

AXIS III: Diet controlled by Onset Diabetes Mellitus.

25. Dr. Mulbry recommends that Ms. Shaw-Baker not drive until she successfully undergoes a formal driving evaluation.

Impairment

26. Based primarily upon the report and testimony of Leonard W. Mulbry, Jr., M.D., which contain cognitive evaluations and diagnoses, the Court finds that Alice Shaw-Baker is impaired by reason of mental deficiency due to limited problems with her memory and executive functions.

27. Presently, Ms. Shaw-Baker does require routine in-home assistance, but whether she requires around-the-clock assistance is unclear. She does not require placement outside her home at this time.

28. A full neuropsychological evaluation and a full medical evaluation of Alice Shaw-Baker would be helpful in determining how much care and supervision is presently necessary.

Finances

29. An inventory and appraisement of Ms. Shaw-Baker's assets has been filed by Family Services, Inc.

30. According to the sworn testimony of Mr. Ed Jellison of Family Services, Inc., Ms. Shaw-Baker has liquid assets of \$233,000, a home with no mortgage, and total monthly income of \$2,900 per month.

Nomination

31. Ms. Shaw-Baker has the mental capacity to nominate a Guardian and a Conservator. She has nominated and consents to appointment of her grand-niece, Lisa Fisher, as her sole Guardian and Conservator.

32. Lisa Fisher, Esquire, is qualified to serve as Alice Shaw-Baker's Guardian and Conservator.

ANALYSIS

1. This Court must exercise its authority so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental

and adaptive limitations or other conditions warranting the procedure. S.C. Code Ann. § 62-5-304(A) (2007).

2. Subject to a finding of good cause by the courts, persons who are not disqualified have priority for appointment as guardian in the following order. “ . . . (1) a person nominated to serve as guardian by the incapacitated person; . . . (6) another relative of the incapacitated person; . . . ” S.C. Code Ann. § 62-5-311 (2007).

3. As a general rule, close relatives are preferred as guardians or conservators of incompetent persons since they are regarded as the ones most solicitous of the ward’s welfare and the ones most likely to rehabilitate the ward. 39 Am. Jur. 2d Guardian and Ward § 41 (2008).

4. In this present case, Ms. Shaw-Baker has nominated Lisa Fisher, Esquire, to serve as guardian, and Ms. Fisher is a relative of Ms. Shaw-Baker. Ms. Fisher is not disqualified to serve. For these reasons, Ms. Fisher has priority for appointment as guardian.

CONCLUSIONS OF LAW

1. “Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. S.C. Code Ann. § 62-5-101(1) (2007).

2. Alice Shaw-Baker is an incapacitated person as defined by S.C. Code Ann. § 62-5-101(1) (2007) due

to limited problems with her executive functions and memory.

3. Appointment of a guardian pursuant to S.C. Code Ann. § 62-5-304(B) (2007) is desirable as a means of providing continuing care and supervision of Alice Shaw-Baker.

4. At the present time the evidence currently before the Court indicates that Ms. Shaw-Baker lacks capacity to:

- a. Dispose of real or personal property, except that she may make purchases up to \$50;
- b. Enter into contracts;
- c. Execute instruments;
- d. Execute a valid power of attorney;
- e. Manage her financial affairs;
- f. Marry or divorce; and
- g. Drive an automobile.

5. At the present time, Alice Shaw-Baker has the capacity make purchases up to \$50 and has the capacity to vote.

6. The Court grants Alice Shaw-Baker's Petitions for Appointment of her great-niece, Lisa Fisher as Guardian and Conservator.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Lisa Fisher, is appointed as sole Guardian and as Conservator for Alice Shaw-Baker; and it is

FURTHER ORDERED that the contents of Alice Shaw-Baker's safety deposit box at Bank of America be turned over to Temporary Conservator, Family Services, Inc. Upon receipt of the contents of said safety deposit box Family Services shall promptly file a copy of Alice Shaw-Baker's last will and testament with this Court. Neither Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will or execute a new will, unless specifically ordered by this Court; and it is

FURTHER ORDERED that Alice Shaw-Baker's Power of Attorney and Health Care Power of Attorney are hereby revoked; and it is

FURTHER ORDERED that, as soon as can be arranged, Alice Shaw-Baker shall have a full neurological evaluation by Randolph Waid, Ph.D., who shall report to this Court on Alice Shaw-Baker's mental condition. This report should summarize diagnosis, treatment options and prognosis, and should address whether or not Alice Shaw-Baker has dementia or one or more other condition(s) which may affect her cognitive function, whether or not medication may be helpful, whether or not Alice Shaw-Baker should be allowed to drive an automobile, whether or not Alice Shaw-Baker requires 24 hour daily care/supervision, whether or not less care/supervision may be sufficient. If less care/supervision may be sufficient, this report should contain a recommendation on the appropriate level of care/supervision or the proper procedure to determine same; and it is

FURTHER ORDERED that, as soon as can be arranged, Alice Shaw-Baker shall have a full medical evaluation by a medical doctor, who shall report to this Court on Alice Shaw-Baker's medical condition.

This report should summarize diagnosis, treatment options, and prognosis, and should address whether or not Alice Shaw-Baker has diabetes, hypertension, elevated cholesterol, or one or more other medical condition(s) which may affect her cognitive function, whether or not medication may be helpful, whether or not her 1,200 calorie diet should be modified, whether or not Alice Shaw-Baker should be allowed to drive an automobile, the extent of Alice Shaw-Baker's limitations, whether or not Alice Shaw-Baker requires 24 hour daily care/supervision, and whether or not less care/supervision may be sufficient. If less care/supervision may be sufficient, this report should provide a recommendation on the appropriate level of care/supervision or the proper procedure to determine same; and it is

FURTHER ORDERED that upon receipt of the neuropsychological and medical reports in this matter, the Guardian shall file a copy of same with this Court and serve copies upon counsel for all parties; a status conference or hearing will be set upon receipt of the neuropsychological and medical reports in this matter; and it is

FURTHER ORDERED that until receipt of the said reports and until further order of this Court, Alice Shaw-Baker shall have 24 hour daily care/supervision in her home or in a day program; and it is

FURTHER ORDERED that Alice Shaw-Baker shall not smoke cigarettes inside her home, but she may smoke outside. In inclement weather only, Alice Shaw-Baker may smoke inside her home only in the pantry (with a cement floor) or in the kitchen (with a tile floor); and it is

FURTHER ORDERED that Temporary Conservator Family Services shall ensure that Alice Shaw-Baker's home is covered by appropriate homeowners insurance; and it is

FURTHER ORDERED that Alice Shaw-Baker shall not be removed from her home for placement elsewhere without further order of this Court; and it is

FURTHER ORDERED that the Guardian shall consult with Alice Shaw-Baker regarding her placement, medical care, and other major life decisions, but the Guardian shall have final decision making authority with regard to all such decisions; and it is

FURTHER ORDERED that Alice Shaw-Baker may make purchases up to \$50.00. Other than making purchases up to \$50.00, Alice Shaw-Baker may not sell personal or real property. Alice Shaw-Baker may not enter into contracts, execute instruments, execute powers of attorney, manage her financial affairs, marry, divorce, drive an automobile, or hold a driver's license. Alice Shaw-Baker can vote; and it is

FURTHER ORDERED that until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis; and it is

FURTHER ORDERED that Lisa Fisher shall report the condition of Alice Shaw-Baker and her estate annually on or before the 1st of November of each year starting November 1, 2009; and it is

FURTHER ORDERED that the Conservator shall be bonded by an amount and in such form as may be approved by the Court. Upon approval and filing of said bond, the Conservator shall take possession and control of the financial affairs of Ms. Shaw-Baker; and it is

FURTHER ORDERED that Family Services, Inc. (and/or the Conservator upon posting a bond) shall promptly pay out of Ms. Shaw-Baker's funds all of her just debts, including, without limitation, the costs of home repair and improvements, food, clothing, living expenses, medical care, elder care, the costs of this action, reasonable fees and expenses of the Court Appointed Examiners, Dr. Mulbry and Ms. McCrudden, costs and premiums for the Conservator's bond, and all other reasonable expenses of the administration of Ms. Shaw-Baker's financial affairs; and it is

FURTHER ORDERED that the attorneys shall submit affidavits and proposed orders for their attorneys' fees; and it is

FURTHER ORDERED that this matter shall be set for review in six months; and it is

FURTHER ORDERED that this Order is subject to such further Orders of the Probate Court of Charleston County as may be or shall become necessary for the custody, control, conduct, and administration of the person and estate of Alice-Shaw Baker.

IT IS SO ORDERED at Charleston, South Carolina on November 19, 2008.

/s/ Tamara C. Curry
Associate Probate Judge

ORDER DENYING MOTIONS FOR
RECONSIDERATION AND OPPOSITION OF
PROBATE COURT ORDER APPOINTING
SPECIAL FIDUCIARY, MOTION TO STRIKE,
AND RENEWED MOTION FOR APPROVAL OF
EXPENSES OF GUARDIAN AND CONSERVATOR
(OCTOBER 14, 2011)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE PROBATE COURT

LISA FISHER,

*Personal
Representative,
Petitioner,*

v.

IN THE CONSERVATORSHIP of
ALICE SHAW-BAKER,

*Deceased.
Lisa Fisher,
Conservator,
Respondent.*

Case No.: 2008-GC-10-088

Before: Tamara C. CURRY, Associate Probate Judge

Here comes before the Court on Lisa Fisher's Motions for Reconsideration of Probate Court Order

dated September 28, 2011 Appointing Special Fiduciary and Motion to Strike and Opposition to Motion to Appoint Special Fiduciary, a Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator and Betty Fischer's Motion to Set Aside Void Probate Court Order dated September 28, 2011 by and through their attorney, John Hughes Cooper, Esq., filed on October 7, 2011. Petitioner asks the Court to reconsider the Court's Order, dated September 28, 2011. This motion is based on the Court's order concerning the Motion to Appoint a Special Fiduciary for Conservatorship Assets filed by Bessie Huckabee dated May 20, 2011 by and through her attorney, Peter A. Kouten, Esq. in response to Lisa Fischer's Motions for Extension filed May 13, 2011, and her Motion to Strike filed June 1, 2011 by and through her attorney, John Hughes Cooper, Esq. This Court's order denied the Respondents Motion to Strike and Motion for Extension to turn over assets and further ordered that a special fiduciary be appointed. The court further ordered that J. Heyward Harvey, Esq. be appointed Special Fiduciary for the estate assets of Alice Shaw-Baker and that Lisa Fischer within fifteen days turn over these said assets to Heyward Harvey, Esq.

At this time, having reviewed the Motions and the record, the Court hereby denies Respondents Motions. The probate court has jurisdiction of proceedings initiated by interested parties concerning the internal affairs over protective proceedings and guardianship proceedings (South Carolina Probate Code 62-5-102) This Court finds that Lisa Fischer's fiduciary role as Guardian and Conservator was terminated by this Court's Order dated May 11, 2009. Since Ms. Fischer's discharge she has held estate assets; has

requested and been granted several extensions to perform the same, due to the ongoing litigation in the estate matter. The Court became aware at the August 17, 2011 hearing that Lisa Fischer has continued to expend funds since Alice Shaw-Baker's death from the Conservator accounts of Alice Shaw-Baker.

The Court finds that Lisa Fischer has been terminated as Conservator and no longer has the authority to withdraw or pay expenses out of the estate which is being withdrawn without authorization from the Probate Court. The decedent's estate is seized with real property. On the court's own motion; to preserve the estate of Alice Shaw-Baker, this Court is freezing all money and assets in the name of Alice Shaw-Baker.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED THAT:

1. The Motion for Reconsideration of Probate Order Dated September 28, 2011 Appointing a Special Fiduciary, the Motion to Strike and Opposition to the Motion to Appoint A Special Fiduciary, the Renewed Motion for Approval of Fees and Expenses of Guardian and Conservator and the Motion to Set Aside Void Probate Court Order dated September 28, 2011 Appointing A Special Fiduciary is hereby Denied; it is further ordered
2. That Alice Shaw-Baker has funds currently in a number of banking institutions under the name of Alice Shaw-Baker Conservatorship and Lisa Fischer Conservatorship or individually. It is ordered that the assets in

any and all accounts in the name of Alice Shaw-Baker Conservatorship and Lisa Fisher Conservatorship, or individually being held with any banking institution shall be frozen until J. Heyward Harvey, Jr., Esq., as Special Fiduciary takes control of said accounts.

AND IT IS SO ORDERED.

/s/ Tamara C. Curry

Associate Probate Judge

This 14th day of October, 2011

Charleston, South Carolina

SOUTH CAROLINA CONSTITUTIONAL PROVISIONS, STATUTES AND JUDICIAL RULES

South Carolina Constitution, Article I, § 3 provides as follows:

SECTION 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

South Carolina Constitution, Article I, § 13 (A) provides as follows:

SECTION 13. Taking private property; economic development; remedy of blight. (A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use. “Except as otherwise provided in this Constitution, private property shall not be taken . . . for public use without just compensation being first made for the property.”).

SC Code § 62-5-414 provides as follows:

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court.

SC Code § 62-5-425 (d) provides as follows:

(d) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after thirty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 62-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order

under this section shall have the effect of an order of appointment of a personal representative as provided in Section 62-3-308 and Parts 6 through 10 of Article 3 [Sections 62-3-601 et seq. through Sections 62-3-1001 et seq.] except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

SC Code § 62-7-707 provides as follows:

- (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
- (b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

South Carolina Rules of Civil Procedure, Rule 11 provides as follows:

- Rule 11—Signing Of Pleadings; Attorneys

(a) Signature

Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an

attorney shall sign his pleading, motion or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. An attorney or party may only utilize an electronic signature in pleadings, motions or other papers that are E-Filed in the SCE-File electronic filing system.

All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held. There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon

the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

- Note:

This Rule 11(a) is substantially the Federal Rule, with one addition, that the pleadings must be signed by the party or, if he has an attorney, by an attorney who practices in the State. Important as this change is, it is not as significant as the Rule itself, which eliminates the verification of pleadings and places on the lawyer who signs a pleading the duty of good faith in preparing the pleading. The lawyer may be disciplined if he violates this duty. This version of Rule 11(a) is not nearly so stringent as the latest version of the Federal Rule which became effective August 1, 1983; but it represents a substantial forward step in lawyer responsibility.

- Note to 1986 Amendment:

The amendment to Rule 11(a) makes explicit that the certification requirement applies to all motions or papers filed by the attorney or party. The requirement that an attorney of record must be a resident or maintain an office in the State is deleted. The conditions under which a person may appear of record are more properly within the exclusive power of the Supreme Court to govern the admission to practice, rather than a matter of trial court procedure.

- Note to 1989 Amendment:

The amendment to Rule 11(a) requires that a movant make a “good faith” effort to resolve any dispute before filing a motion and to so certify in the motion unless the consultation would serve no useful purpose or could not be timely held. This is similar to the Local Federal Rule. As in the Local Federal Rule, there is no duty to consult with pro se litigants, or about certain motions. Consultation may be oral or written.

The change makes clear that the court may impose sanctions for violations of this Rule and replaces the ambiguous language that “an attorney may be subject to appropriate disciplinary action.” The change is more consistent with the language on sanctions for discovery abuse. The amendment does not change the standard for imposing sanctions which remains that of the pre-1983 Federal Rule.

- Note to 1993 Amendment:

Rule 11(a) was amended to add a requirement that the signer of pleadings include his telephone number.

- Note to 2016 Amendment:

This amendment clarifies that the electronic signature of an attorney or party may only be used in E-Filed pleadings, motions or other papers.

(b) Change of Attorney

An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not

otherwise. Written notice of change of attorney must be served as provided by Rule 5.

- Note:

This Rule 11(b) retains the requirements of Circuit Court Rule 7, and represents no change in State or Federal practice.

(c) Affidavits and Verifications

Affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true. When a corporation is a party the verifications may be made by any officer or agent thereof. When a partnership or other unincorporated association is the party under a common name the verification may be made by a member or officer thereof. When the State or any officer thereof in its behalf is a party, verifications may be made by any person acquainted with the facts.

(d) Attorney as Surety

No attorney or other officer of the court shall become surety upon any undertaking or bond filed in any action.

- Note:

Rules 11(c) and 11(d) are added to the Federal Rule to preserve the requirements of Code §

15-1-240, and Circuit Court Rule 9.

- Note to 1986 Amendment:

Rule 11(c) is amended to permit an employee of an attorney to probate affidavits or verifications on pleadings or other papers, although a deposition cannot be taken before such employee under Rule 28(c).

**REMITTITUR IN *EX PARTE COOPER*
(DECEMBER 12, 2018)**

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

EX PARTE: JOHN HUGHES COOPER,

Appellant,

IN RE: BETTY FISHER and LISA FISHER,

Plaintiffs,

v.

BESSIE HUCKABEE,
KAY PASSAILAIGUE SLADE, and SANDRA BYRD,

Respondents.

Appellate Case No. 2018-000662
Memorandum Opinion No. 2018-M0-040

Appeal From Charleston County Thomas L.
Hughston, Jr., Circuit Court Judge

Before: BEATTY, C.J., KITTREDGE,
HEARN, FEW and JAMES, JJ.

PER CURIAM:

John Hughes Cooper was held jointly and severally liable for a sanctions award in the amount of \$170,623.68 in attorneys' fees under the South

Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA)¹ and Rule 11, SCACR, in connection with his representation of Lisa and Betty Fisher in cases involving the estate of Alice Shaw-Baker. We have painstakingly reviewed the record and find there is no evidence to support an award of sanctions or a finding of misconduct against Cooper. We therefore reverse all judgments against Cooper pursuant to Rule 220(b)(1), SCACR. This case is concluded.

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

¹ See S.C. Code Ann. §§ 15-36-10 to-100 (Supp. 2018).

**LETTER TO OFFICE OF SOUTH CAROLINA
DISCIPLINARY COUNSEL
(SEPTEMBER 27, 2018)**

STATE OF SOUTH CAROLINA

Thomas L. Hughston, Jr.
Circuit Judge, Retired
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Ms. Kelly B. Arnold
Assistant Disciplinary Counsel
P.O. Box 12159
Columbia, SC 29211

Re: John Hughes Cooper 18-DE-L-0330
Lisa Fisher 18-DE-L-0331

Dear Ms. Arnold:

Since my last communication to you in the above matters, I had to do several additional Orders that are of course on file with the Clerk of Court, and these Orders should also be considered.

Additionally, I believe you should consider other cases involving these attorneys that show a pattern of frivolous actions. See *Fisher, et al. vs. Huckabee, et al.*, Supreme Court of South Carolina, Appellate Case No. 2016-000320. An examination of the pleadings and facts again shows a frivolous suit. The claims of

attorney negligence and abuse, neglect and wrongful death are preposterous.

Also, there was an ejectment case involving these parties that I believe has been ended by the Supreme Court of South Carolina.

Further, I am enclosing copies of six cases reported from California involving Lisa Fisher that I think again support the conclusion that she has a pattern of frivolous suits.

Thank you for your attention to these matters.

Very truly yours,

/s/ Thomas L. Hughston, Jr.