

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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**Jul 20 2022**

**SC Court of Appeals**

APPEAL FROM HORRY COUNTY

Cynthia Graham-Howe, Master-in-Equity

Civil Action No.: 2016-CP-26-007190

Appellate Case No.: 2022-00721

In the Matter of Edith Cox Soles, Deceased,

Marcia Soles Anderson and Michael W. Soles,  
Individually and as interested Parties, ..... Appellants,

v.

Jimmy R. Soles, ..... Respondent.

INITIAL BRIEF OF RESPONDENT

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## **STATEMENT OF ISSUES ON APPEAL**

The Master-in-Equity for Horry County, as trier-of-fact in this action, did not err in failing to set aside the Deed from Edith Cox Soles to Jimmy R. Soles dated July 21, 2015 and recorded in Deed Book 3837 at Page 3468 in the office of the Register of Deeds for Horry County, South Carolina. The Master-in-Equity heard all of the testimony and found that substantive evidence supported the mental capacity and competence of Edith Soles to Execute the Deed at issue in this matter.

## **STATEMENT OF THE CASE**

The Plaintiffs-Appellants, brother and sister Marcia Soles Anderson and Michael W. Soles, brought this action, against their remaining brother, Jimmy R. Soles, to set aside and void a deed from Edith Cox Soles to Jimmy R. Soles, executed on July 21, 2015, and recorded in Deed Book 3837 at page 3468 in the records of the Register of Deeds for Horry County. Plaintiff's Amended Complaint was filed December 22, 2016 asserting that Edith Cox Soles was substantially impaired and did not have the mental capacity to execute the Deed. Defendant's Answer to the Amended Complaint was filed February 14, 2017 and denied the allegations of the Plaintiff-Appellants' Complaint and asserted that the deceased Edith Cox Soles had the capacity to execute the deed at issue.

The matter was referred to the Master-in-Equity of Horry County by consent of the parties, and the Final Hearing on the matter was held April 15 and 16, 2019 before the Honorable Cynthia Graham-Howe, Master-in-Equity for Horry County, non-jury, and a decision was duly rendered. On April 29, 2022, the Final Order was issued by the Court in favor of the Defendant/Respondent, Jimmy R. Soles. Plaintiff-Appellant seeks to have the Deed at issue in this case set aside, and asks whether the Master-in-Equity, as trier of fact in this case, has erred in failing to set aside the Deed.

Defendant-Respondent seeks a determination that no error was made in not setting aside the Deed and to have the Final Order issued by Judge Howe affirmed.

### **STATEMENT OF FACTS**

On July 15, 2015, Edith Soles executed a deed transferring a 55-acre tract of land to her son, Defendant-Respondent Jimmy R. Soles. The deed was prepared by an attorney in Conway, South Carolina, Catherine Dingle, who had been practicing law, at the time of the Final Hearing of this matter, for twenty-two (22) years. Ms. Dingle's practice consists of, primarily, transactional real estate work. The Plaintiff-Appellants' counsel presented testimony not only from each of the Plaintiffs, but also from Dr. Gary Barrett, an internal medicine physician, as well as from William Phipps, Esquire, the attorney who prepared the original will for Edith Soles, and Angela Fowler, a former caregiver. Most of Plaintiff-Appellants' witnesses testified about Edith Soles mental capacity. William Phipps testified that he last saw Edith Soles in 2014 after her youngest son had passed away and that, at that point, she was not much different than she had been in 2013 and still was basically in control, except for being emotional because of her son's death.

Defendant-Respondent's counsel presented testimony from the Defendant-Respondent, Jimmy R. Soles, as to the mental capacity of Ms. Soles. Defendant-Respondent's counsel also presented testimony from Catherine Dingle, Esquire, the attorney who prepared the Deed. Ms. Dingle testified as to how she followed practice and protocol regarding the transaction and questioned Edith Soles separately from her son, Jimmy R. Soles, the Defendant-Respondent in this matter, who had driven her to the appointment, in order to determine whether or not Ms. Soles was aware of what she was doing and to determine if she was making the transfer of her own volition. Ms. Dingle testified that Ms. Soles had the capacity to execute the Deed.

Defendant-Respondent also introduced testimony from Kevin Rochford, the attorney who prepared the Codicil to Edith Soles's will. Kevin Rochford testified that he examined Ms. Soles when she came to execute the codicil to her will and found that Ms. Soles was competent to execute the Codicil.

Defendant-Respondent also introduced testimony from two (2) additional caregivers of Ms. Soles, Judy Faye Platt and Lavonda Hyatt. Each of these caregivers testified that, in general, Ms. Soles was aware of various matters in her day-to-day life, including financial matters, how Ms. Soles had apportioned her land among her children, and gossip that was going on in the neighborhood.

The Master-in-Equity took all matters under advisement and issued her ruling in April of 2022.

### **STANDARD OF REVIEW**

This is an action to set aside the Deed executed by Edith Soles granting property to Jimmy R. Soles, dated July 21, 2015, recorded in Deed Book 3837 at Page 3468 in the office of the Register of Deeds for Horry County, South Carolina, for lack of mental capacity to execute the Deed.

In Stoney v. Stoney, the Court noted as follows: "De novo review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings." Stoney v. Stoney, 425 S.C. 47, 62, 819 S.E.2d 201, 209 (S.C. App. 2018) (citing Lewis v. Lewis 392 S.C. 381, 390, 709 S.E.2d 650, 654-655 (2011)). The Court went on to state, "However, this broad scope of review does not require an appellate court to disregard the factual findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." Stoney, 425 S.C. at 62, 819 S.E.2d at 209 (Citing Pinckney v. Warren, 344 S.C. 382,

387, 544 S.E.2d 620, 623 (2001). “Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.” Stoney, 425 S.C. at 62, 819 S.E.2d at 209 (citing Pinckney at 387-88, 544 S.E.2d at 623).

Further, in Dept. of Transp. v. M&T Ent., this Court set forth as follows: “However, our broad scope of review does not require this court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility.” Dept. of Transp. v. M&T Ent., 379 S.C. 645, 654, 667 S.E.2d 7, 12 (S.C. App. 2008), (Citing Sloan v. Greenville County, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App. 2003)). This Court further noted, “[W]hile certainly not controlling, the master-in-equity as trier of fact was free to accept or reject any or all of a witness’s testimony, including that of an expert witness.” Dept. of Transp., 379 S.C. at 668, 667 S.E.2d at 21, n.12 (see also, Dixon v. Besco Eng’g, Inc., 320 S.C. 174, 181, 463 S.E.2d 636, 640 (Ct. App. 1995) (“The fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations.”))

The Master-in-Equity in our case was both the judge and the trier of fact. The Final Order, at pages 2, 3, 4, 5, and 6, noted and referenced a review of each witness and the testimony provided by that witness. As trier-in-fact, the judge, is not required to specifically set forth degrees of the testimony credibility for the various witnesses from whom testimony was taken in the trial of the case.

All testimony was duly acknowledged and considered by Judge Howe in her ruling, including Dr. Barrett’s. The ruling of the Master-in-Equity should be affirmed.

## ARGUMENT

### Jimmy Soles's Testimony was thorough and compelling.

The lower Court found the testimony of Jimmy Soles and the witnesses for Jimmy Soles to be thorough and compelling:

However, I find the testimony provided by the witnesses for the Defendant to be thorough and compelling as to the cognitive mental capacity and competence of Edith Cox Soles through all time related to the date of the execution of the deed on July 21, 2015 and throughout the year 2015. ... [Final Order, p. 3, ¶ 3].

Jimmy Soles provided testimony about the physical and mental conditions of Ms. Edith Soles from 2013 through 2016. He testified that he saw Edith Soles with frequency during 2014 and 2015 [Tr., Apr. 16, p. 50, line 20 through p. 51, line 9]. Ms. Soles also went to the casino with him and spent Christmas with him in 2015, at which time she was able to get around his house. [Tr. Apr. 16, p. 38, line 19 through p. 39, line 19; p. 45, line 18 through p. 48, line 25; and p. 49, lines 1-21].

Jimmy Soles did offer testimony that he took his mother to Conway with regard to the execution of the Deed at issue in this case. They made an appointment and returned to meet with the attorney, Catherine Dingle. When they returned for the appointment with Ms. Dingle, Ms. Dingle took Ms. Soles into another room to consult with her while Jimmy Soles remained in lobby. [Tr. Apr. 16, p. 42, line 18 through p. 44, line 25]. The testimony of Jimmy Soles as to Ms. Soles's cognitive mental capacity and competency are further referenced in pages 31 through 51 of the record.

### The Testimony of Catherine Dingle was Clear and Convincing.

Catherine Dingle, an attorney with Thompson & Henry, P.A., a law firm in Conway, South Carolina, had practiced law for 22 years on the day the Deed was executed. Her specific testimony was related to meeting with Ms. Soles and the execution of the Deed on July 21, 2015 in her office

as set forth in the April 16, 2019 transcript of the Trial beginning on page 157, line 15 and continuing through page 164, line 19.

The Final Order of Judge Howe reads, in part, as follows:

[Catherine Dingle's] further testimony was that there was no question but that Ms. Soles had the capacity to make an informed decision about executing the Deed and that she had an understanding of the property she was conveying to Jimmy Soles. Attorney Dingle followed the same protocol with Ms. Soles in executing the Deed she's followed for 22 years. Ms. Dingle further testified that she had no questions as to whether Ms. Soles was competent to execute the Deed then and further testified that she had no representation of Ms. Soles thereafter. Jimmy Soles was not in the room with his mother when she executed the Deed. [Final Order, page 5, 13<sup>th</sup> line].

### **The Testimony of Kevin Rochford is Clear and Compelling.**

Kevin Rochford provided testimony about his preparation of a codicil to Ms. Soles's Will. The Codicil was dated July 8, 2015. Mr. Rochford graduated from law school in 1980, and his practice is limited exclusively to estate planning and estate administration. He met with Ms. Soles on July 8, 2015 to review a short codicil and then have the codicil executed. [Rochford Dep. p. 7, lines 10-12]. His testimony referenced the protocol he followed to ensure Ms. Soles was competent to execute the Codicil. [Rochford Dep. p. 9, line 2 through page 10, line 18]. He testified that he explained the effect of her Codicil after questioning her about her competency. [Rochford Dep. p. 12, line 7 through p. 13, line 1]. Mr. Rochford further explained that there was a process whereby that Edith Soles had to disclose to the witnesses who witnessed her signature her reasoning for the transfer so they could all sign under oath as to her competency. Kevin Rochford had a multiple step process in place to verify the competency of Edith Soles. She was required to relate her reasoning not just to him as the attorney, but again later to the two witnesses who would witness her signature.

Mr. Rochford offered further testimony regarding the standard protocol he used for inquiring of a testator and the process. [Rochford Dep. p. 17, line 11 through p. 18, line 25; page 19, lines 1-11]. His further testimony was specific as to the factors being incorporated into the protocol for questioning elderly clients. [Rochford Dep., p. 18, line 25 through p. 19, line 11]. The transcript of the deposition of Kevin Rochford is included in the Designation of Matter in the Record on Appeal.

Kevin Rochford's deposition was credible, clear and compelling, and as evidenced above, in his deposition, he outlined a multi-step process he used to assess, and confirm verify the competency of Edith Cox Soles to execute the Codicil on July 8, 2015.

**Testimony of Judy Faye Platt Supports the Competency of Edith Cox Soles**

Judy Faye Platt worked as a caretaker for Ms. Edith Cox Soles several days per week. Her testimony was that she worked as a caregiver for approximately two years, ending in March of 2016. [Tr., Apr. 16, 2019, p. 91, line 5- 18]. She testified that Ms. Soles was of sound mind and could carry on conversations and was aware of what was going on around her. [Tr., Apr. 16, p. 94, line 12 – p. 96, line 16]. Her testimony further dealt with Ms. Soles's knowledge of her property and her ability to take instructions, listen to questions and carry on conversations. [Tr., Apr. 16, p. 99, line 11 – p. 101, line 24].

The testimony of Ms. Platt supports the mental ability and competency of Ms. Soles during the time in which the Deed at issue was executed:

Q. And you indicate here that she was very aware of what was going on and not confused about things; is that correct?

A. Yes, sir.

[Tr. Apr. 16, p. 101, lines 21-25]

**The Testimony of Lovanda Sue Hyatt is Persuasive.**

Lovanda Hyatt was employed to care for Edith Cox Soles beginning sometime in 2013 and continuing throughout the years 2014, 2015 and until the death of Ms. Soles in 2016. [Tr. Apr. 16, p. 114, lines 19 – p. 116, line 14].

Ms. Hyatt specifically testified as to Ms. Soles having a good, sharp mind throughout the year 2015 [Tr. Apr. 16, p. 116, line 15 – p. 117, line 9]. Further testimony was given by Ms. Hyatt as to Ms. Soles knowing about her surroundings and the area. [Tr. Apr. 16, p. 118, line 13-25]. Ms. Hyatt’s testimony provided that for most of the time Ms. Hyatt worked for Ms. Soles, Ms. Soles knew what was going on in her checkbook. [Tr. Apr. 16, p. 121, line 10 – p. 122, line 7].

The testimony of Lovanda Hyatt supports the mental capacity and competency of Ms. Edith Cox Soles.

**Judge Howe Did Address the Testimony of Dr. Gary Barrett.**

The testimony of Dr. Gary Barrett is included in the record. Judge Howe specifically referenced and acknowledged Dr. Barrett’s testimony, and provided as follows in her Final Order:

Dr. Barrett had long provided medical care for Ms. Soles and testified as to dementia, and I find his testimony insightful and thorough as to his medical position on the condition of Ms. Soles. His testimony has been duly noted and thoroughly reviewed and acknowledged.

[Final Order, p. 2, ¶ 3].

There is no rule or precedent that provides that the judge, as trier of fact, must assign degrees of weight assessed to each witness and explain those degrees of weight in a final order. It is well-established that the appellate court’s broad scope of review does not require the appellate court to disregard the factual findings or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses. Stoney v. Stoney, 425 S.C. 47 at 62, 819 S.E.2d 201 at

209; Dept. of Transp. v. M&T Ent., 379 S.C. at 654, 667 S.E.2d at 12. Further, the master-in-equity as trier of fact was free to accept or reject any or all of a witness's testimony, including that of an expert witness." Dept. of Transp., 379 S.C. at 668, 667 S.E.2d at 21, n.12. See also, Dixon, 320 S.C. 174, 181, 463 S.E.2d 636, 640 (Ct. App. 1995) ("The fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations.")

### **The Testimony of the Plaintiffs**

Both of the Plaintiffs offered testimony in support of their case. Judge Howe, in her order, recites the following related to the Plaintiffs' testimony:

Plaintiffs, Marcia Soles Anderson and Michael W. Soles, presented their claims and provided testimony about their position on the capacity of Ms. Soles and her purported impairment with the inability to carry out various tasks. I duly noted all testimony provided and also note that the two (2) of them lived in close proximity to Ms. Soles and provided and/or oversaw caregiver responsibilities. Their positions and testimony on the alleged mental incapacity and impairment of Ms. Soles has been duly and thoroughly noted and acknowledged.

[Final Order, p. 2, ¶ 2].

### **Testimony of Angela Fowler**

Testimony was taken from Angela Fowler, who had been a caregiver for Ms. Soles. The Final Order specifically referenced her testimony as follows:

Finally, the Plaintiffs called Angela R. Fowler who served as a caretaker for Ms. Soles for various periods of time. Her testimony included statements as to the condition of Ms. Soles during when [sic] she assisted with Ms. Soles's care. She testified that in 2015 Ms. Soles had dementia and was unable to take care of her affairs.

Her testimony was significantly disputed by the testimony provided by Judy Faye Platt and Lovanda Hyatt, two other caregivers. However, her testimony was duly noted and, as with the other Plaintiff's witnesses' testimony, was given substantial attention. [Final Order, p. 3, ¶¶ 1 and 2].

## **Appellant's Brief States the Distribution to the Children Was Not Equal**

The position presented by the Appellants in their brief starts as follows:

It is of course true that the issue of contractual capacity is not controlled by whether each child was treated equally. This would be true whether Jimmy Soles had previously received less, the same, or more than the other children.

There is extensive testimony provided as to the competence and capacity of Ms. Soles to make an informed decision about executing the Deed at issue in this case and that she had an understanding of the property she was conveying to Jimmy Soles in the Deed. The sole issue on appeal is the decision of the Master-in-Equity related to the Deed dated July 21, 2015 from Edith Soles to Jimmy R. Soles. Testimony provided by the Defendant-Respondent and the witnesses for the Defendant-Respondent clearly support her competence and capacity to execute the Deed in the office of Catherine Dingle on July 21, 2015.

### **CONCLUSION**

The Court ruled properly that the Plaintiffs failed to prove their allegations that would result in the Deed being declared void. The conclusion of the Master-in-Equity in the Final Order is as follows:

There is a lack of evidence that Jimmy Soles took actions which unduly influenced his mother, Edith Cox Soles, or that he breached a confidential relationship in her executing the Deed conveying title to the subject property. In addition, substantial testimony was provided as to the mental competency and capacity of Ms. Edith Cox Soles to undertake and understand her actions and affairs and in the execution of the contested Deed.

THEREFORE, I find that the Plaintiffs have failed to prove their allegations that would result in the Deed being declared void.

I further find that substantive evidence supports the mental capacity and competency of Edith Cox Soles in the execution of the Deed in the office of Catherine Dingle on July 21, 2015 granting the property contained therein to Jimmy R. Soles.

I further find that in the execution of the Deed, there was no abuse of any confidential relationship or exertion of undue influence whereby the free will of Edith Cox Soles was overcome or overborne by Jimmy R. Soles.

I further find that the Deed was properly prepared, duly documented and duly executed and that title is properly vested in the Defendant, Jimmy R. Soles, under the Deed dated July 21, 2015 and recorded in Deed Book 3837 at Page 3468 in the office of the Register of Deeds for Horry County, South Carolina. [Final Order, p. 9, ¶¶ 1-5]

Respondent submits the conclusion of the Honorable Cynthia Graham Howe, Master-in-Equity as the proper result for this action. The Respondent would submit that as cited above, the Master-in-Equity, as trier-of-fact, was in the best position to assess the credibility of the witnesses in this case and must determine the weight to be accorded the testimony of the witnesses, and accept or reject their evaluations. The decision of the Master-in-Equity should be affirmed.

McCUTCHEM VAUGHT GEDDIE &  
HUCKS, P.A.

s/ Luther O. McCutchen, III

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July 20, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM HORRY COUNTY  
Cynthia Graham-Howe, Master-in-Equity

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In the Matter of Edith Cox Soles, Deceased,

Marcia Soles Anderson and Michael W. Soles,  
Individually and as interested Parties, ..... Appellants,

v.

Jimmy R. Soles, ..... Respondent.

PROOF OF SERVICE

The undersigned counsel for Respondent herein certifies that he served the Initial Brief of Respondent upon Brown W. Johnson, counsel for Appellants, by email as called for pursuant to Rule 262 of the South Carolina Appellate Court Rules to his primary email address: bjohnson@cjpmlaw.com, this 20<sup>th</sup> day of July, 2022.

McCUTCHEM VAUGHT GEDDIE &  
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s/ Luther O. McCutchen, III

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**Anderson v. Soles - Appellate Case No.: 2022-00721**

From: jgr@lawyersatthebeach.com

Sent: Wed, Jul 20, 2022 at 3:12 pm

To: Brown Johnson

Cc: Luther McCutchen

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[Johnson Ltr 07-20-22 re serve Init'l Brief & Designation.pdf](#) (76.4 KB)    [Soles initial Brief.pdf](#) (237.4 KB)[Designation of Matter to Include in Record on Appeal.pdf](#) (96.4 KB)[Proof of Service - Resp. Init. Brief & Designation.pdf](#) (14 KB) – **Download all**

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Mr. Johnson:

Attached herewith and served upon you please find the following related to the above matter:

- 1) Letter from Luther O. McCutchen, III;
- 2) Initial Brief of Respondent;
- 3) Respondent's Designation of Matter to Be Included in Record on Appeal; and
- 4) Proof of Service.

Thank you,  
Jennifer

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**SC Court of Appeals**

**VIA EMAIL**

The Honorable Jenny Abbott Kitchings  
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Re: *Marcia Soles Anderson, et al. v. Jimmy R. Soles*  
Civil Action No.: 2016-CP-26-7190  
Appellate Case No.: 2022-00721

Dear Ms. Kitchings:

Pursuant to South Carolina Appellate Court Rule 262 and Supreme Court Order dated May 6, 2022 regarding Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), Appellate Case No. 2020-00447, enclosed herewith for filing please find the following:

1. Initial Brief of Respondent;
2. Respondent's Designation of Matter to Be Included in Record on Appeal; and
3. Proof of Service with email.

With my regards, I am

Very truly yours,

MCCUTCHEN, MUMFORD, VAUGHT  
& GEDDIE, P. A.

Luther O. McCutchen, III

LOM:jgr

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