

RECEIVED

Aug 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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,

Jimmy R. Soles, Respondent.

RECORD ON APPEAL, VOLUME I

**Brown W. Johnson, Esquire
Clark, Johnson, Peterson & McLean, PA
P.O. Box 1865
Florence, South Carolina 29503
843-669-2401
Attorney for Appellants**

**Luther O. McCutchen, III, Esquire
McCutchen Vaught Geddie & Hucks, P.A.
4610 Oleander Drive, Suite 203
Myrtle Beach, South Carolina 29577
(843) 449-3411
Attorney for Respondent**

INDEX

Record on Appeal, Volume I

1.	Final Order of the Honorable Cynthia Graham Howe, Master-in-Equity for Horry County, dated April 29, 2022	1
2.	Amended Complaint dated December 22, 2015.....	14
3.	Answer to Amended Complaint filed February 14, 2017.....	22
4.	Amended Answer to Amended Complaint dated February 15, 2017	43
5.	Transcript of April 15, 2019 Trial Proceedings, pp. 18-153; 156-158.....	52

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-7190

In the Matter of Edith Cox Soles, deceased,)
)
Marcia Soles Anderson and Michael W. Soles,)
Individually and as Interested Parties,)
)
Plaintiff,)
)
v.)
)
Jimmy R. Soles,)
)
Defendant.)
_____)

FINAL ORDER

This matter came before me for a final hearing on Monday and Tuesday, April 15 and 16, 2019. This matter was referred to me by Consent Order of Reference filed on May 9, 2018. Present on behalf of the Plaintiffs was Brown W. Johnson of the law firm of Clark, Johnson, Peterson & McLean, P.A. Present on behalf of the Defendant, Jimmy R. Soles, was Luther O. McCutchen, III of the law firm of McCutchen, Mumford, Vaught & Geddie, P.A.

This action was brought by the Plaintiffs, brother and sister, against their remaining brother to set aside and to void a deed that was executed July 21, 2015 and recorded in Deed Book 3837 at Page 3468 in the records of the Register of Deeds for Horry County. Plaintiffs' Complaint is couched upon the assertion that Edith Cox Soles, their mother, was substantially impaired due to her advanced age and her physical and mental condition when the Deed was executed on July 21, 2015. Further, Plaintiffs' allegations include that a confidential relationship existed between Edith Cox Soles and Jimmy R. Soles and that Defendant breached the confidential relationship as the Deed was executed as referenced above. The Complaint contains further allegations about undue influence by the Defendant that influenced Edith Cox Soles to execute the Deed, with allegations

of her not being of sound mind and that she had lacked the mental capacity to execute the deed due to her substantial impairment when it was executed.

The Defendant answered, denied the various allegations, and demanded proof of the allegations that Edith Cox Soles had substantial impairment due to her advanced age when she executed the Deed, that there was an abuse of a confidential relationship, and that the Defendant unduly influenced Edith Cox Soles to convey title to the subject property.

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.

Plaintiffs also called Dr. Gary J. Barrett, an internal medicine physician with McLeod Loris Primary Care. 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.

An additional witness for the Plaintiff was attorney William W. Phipps of Tabor City, North Carolina, and he provided testimony as to the representation of not only Ms. Edith Soles but various family members in legal matters including deeds and transactions. Mr. Phipps testified the last time he had seen Ms. Soles was in April of 2014 at the funeral of Charlie Soles, the parties' other brother. Mr. Phipps's testimony was limited as he had not seen Ms. Soles since then. Mr. Phipps did testify that when he saw Edith Soles at the funeral, she had failed a little since the last time he saw her, but she was still basically in control, and she was very emotional due to the death

of her son. Again, the testimony provided by Mr. Phipps was with his prior history with Ms. Soles and his testimony is duly noted and acknowledged.

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 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 Plaintiffs' witnesses' testimony, was given substantial attention.

However, I find the testimony provided by the witnesses for the Defendant, Jimmy R. Soles, to be thorough and compelling as to the cognitive mental capacity and competency of Edith Cox Soles through all times related to the date of the execution of the deed on July 21, 2015 and throughout the year 2015. Further, the testimony and evidence provided by the Plaintiffs fails to support the claims of undue influence or breach of a confidential relationship.

Jimmy R. Soles testified as to his relationship with his mother, her mental capacity and competency through the early part of 2016 and, specifically, as to the year 2015. Mr. Soles lived in High Point, North Carolina, some 150 miles from his mother, during the period from 2007 through the time period in which this Deed was executed and saw his mother as often as possible. His testimony included a visit by Ms. Soles at Christmas in 2015 when she stayed with him and not only carried on lucid and thorough conversations but also slept in a bedroom upstairs and went up and down the stairs as needed. He never saw his mother in a wheelchair until sometime in 2016. While his mother was visiting him, she was relaxing by the pool. She tripped, fell, and broke her hip. She had to go to a rehab facility. For three months, either the Defendant or the parties' youngest brother stayed with their mother at night. Plaintiff Mike Soles never visited their mother.

Plaintiff Marcia visited once. Jimmy Soles testified that his mother requested him to find an attorney to prepare the deed at issue, and he was not in the room with his mother when she executed the deed with her attorney, Catherine Dingle, Esquire. He did testify that she began to go downhill in the early part of 2016. He presented testimony that Ms. Soles was mentally competent when she executed the deed and had the capacity to undertake her normal everyday affairs then.

Next, the Defendant presented as witnesses two (2) of his mother's caregivers, Judy Faye Platt and Lovanda Hyatt. Both of them were former caregivers of Edith Soles that were thorough and provided detailed positions on Ms. Soles's general mental capacity and ability to undertake and complete many daily actions and routines. Ms. Platt would pick up Ms. Soles from Plaintiff Marcia Soles Anderson's house to take her back to Ms. Soles's house. Ms. Soles would be wet then and would need to be cleaned once they arrived at Ms. Soles's house. Ms. Soles insisted that she did not need help. She said she could bathe herself. She could pick out her own clothes, although she needed help putting on socks. Ms. Soles was an independent woman and did not like people telling her what to do. The only medicine she took was ½ Xanax pill. Ms. Hyatt testified that Ms. Soles knew all of the neighborhood gossip and loved to be pampered with foot massages and lotion rubbed on her legs. From 2011-2015, Ms. Soles managed three (3) large personal checking accounts, one with about \$500,000 in it, one with \$110,000 balance, and one with a \$38,000 balance. Ms. Hyatt said that Ms. Soles would sometimes dance in the kitchen and that going to work for Ms. Soles was fun! Their testimony clearly supported the mental ability and competency of Ms. Soles to fully and properly function and oversee her affairs throughout the year 2015, when the Deed was executed, and into the year 2016.

I next go to the testimony presented by two (2) attorneys that assisted Ms. Soles with legal matters in the summer of 2015. Defendants presented attorney Catherine H. Dingle, Esquire, who prepared the Deed at issue in this matter found in Deed Book 3837 at Page 3468 in the Horry

County Office of the Register of Deeds. Ms. Dingle is an attorney practicing with Thompson & Henry, P.A., a well-respected law firm in Conway. She has been practicing for twenty-two (22) years, and the bulk of her law practice has been, and is, transactional work, including all real estate related matters. Her testimony was clear and convincing. Ms. Dingle recited that she followed protocol and procedure in inquiring of Ms. Soles concerning her decision to convey title to the property set forth in the Deed. Attorney Dingle's notes reflected that Ms. Soles understood she was giving the property to her son, Jimmy Soles, and Ms. Soles told her she wanted him to have her property known as the Highway 9 property. Ms. Dingle's notes further reflected that she asked Ms. Soles if she had other children, and Ms. Soles replied that she did, but they already had received property, and it was time for Jimmy to get his. She stated that the other children had been given other property, and "I want to make it even before I check out." Ms. Dingle explained to Ms. Soles that this was a transfer of the property and asked if she had any questions about the execution of the Deed. Her testimony was that Ms. Soles did not have any questions. Her 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 that 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.

It is duly noted that the Deed was executed in the office of Ms. Catherine Dingle on July 21, 2015 with the appropriate witnesses and thereafter duly recorded in Deed Book 3837 at Page 3468 in the office of the Register of Deeds for Horry County, South Carolina.

I find the testimony provided by Attorney Dingle to be significantly compelling as to the mental capacity and competency of Ms. Soles to execute the Deed in this case on July 21, 2015.

Mr. Kevin Rochford provided testimony about a codicil for Ms. Soles's Will that he prepared for her dated July 8, 2015. He recited his years of practicing law in North Carolina since 1989 and his assistance with Ms. Soles and the execution of the Codicil. His was testimony provided by *de bene esse* video deposition.

Mr. Rochford's practice is limited to estate planning and estate administration and has been so for virtually all of the time he has been in private practice. His testimony was detailed and included reference to the "Andrews case," a case in North Carolina that called for protocol and procedure to ensure that an individual was not subject to undue influence. His testimony is clear and compelling that Ms. Soles, at the date of the execution of her Codicil in his office on July 8, 2015 was of sound mind and completely and independently, free of outside influence, understood what she was doing. Further, when Mr. Rochford asked her why she wanted to execute a Codicil, she indicated that her son Jimmy had considerably less real property than the other children, and she wanted to equalize the real property distributions as much as possible.

I find Mr. Rochford's testimony to be compelling as to the mental capacity and competency of Ms. Soles to understand and complete her business affairs in July of 2015 with the execution of her Will's Codicil.

The Plaintiffs' Complaint has alleged that Ms. Edith Cox Soles was substantially impaired with the inability to execute the Deed transferring title from her to Jimmy R. Soles. Further, the Complaint asserts that a confidential relationship existed between Ms. Soles and Jimmy R. Soles, and he obtained her signatures on the Codicil and the Deed by using undue influence.

I note that although there is a lack of evidence of undue influence or abuse of a confidential relationship as to the execution of the Deed, South Carolina caselaw discusses a two-pronged

approach in an attempt to overturn or set aside a deed. First, there must be establishment of a confidential relationship and that the grantee exerted undue influence on the grantor in the procurement of the deed. Once a confidential relationship is shown, the deed is presumed invalid, and the burden shifts to the grantee to affirmatively show the absence of influence. Bullard v. Crawley, 294 S.C. 280, 281, 363 S.E. 2d 897, 900 (1987).

To show a confidential relationship existed between grantor and grantee, the grantor must present adequate evidence that she has placed her trust and confidence in the grantee, *and* the grantee has exerted dominion over the grantor. [Emphasis added]. Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849, citing *Brooks v. Kay*, 339 S.C. 479, 489, 530 S.E.2d 120, 125 (2000); *Middleton v. Middleton*, 300 S.C. 402, 404, 388 S.E.2d 639, 641 (1990); *Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986).

Even if there were a confidential relationship between Ms. Soles and the Defendant, there must be a showing of undue influence. Undue influence is enunciated in Dixon as follows:

the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition.

Id. at 399.

Bullard, at page 281, states that to prove undue influence requires a showing that grantor was unquestionably susceptible to undue influence as a result of her physical or mental condition or for some other reason. However, it also states that *there must be evidence which "unmistakenly and convincingly" shows a grantor's will was overborne by the grantee.* [emphasis added]. Although Plaintiffs are alleging Ms. Soles had dementia which rendered her totally incapable, she was a strong-willed woman unwilling to be influenced by a number of people, as evidenced in the testimony of the several witnesses, including the Plaintiffs. Plaintiffs' own witnesses have shown that it was extremely difficult to overbear Ms. Soles' will. Defendant's witnesses have stated that

Ms. Soles did, in fact, know which conveyances she had made, where those properties were, and she understood her actions and the consequences of those actions and had the mental capacity and was competent to execute the contested Deed.

Defendants presented two witnesses who are respected attorneys who believed, on separate occasions within thirteen (13) days of each other (July 8, 2015 and July 21, 2015), that Ms. Soles was cognizant of what she was doing.

Moorer v. Bull, 212 S.C. 146, 149, 46 S.E.2d 681, 682 (1948) states “[a] mere showing of opportunity and even of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized. *General influence is not enough*. [Emphasis added]. Further, the court in Dixon, at pages 398, 399, referenced the description of undue influence as follows:

the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). The influence must be of such a degree that it prevents the grantor’s exercise of judgment and free choice. *Id.* **Moreover, a showing of general influence is not tantamount to undue influence.** *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982). For this Court to void a conveyance of land, a contestant must show that the undue influence was brought directly to bear upon the conveyance. *Russell*, 353 S.C. at 219, 578 S.E.2d at 335. [Emphasis added]

The court in Dixon went on to find that the mother’s will in that case was not overcome, and that she appeared to be clear about what she was doing and fully appreciated the nature of the conveyance and its effect. The court acknowledged the mother in that case, like Ms. Edith Soles, was a strong-willed woman, and whether or not her decision was a good one, was one of her own free will.

Jimmy Soles lived 150 miles away from Edith Soles in High Point, North Carolina, and had lived there for a period of approximately twelve (12) years prior to the death of Ms. Soles in

November of 2016. Therefore, throughout the time period at issue in this case, Jimmy Soles did not see Ms. Soles on a daily basis, unlike the Plaintiffs, and had no way to exert undue influence, the kind of mental coercion to destroy the free agency of Ms. Soles, in order to get the Deed at issue executed. Further, Plaintiffs have failed to show any evidence that “unmistakenly and convincingly” shows Ms. Soles’s will was overborne by the grantee.

CONCLUSION

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.

AND IT IS SO ORDERED.

Cynthia Graham Howe
Special Master in Equity

Conway, South Carolina

ELECTRONICALLY FILED - 2022 Apr 29 9:35 AM - Horry - COMMON PLEAS - CASE#2016CP2607190

**STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS**

FORM 4

**JUDGMENT IN A CIVIL CASE
CASE NO. 2016 CP-26-07190**

In the Matter of Edith Cox Soles, deceased,
 Marcia Soles Anderson and Michael W. Soles,
 Individually and as Interested Parties

Jimmy R. Soles

PLAINTIFF(S) _____ DEFENDANT(S) _____

Submitted by: Luther O. McCutchen, III, Esquire	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for
 the Clerk : _____

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

[Empty rectangular box]

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.

Cynthia Graham Howe	3073	
Special Master in Equity Judge	Code Judge	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Brown Johnson

ATTORNEY(S) FOR THE
PLAINTIFF(S)

Luther McCutchen, III

ATTORNEY(S) FOR THE
DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: Marcia Soles Anderson , plaintiff, et al VS Jimmy R Soles
Case Number: 2016CP2607190
Type: Master/Order/Other

So Ordered

s/Cynthia Graham Howe, Special Master in Equity
for Horry County, 3073

Electronically signed on 2022-04-28 20:47:37 page 13 of 13

ELECTRONICALLY FILED - 2022 Apr 29 9:35 AM - HORRY - COMMON PLEAS - CASE#2016CP2607190

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2016-CP-26-7190

In the matter of Edith Cox Soles,
deceased,

Marcia Soles Anderson, individually and
as an interested party,

Plaintiff,

vs.

Jimmy R. Soles,

Defendant.

AMENDED COMPLAINT

2016 FEB 22 PM 1:26

Marcia Soles Anderson, the plaintiff above named, complaining of the defendant,
herein would respectfully show the Court

JURISDICTION

1. The plaintiff, Marcia Soles Anderson, is a resident and citizen of Columbus County, North Carolina.
2. Marcia Soles Anderson is the daughter of Edith Cox Soles, deceased, and is a party of interest in this matter.
3. Edith Cox Soles, deceased, was the owner of a tract of land located in the County of Horry, State of South Carolina.
4. The defendant, Jimmy R. Soles, is a resident and citizen of Davidson County, North Carolina.

5. The property which is the subject of this action is situate and located in Horry County, South Carolina; and this Court has jurisdiction of the matter.

FACTS

6. On or about July 21, 2015, the deed hereto attached as Exhibit A and incorporated herein by reference (the "deed"), was filed in the Office of the Register of Deeds for Horry County, South Carolina on July 22, 2015, and recorded in Deed Book 3837 at Page 3468.

7. At the time of the execution of the deed, Edith Cox Soles was substantially impaired due to her advanced age and her physical and mental condition.

8. At the time of the execution of the deed, Edith Cox Soles lacked the necessary mental capacity to execute a deed.

9. The defendant, Jimmy R. Soles, is the son of Edith Cox Soles, deceased, and a confidential relationship existed between Edith Cox Soles and Jimmy R. Soles at the time of the execution of the deed.

10. No consideration was paid by Jimmy R. Soles, or if any consideration was paid, it was grossly inadequate for the conveyance and said deed should be set aside and title to the property divested from the defendant.

11. In addition to the confidential relationship existing between Edith Cox Soles and Jimmy R. Soles as alleged above, Jimmy R. Soles was acting as Power of Attorney for Edith Cox Soles by virtue of a power of attorney filed on May 20, 2013 in the Office of the Clerk of Court in Columbus County, North Carolina recorded in Plat Book RB 1059 at Page 567-573 following the death of Charles Luther Soles.

12. Jimmy R. Soles became the successor power of attorney for Edith Cox Soles following the death of Charles Luther Soles.

13. As Power of Attorney for Edith Cox Soles, Jimmy R. Soles owed her the duty of acting in good faith and in her best interest and to act with care, confidence, and diligence ordinarily exercised by those holding power of attorney.

14. The said Jimmy R. Soles failed to act in good faith and in the best interest of Edith Cox Soles by borrowing money for his own personal use from Branch Banking & Trust Company (BB&T), for the construction of his house and by signing the loan documents in the name of "Edith Cox Soles by & through her attorney in fact Jimmy R. Soles" thereby subjecting Edith Cox Soles as a "borrower" and obligated as co-borrower to pay the debt.

15. The above loan was in violation of his duties of good faith and loyalty to Edith Cox Soles.

FOR A FIRST CAUSE OF ACTION

16. The allegations contained above are realleged as if repeated herein verbatim.

17. Edith Cox Soles was, at the time of the execution of the within deed, not mentally competent to execute a deed, and the deed should therefore be declared void and set aside and title to the property divested from Jimmy R. Soles.

FOR A SECOND CAUSE OF ACTION

18. The allegations contained in the previous cause of action are realleged as if repeated herein verbatim.

19. The deed executed by Edith Cox Soles was done through the confidential

relationship between Edith Cox Soles and the defendant Jimmy R. Soles.

20. The execution of the aforementioned deed by Edith Cox Soles was attained through the undue influence of the defendant as described above, and accordingly, should be declared null and void and set aside and title to the property divested from Jimmy R. Soles.

FOR A THIRD CAUSE OF ACTION

21. The allegations contained in the aforementioned causes of actions are realleged as if repeated herein verbatim.

22. The execution of the deed of Edith Cox Soles was done without consideration or for grossly inadequate consideration and was obtained by fraud, trick, artifice, abuse and/or overreaching.

23. As a result of the above action on the part of the defendant, the deed should be set aside and title to the property divested from Jimmy R. Soles.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

24. The allegations contained in the aforementioned causes of actions are realleged as if repeated herein verbatim.

25. Following the death of Charles Luther Soles, Jimmy R. Soles became the acting Power of Attorney for Edith Cox Soles, deceased.

26. Edith Cox Soles was at all times relevant hereto in a fiduciary relationship with defendant Jimmy R. Soles in that Edith Cox Soles:

- a. was in a pre-existing definite fiduciary relationship with Jimmy R. Soles;

- b. expressly or impliedly reposed a trust and confidence in Jimmy R. Soles with reference to the aforementioned power of attorney recorded in Book RB1059 at Page 567-573 in the Office of the Columbus County, North Carolina Clerk of Court's office;
- c. expressly or impliedly reposed a trust and confidence in Jimmy R. Soles with reference to the particular transactions in question;
- d. the plaintiff and Jimmy R. Soles imposed a special confidence in one another so defendant Jimmy R. Soles in equity and in good conscience was bound to act in good conscience, good faith, loyalty, and fair dealings with regard to the interest of Edith Cox Soles; and
- e. Jimmy R. Soles, acting in a fiduciary relationship, made use of that relationship to benefit his own personal interests as described above in violation of his fiduciary duty owed to the plaintiff.

27. By reason of the misconduct described above, Jimmy R. Soles negligently, carelessly, recklessly, willfully, and wantonly breached his fiduciary duties of good conscience, good faith, loyalty, and fair dealings to the plaintiff making Jimmy R. Soles jointly and severally liable for his wrongdoing.

28. Marcia Soles Anderson, as the plaintiff and personal interest and heir to the Estate of Edith Cox Soles, has suffered damages proximately caused by such breaches, and Plaintiff Marcia Soles Anderson is entitled to actual and punitive damages as a result thereof.


FOR A FOURTH CAUSE OF ACTION

29. The allegations contained in the aforementioned causes of actions are realleged as if repeated herein verbatim.
30. Marcia Soles Anderson is the daughter of Edith Cox Soles and a person of interest.
31. Defendant Jimmy R. Soles is the also the son of Edith Cox Soles.
32. On May 15, 2013, Edith Cox Soles executed her Last Will and Testament by which she left her estate to her three children; (1) Charles Luther Soles; (2) Jimmy R. Soles; and (3) Marcia Soles Anderson.
33. The defendant Jimmy R. Soles was aware and had knowledge of the Last Will and Testament of Edith Cox Soles.
34. The defendant, through undue influence, fraud, trick, artifice, and in violation of his confidential relationship and fiduciary relationship with Edith Cox Soles committed tortuous interference with the inheritance of the intended beneficiaries of testator's estate by having Edith Cox Soles execute the above-described deed when she lacked the mental capacity to do so.
35. The actions of Jimmy R. Soles as described above were intentional and designed to interfere with the inheritance of the intended beneficiaries.
36. As a result of the defendant's tortuous interference with the inheritance or the planned inheritance of the testator, the deed described above should be set aside and title to the property divested from Jimmy R. Soles.

WHEREFORE, Plaintiff prays as follows: the deed be declared void for any

one or more of the aforementioned reasons; that the deed be set aside, and title to the property divested from Jimmy R. Soles; the plaintiff Marcia Soles Anderson also be awarded punitive damages, attorney fees, and the costs of this action; and for such other and further relief as the Court may deem just and proper.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA



BROWN W. JOHNSON
Post Office Box 1865
Florence, South Carolina 29503
Tel: (843) 669-2401
Fax: (843) 662-1779
Email: bjohnson@cjplaw.com

Gary W. Crawford, Esquire
Post Office Box 508
Florence, South Carolina 29503
kitco@msn.com

Attorney for Plaintiff

Florence, South Carolina

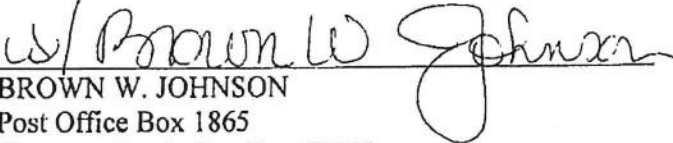
December 20, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Amended Complaint has been served upon the following via electronic mail and first class mail, postage pre-paid this 20th day of December, 2016:

Luther O. McCutchen, III, Esquire
McCutchen, Mumford, Vaught & Geddie, P.A.
4610 Oleander Drive, Suite 203
Myrtle Beach, South Carolina 29577
lom@lawyersatthebeach.com

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.


BROWN W. JOHNSON
Post Office Box 1865
Florence, South Carolina 29503
Tel: (843) 669-2401
Fax: (843) 662-1779
Email: bjohnson@cjpmlaw.com

2016 DEC 22 PM 1:25

Attorney for Plaintiff

Florence, South Carolina

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-7190

In the Matter of Edith Cox Soles, deceased.)
)
Marcia Soles Anderson, Individually and as an)
Interested Party.)
)
Plaintiff,)
)
v.)
)
Jimmy R. Soles.)
)
Defendant.)

ANSWER TO AMENDED
COMPLAINT

2017 FEB 14 PM 1:56

Defendant Jimmy R. Soles, answering the Amended Complaint of Plaintiff, would herein allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Objections Applicable to All Allegations)

1. Each and every allegation in Plaintiff's Complaint which is not hereinafter specifically admitted, qualified or explained herein is denied and Defendant demands strict proof thereof.

2. Defendant hereby objects to any allegation which in any way attempts to characterize, interpret, describe, or explain the legal effect of any written document, or provision thereof, which is referred to, referenced, or incorporated within Plaintiff's Complaint, and to which document or provision Defendant specifically craves reference, and specifically demands strict proof thereof via reference to a proper legal definition, interpretation, and/or reference obtained from the entire document or other documents of record.

FOR A SECOND DEFENSE
(General Denial)

3. Defendant admits the allegations contained in Paragraph 1 of the Amended Complaint.

4. As to Paragraph 2 of the Amended Complaint, Defendant admits that Marcia Soles Anderson is the daughter of Edith Cox Soles, now deceased. Defendant denies that Ms. Anderson is a party of interest in this matter, and strict proof is demanded thereof.

5. As to Paragraph 3 of the Amended Complaint, Defendant admits that Edith Cox Soles, deceased, was the owner of a tract of land located in the County of Horry, State of South Carolina. Defendant herein denies that any particulars of tracts of land are set forth in this allegation.

6. Defendant admits the allegations contained in Paragraph 4 of the Amended Complaint.

7. As to Paragraph 5 of the Amended Complaint, Defendant admits that the property which is referenced in below allegations is situate and located in Horry County, South Carolina. This Court denies that this Court has jurisdiction over the matter and demands strict proof thereof.

8. As to Paragraph 6 of the Amended Complaint, Defendant denies that any Deed was attached to the Amended Complaint. This Defendant would admit that a deed was filed with the office of the Register of Deeds for Horry County, South Carolina on July 22, 2015 and recorded in Deed Book 3837 at Page 3468.

9. Defendant denies the allegations contained in Paragraphs 7 and 8 of the Amended Complaint and demands strict proof thereof. Attached hereto as Exhibit "A" and incorporated hereto by reference, please find Affidavit of attorney Kevin L. Rochford who prepared both a

Health Care Power of Attorney for the Decedent's spouse in August of 2011 and the Codicil to Decedent's January 29, 2013 Will on July 8, 2015.

10. As to Paragraph 9 of the Amended Complaint, Defendant admits that he is the son of Edith Cox Soles, now deceased. Defendant denies as written that a confidential relationship existed between Edith Cox Soles at the time of the execution of the Deed.

11. As to Paragraph 10 of the Amended Complaint, Defendant admits that little consideration was paid by Defendant as to the conveyance of the deed. Defendant denies any allegations not specifically admitted herein and demands strict proof thereof.

12. As to Paragraph 11 of the Amended Complaint, Defendant admits that he was acting as a Power of Attorney for Edith Cox Soles. Defendant craves reference to the Power of Attorney referenced therein as to the alleged execution and recording thereof and further craves reference to the specific provisions referenced or contained in the entirety of that document. Any allegations not consistent herewith are denied and strict proof demanded thereof.

13. Defendant admits the allegations contained in Paragraph 12 of the Amended Complaint.

14. As to Paragraph 13 of the Amended Complaint, Defendant admits that he owed any duties as set forth under the Power of Attorney for Edith Cox Soles, as well as any other duties as may be found in the statutory and case law for powers of attorney. In further answering this allegation, Jimmy R. Soles would assert that he always acted in good faith and in the best interests of Edith Cox Soles and acted with care, confidence and diligence in all matters related to Edith Cox Soles.

15. Defendant denies the allegations contained in Paragraphs 14 and 15 of the Amended Complaint and demands strict proof thereof.

16. As to Paragraph 16 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

17. Defendant denies the allegations contained in Paragraph 17 of the Amended Complaint and demands strict proof thereof.

18. As to Paragraph 18 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

19. Defendant denies as written the allegations contained in Paragraph 19 of the Amended Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 20 of the Amended Complaint and demands strict proof thereof.

21. As to Paragraph 21 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

22. Defendant denies the allegations contained in Paragraphs 22 and 23 of the Amended Complaint and demands strict proof thereof.

23. As to Paragraph 24 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

24. Defendant admits the allegations contained in Paragraph 25 of the Amended Complaint.

25. As to Paragraph 26 of the Amended Complaint, Defendant denies as written the first clause.

a. As to subletter a. of Paragraph 26 of the Amended Complaint, Defendant would admit that he was the son of Edith Cox Soles and acted with care, confidence and diligence on behalf of his mother, Edith Cox Soles. Any allegation not specifically

admitted is denied and strict proof demanded thereof.

b. As to subletter b. of Paragraph 26 of the Amended Complaint, Defendant would admit that the Power of Attorney was duly executed and would crave reference to the Power of Attorney for any and all duties, responsibilities and empowerments that existed by and between Edith Cox Soles and Jimmy R. Soles, as successor on the Power of Attorney to Charles Luther Soles.

c. Defendant denies as written the allegations contained in subletter c. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

d. Defendant denies the allegations contained in subletter d. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

e. Defendant denies the allegations contained in subletter e. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

26. Defendant denies the allegations contained in Paragraphs 27 and 28 of the Amended Complaint and demands strict proof thereof.

27. As to Paragraph 29 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

28. As to Paragraph 30 of the Amended Complaint, Defendant admits that Marcia Soles Anderson is the daughter of Edith Cox Soles, deceased. Defendant denies she is a person of interest and demands strict proof thereof.

29. Defendant admits the allegations contained in Paragraph 31 of the Amended Complaint.

30. As to the allegations contained in Paragraph 32 of the Amended Complaint, Defendant admits that Edith Cox Soles executed a last will and testament and would crave

reference to said documents, any addendums and codicils thereto, as to her intentions for the distributions of what remained in her estate at her death. Anything not consistent herewith is denied and strict proof demanded thereof.

31. As to Paragraph 33 of the Amended Complaint, Defendant admits that Jimmy R. Soles was aware that edit Cox Soles had a Last Will and Testament. Further, a Codicil to the Last Will and Testament was duly executed dated July 8, 2015. This Defendant knows of no other codicils that may have been executed by Edith Cox Soles.

32. Defendant denies the allegations contained in Paragraphs 34, 35 and 36 of the Amended Complaint and demands strict proof thereof.

FOR A THIRD AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(1) SCRPC – Lack of Jurisdiction Over the Subject Matter)

33. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

34. Defendant would assert Rule 12(b)(1) for lack of subject matter jurisdiction as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A FOURTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(2) SCRPC – Lack of Jurisdiction Over the Person)

35. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

36. Defendant would assert Rule 12(b)(2) for lack of jurisdiction over the person as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A FIFTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(4) SCRPC – Insufficiency of Process)

37. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

38. Defendant would assert Rule 12(b)(4) for insufficiency of process as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A SIXTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(6) SCRPC – Failure to State a Cause of Action)

39. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

40. Defendant would assert Rule 12(b)(6) for failure to state a cause of action as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A SEVENTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Waiver)

41. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

42. This answering Defendant pleads the defense of waiver as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR AN EIGHTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Estoppel)

43. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

44. This answering Defendant pleads the defense of estoppel as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR A NINTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Laches)

45. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

46. Defendant pleads the defense of laches as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR A SIXTH DEFENSE AS TO DEFENDANT'S FIFTEENTH DEFENSE
BY WAY OF FIRST COUNTERCLAIM
(Unclean Hands)

47. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

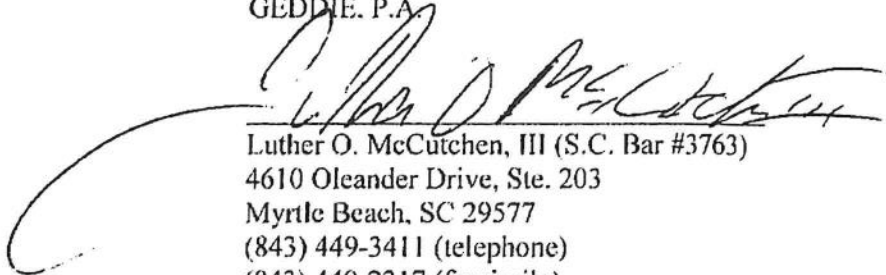
48. Defendant would show that the Plaintiff herein has engaged in inequitable conduct with regard to this Defendant and Ms. Edith Cox Soles, and Defendant would plead the equitable doctrine of unclean hands as a complete and absolute bar to any and all claims asserted in Plaintiff's Amended Complaint.

FOR A SEVENTEENTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

49. Each and every response or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

50. Defendant Jimmy R. Soles hereby gives notice that he intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his Answers to assert any such defenses.

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



Luther O. McCutchen, III (S.C. Bar #3763)
4610 Oleander Drive, Ste. 203
Myrtle Beach, SC 29577
(843) 449-3411 (telephone)
(843) 449-2317 (facsimile)
lom@lawyersatthebeach.com

February 13, 2017
Myrtle Beach, South Carolina

Attorneys for Defendant

In the Matter of the Estate of)
Edith I. Soles,)
Deceased)

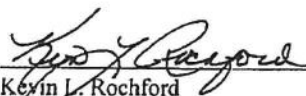
AFFIDAVIT

2011 FEB 14 PM 1:51

Kevin L. Rochford, the affiant, being first duly sworn states as follows:

1. He is a duly licensed attorney in the State of North Carolina since 1989.
2. His office is located at 1008 Hutton Lane, Suite 102, High Point, North Carolina and he is the sole member of the Law Offices of Kevin L. Rochford, PLLC.
3. His law practice is solely in the practice areas of estate planning and estate administration.
4. He was familiar with the decedent, Edith I. Soles, (hereinafter "the Decedent") and her family for several years prior to him being requested by Edith I. Soles to prepare the Codicil to her Will dated July 8, 2015 (hereinafter "the Codicil").
5. Prior to the preparation and execution of the Codicil he was requested to prepare a Health Care Power of Attorney by the Decedent's spouse, Euclid W. Soles, and did prepare such Health Care Power of Attorney which was faxed to Decedent's daughter, Marcia Anderson, on August 9, 2011. A copy of the fax transmittal form and the health care power of attorney are attached hereto and incorporated herein by reference.
6. He received a request from the Decedent to prepare a Codicil to her Will dated January 29, 2013.
7. He questioned the Decedent as to why she did not request Bill Phipps, her local attorney who had prepared her Will on January 29, 2013 along with multiple deeds to her children

and affirms the contents thereof, and that the same is true of his knowledge, save and except for those matters and things therein alleged upon information and belief, and that as to those, he believes them to be true.


Kevin L. Rochford

Sworn to and Subscribed before me

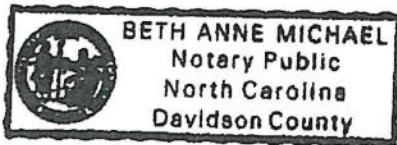
this 15th day of December, 2016

Beth Anne Michael
Notary Public

BETH ANNE MICHAEL

Printed/Typed Name of Notary Public

My Commission Expires: 7-21-2016



TRANSACTION REPORT

AUG/09/2011/TUE 12:59 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	AUG/09	12:55PM	19106535325	0:03:46	10	MEMORY OK	ECM 2614

LAW OFFICES OF
 KEVIN L. ROCHFORD PLLC
 P O BOX 5945
 HIGH POINT, NC 27262-5945

facsimile transmittal

To: Marcia Anderson Fax: 910-653-5325

From: Linda White Date: 8/9/2011

Re: HealthCare POA for Mr. Soles Pages: 10 including cover

CC:

Urgent For Review Please Comment Please Reply Please Recycle



Marcia Anderson
 Marcia Anderson Health Care Power of Attorney for Mr. Soles. A couple of things I need to tell you about executing this document. First, on page 4 Mr. Soles should initial at the B and the three initial lines under B. No other places require initials. Then he dates and signs on page 8. Also on page 8 under his name you will see two lines for 2 witnesses. The witnesses can not be any relation to Mr. Soles or in-law (son-in-law, etc). A care giver or neighbor could witness. Then on the last page is for the notary. Also, be sure the notary prints the names of the witnesses on that last page when he/she notarizes the document.

If you have any questions please feel free to contact me at 336-885-7333.

Linda

STATE OF NORTH CAROLINA

COUNTY OF COLUMBUS

HEALTH CARE POWER OF ATTORNEY

1. Designation of Health Care Agent.

I, **EUCLID W. SOLES**, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, successively in the order named:

- A. Name: Marcia Anderson Home Phone: _____
Address: _____ Work Phone: _____
_____ Cellular Phone: _____
- B. Name: Michael W. Soles Home Phone: _____
Address: _____ Work Phone: _____
_____ Cellular Phone: _____
- C. Name: _____ Home Phone: _____
Address: _____ Work Phone: _____
_____ Cellular Phone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or

disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)
2. _____ (Physician)

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Sections 5 or 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

- A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.
- B. Employing or discharging my health care providers.
- C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.
- D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.
- E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."
- F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.
- G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

(Initial)

shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

(Initial)

shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

(Initial)

B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: *(Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)*

My agent may withhold or discontinue life-prolonging measures only if my attending physician determines that I lack capacity to make or communicate health care decisions and:

(Initial)

I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

(Initial)

I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

(Initial)

I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.):

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

D. I have an Advance Instruction for Mental Health Treatment. *(Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment.)*

NOTE: DO NOT initial unless you insert a limitation.

(Initial)

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. *(Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):*

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

(Initial) donate any needed organs or parts; or

(Initial) donate only the following organs or parts:

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

(Initial) donate my body for anatomical study if needed.

(Initial) In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: *(Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)*

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Healthcare Insurance Portability and Protection Act.

I intend for my Health Care Agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164. I authorize any physician, healthcare professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Information Bureau Inc. or other health care clearinghouse that has provided treatment or services to me or that has paid for or is seeking payment from me for such services to give, disclose and release to my agent, without restriction all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse. The authority given my agent shall supersede any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my Health Care Agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

10. Miscellaneous Provisions.

A. **Revocation of Prior Powers of Attorney.** I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. **Jurisdiction, Severability, and Durability.** This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. **Health Care Agent Not Liable.** My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my

heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the ____ day of _____, 2011.

_____(SEAL)
EUCLID W. SOLES

I hereby state that the principal, **EUCLID W. SOLES**, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

Date: _____ Witness: _____

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

Sworn to (or affirmed) and subscribed before me this ____ day of _____,
2011, by **EUCLID W. SOLES**, and _____ and
_____, Witnesses.

Signature of Notary Public

Printed or typed name

My commission expires: _____

Document Prepared By:
The Law Offices of Kevin L. Rochford PLLC
PO Box 5945
1008 Hutton Lane, Suite 102
High Point, NC 27262
(336) 885-7333

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-7190

In the Matter of Edith Cox Soles, deceased,)
)
Marcia Soles Anderson, Individually and as an)
Interested Party,)
)
Plaintiff,)
)
v.)
)
Jimmy R. Soles,)
)
Defendant.)

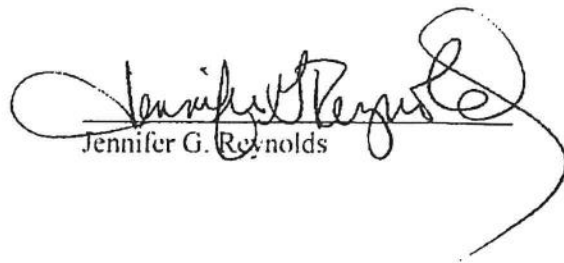
CERTIFICATE OF SERVICE

2017 FEB 14 PM 1:57
HARRIS COUNTY CLERK

The undersigned, being an employee of McCutchen, Mumford, Vaught & Geddie, P.A., herein certifies that she served a copy of the Answer to Amended Complaint in the above matter upon counsel for Plaintiff by email, facsimile and/or U.S. Mail, properly addressed and with sufficient postage attached thereto, this 13th day of February, 2017.

Addressee:

Brown W. Johnson, Esq.
Clarke, Johnson, Peterson & McLean, P.A.
P.O. Box 1865
Florence, SC 29503


Jennifer G. Reynolds

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-7190

In the Matter of Edith Cox Soles, deceased,)
)
Marcia Soles Anderson, Individually and as an)
Interested Party,)
)
Plaintiff,)
)
v.)
)
Jimmy R. Soles,)
)
Defendant.)
_____)

**AMENDED ANSWER TO
AMENDED COMPLAINT**

Defendant Jimmy R. Soles, answering the Amended Complaint of Plaintiff, would herein allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Objections Applicable to All Allegations)

1. Each and every allegation in Plaintiff's Complaint which is not hereinafter specifically admitted, qualified or explained herein is denied and Defendant demands strict proof thereof.

2. Defendant hereby objects to any allegation which in any way attempts to characterize, interpret, describe, or explain the legal effect of any written document, or provision thereof, which is referred to, referenced, or incorporated within Plaintiff's Complaint, and to which document or provision Defendant specifically craves reference, and specifically demands strict proof thereof via reference to a proper legal definition, interpretation, and/or reference obtained from the entire document or other documents of record.

FOR A SECOND DEFENSE
(General Denial)

3. Defendant admits the allegations contained in Paragraph 1 of the Amended Complaint.

4. As to Paragraph 2 of the Amended Complaint, Defendant admits that Marcia Soles Anderson is the daughter of Edith Cox Soles, now deceased. Defendant denies that Ms. Anderson is a party of interest in this matter, and strict proof is demanded thereof.

5. As to Paragraph 3 of the Amended Complaint, Defendant admits that Edith Cox Soles, deceased, was the owner of a tract of land located in the County of Horry, State of South Carolina. Defendant herein denies that any particulars of tracts of land are set forth in this allegation.

6. Defendant admits the allegations contained in Paragraph 4 of the Amended Complaint.

7. As to Paragraph 5 of the Amended Complaint, Defendant admits that the property which is referenced in below allegations is situate and located in Horry County, South Carolina. This Court denies that this Court has jurisdiction over the matter and demands strict proof thereof.

8. As to Paragraph 6 of the Amended Complaint, Defendant denies that any Deed was attached to the Amended Complaint. This Defendant would admit that a deed was filed with the office of the Register of Deeds for Horry County, South Carolina on July 22, 2015 and recorded in Deed Book 3837 at Page 3468.

9. Defendant denies the allegations contained in Paragraphs 7 and 8 of the Amended Complaint and demands strict proof thereof. Attached hereto as Exhibit "A" and incorporated hereto by reference, please find Affidavit of attorney Kevin L. Rochford, who prepared both a Health Care Power of Attorney for the Decedent's spouse in August of 2011 and on July 8, 2015,

prepared the Codicil to Decedent's January 29, 2013 Last Will and Testament. Also attached hereto and incorporated herein by reference as Exhibits "B" and "C," respectively, are Affidavit of Judy Faye Platt, caretaker for Edith Cox Soles from approximately March, 2014 to March, 2016, and Affidavit of Lovanda Hyatt, caretaker for Edith Cox Soles from 2011 to November, 2016, when Ms. Soles passed away. Exhibits A, B and C all demonstrate that during the time of the preparation and execution of the Deed filed July 22, 2015, Edith Cox Soles possessed the mental capacity to understand what she was doing and execute the Deed.

10. As to Paragraph 9 of the Amended Complaint, Defendant admits that he is the son of Edith Cox Soles, now deceased. Defendant denies as written that a confidential relationship existed between Edith Cox Soles at the time of the execution of the Deed.

11. As to Paragraph 10 of the Amended Complaint, Defendant admits that little consideration was paid by Defendant as to the conveyance of the deed. Defendant denies any allegations not specifically admitted herein and demands strict proof thereof.

12. As to Paragraph 11 of the Amended Complaint, Defendant admits that he was acting as a Power of Attorney for Edith Cox Soles. Defendant craves reference to the Power of Attorney referenced therein as to the alleged execution and recording thereof and further craves reference to the specific provisions referenced or contained in the entirety of that document. Any allegations not consistent herewith are denied and strict proof demanded thereof.

13. Defendant admits the allegations contained in Paragraph 12 of the Amended Complaint.

14. As to Paragraph 13 of the Amended Complaint, Defendant admits that he owed any duties as set forth under the Power of Attorney for Edith Cox Soles, as well as any other duties as may be found in the statutory and case law for powers of attorney. In further answering

this allegation, Jimmy R. Soles would assert that he always acted in good faith and in the best interests of Edith Cox Soles and acted with care, confidence and diligence in all matters related to Edith Cox Soles.

15. Defendant denies the allegations contained in Paragraphs 14 and 15 of the Amended Complaint and demands strict proof thereof.

16. As to Paragraph 16 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

17. Defendant denies the allegations contained in Paragraph 17 of the Amended Complaint and demands strict proof thereof.

18. As to Paragraph 18 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

19. Defendant denies as written the allegations contained in Paragraph 19 of the Amended Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 20 of the Amended Complaint and demands strict proof thereof.

21. As to Paragraph 21 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

22. Defendant denies the allegations contained in Paragraphs 22 and 23 of the Amended Complaint and demands strict proof thereof.

23. As to Paragraph 24 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

24. Defendant admits the allegations contained in Paragraph 25 of the Amended Complaint.

25. As to Paragraph 26 of the Amended Complaint, Defendant denies as written the first clause.

a. As to subletter a. of Paragraph 26 of the Amended Complaint, Defendant would admit that he was the son of Edith Cox Soles and acted with care, confidence and diligence on behalf of his mother, Edith Cox Soles. Any allegation not specifically admitted is denied and strict proof demanded thereof.

b. As to subletter b. of Paragraph 26 of the Amended Complaint, Defendant would admit that the Power of Attorney was duly executed and would crave reference to the Power of Attorney for any and all duties, responsibilities and empowerments that existed by and between Edith Cox Soles and Jimmy R. Soles, as successor on the Power of Attorney to Charles Luther Soles.

c. Defendant denies as written the allegations contained in subletter c. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

d. Defendant denies the allegations contained in subletter d. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

e. Defendant denies the allegations contained in subletter e. of Paragraph 26 of the Amended Complaint and strict proof is demanded thereof.

26. Defendant denies the allegations contained in Paragraphs 27 and 28 of the Amended Complaint and demands strict proof thereof.

27. As to Paragraph 29 of the Amended Complaint, each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

28. As to Paragraph 30 of the Amended Complaint, Defendant admits that Marcia Soles Anderson is the daughter of Edith Cox Soles, deceased. Defendant denies she is a person

of interest and demands strict proof thereof.

29. Defendant admits the allegations contained in Paragraph 31 of the Amended Complaint.

30. As to the allegations contained in Paragraph 32 of the Amended Complaint, Defendant admits that Edith Cox Soles executed a last will and testament and would crave reference to said documents, any addendums and codicils thereto, as to her intentions for the distributions of what remained in her estate at her death. Anything not consistent herewith is denied and strict proof demanded thereof.

31. As to Paragraph 33 of the Amended Complaint, Defendant admits that Jimmy R. Soles was aware that edit C ox Soles had a Last Will and Testament. Further, a Codicil to the Last Will and Testament was duly executed dated July 8, 2015. This Defendant knows of no other codicils that may have been executed by Edith Cox Soles.

32. Defendant denies the allegations contained in Paragraphs 34, 35 and 36 of the Amended Complaint and demands strict proof thereof.

FOR A THIRD AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(1) SCRPC – Lack of Jurisdiction Over the Subject Matter)

33. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

34. Defendant would assert Rule 12(b)(1) for lack of subject matter jurisdiction as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A FOURTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(2) SCRPC – Lack of Jurisdiction Over the Person)

35. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

36. Defendant would assert Rule 12(b)(2) for lack of jurisdiction over the person as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A FIFTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(4) SCRPC – Insufficiency of Process)

37. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

38. Defendant would assert Rule 12(b)(4) for insufficiency of process as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A SIXTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Rule 12(b)(6) SCRPC – Failure to State a Cause of Action)

39. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

40. Defendant would assert Rule 12(b)(6) for failure to state a cause of action as a complete defense and bar to the claims made in the Plaintiff's Amended Complaint.

FOR A SEVENTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Waiver)

41. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

42. This answering Defendant pleads the defense of waiver as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR AN EIGHTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Estoppel)

43. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

44. This answering Defendant pleads the defense of estoppel as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR A NINTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Laches)

45. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

46. Defendant pleads the defense of laches as a complete bar to any and all claims asserted in the Plaintiff's Complaint.

FOR A SIXTH DEFENSE AS TO DEFENDANT'S FIFTEENTH DEFENSE
BY WAY OF FIRST COUNTERCLAIM
(Unclean Hands)

47. Each and every response and/or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

48. Defendant would show that the Plaintiff herein has engaged in inequitable conduct with regard to this Defendant and Ms. Edith Cox Soles, and Defendant would plead the equitable doctrine of unclean hands as a complete and absolute bar to any and all claims asserted in Plaintiff's Amended Complaint.

FOR A SEVENTEENTH AND BY WAY OF AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

49. Each and every response or allegation set forth above is incorporated herein by reference as if fully repeated verbatim.

50. Defendant Jimmy R. Soles hereby gives notice that he intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his Answers to assert any such defenses.

WHEREFORE, having fully responded to the Plaintiff's Complaint, Defendant Jimmy R. Soles prays that same be dismissed, that the Plaintiff be required to pay all attorney's fees associated with the defense of the position of Defendant in this matter; and for such other and further relief as this Court deems just and proper.

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



Luther O. McCutchen, III (S.C. Bar #3763)
4610 Oleander Drive, Ste. 203
Myrtle Beach, SC 29577
(843) 449-3411 (telephone)
(843) 449-2317 (facsimile)
lom@lawyersatthebeach.com

Attorneys for Defendant

February 15, 2017
Myrtle Beach, South Carolina

1 executed and conveyed to Mr. Soles.

2 Thank you.

3 THE COURT: Thank you, Mr. McCutchen.

4 MR. JOHNSON: I would like to call
5 Marcia Anderson as our first witness. I would also
6 like to direct -- Michael Soles pointed out that I
7 referred to him as Michael Anderson. He is Michael
8 Soles, the son.

9 THE COURT: I guess that's important,
10 isn't it?

11 You may be seated and state your full
12 name for the record.

13 THE WITNESS: My name is Marcia Soles
14 Anderson.

15 THE COURT: That's where we get the
16 Anderson.

17 If anybody needs to take a break at any
18 time, we'll be glad to take a short break.

19 THE WITNESS: Thank you.

20

21 MARCIA SOLES ANDERSON
22 being first duly sworn, testified as follows:

23 EXAMINATION

24 BY MR. JOHNSON:

25 Q. Marcia, you and Mike have brought suit

1 against your brother, Jimmy Soles, to set aside a
2 deed from your late mother transferring property to
3 Jimmy. The deed in question is dated July 21,
4 2015, and it transferred property to Jimmy Soles.

5 I believe that property is in Horry
6 County; is that correct?

7 A. Yes, sir.

8 Q. And the date of your mother's death is
9 -- do you recall?

10 A. Yes.

11 Q. What is it?

12 A. November the 13th, 1916.

13 Q. 2016?

14 A. 2016 I mean. Yeah.

15 Q. Before we go into the facts of the case
16 let me maybe get some background information.

17 What is your current address?

18 A. 624 Cox Town Road, Tabor City, North
19 Carolina.

20 Q. And I believe that's in Columbus
21 County.

22 A. Yes, sir.

23 Q. How long have you lived at that
24 address?

25 A. Well, we moved from Texas in '64, which

1 I stayed with my parents for a while, and then it
2 wasn't but a few years I moved across the street at
3 624 Cox Town Road.

4 Q. Tell us about your education.

5 A. Okay. I went to Southeastern Community
6 College I think in 1979 and got my GED. And I also
7 took some college classes, but I do not have a
8 degree.

9 Q. What is your work experience? Tell us
10 about that.

11 A. Well, when I was younger I worked at a
12 little hamburger place called The Little Mint. And
13 then I worked for CHS, which was Aberdeen to start
14 with. I worked there for approximately 22 years.
15 And then I worked for Piedmont Recovery, National
16 Recovery. It was the same thing. They just kind
17 of changed names. I worked there from 1997 to
18 2012.

19 Q. Are you retired now?

20 A. Yes, sir.

21 Q. And are you married and do you have
22 children?

23 A. Yes. I'm married to Clyde Anderson. I
24 have one daughter, Angela Caton.

25 Q. I believe Michael and Jimmy -- I

1 believe you and Michael had another brother who is
2 now predeceased.

3 A. Yes; Charles Soles.

4 Q. And he died. What was the date of his
5 death?

6 A. He died April the 7th, 2014.

7 Q. I want to ask you when and where you
8 and Michael lived in relation to your mother.

9 Where did Michael live?

10 MR. McCUTCHEN: Objection, your Honor.

11 Leading.

12 THE COURT: When?

13 MR. McCUTCHEN: Leading.

14 THE COURT: Was that question not
15 "when?" Did it not start with "when?"

16 MR. JOHNSON: It didn't.

17 Q. (Continued) Where did you and Michael
18 live in relation to your mother?

19 A. Michael lived directly across the
20 street and I lived directly beside Mike.

21 Q. And how long did you and Michael live
22 across from your mother? I mean approximately.

23 A. I have lived there probably basically
24 from sometime in the '70s until current.

25 Q. Did your brother Charlie before his

1 death live in the Tabor City area?

2 A. Yes. He lived right down the road.

3 And then -- I'm not for sure what year, but his
4 wife died, so they moved to right on Camp Swamp
5 Road. Somewhere close to there in Horry County.

6 Q. Now, Jimmy was living during the last
7 years of his mother's life in High Point, North
8 Carolina?

9 A. Yes.

10 Q. Do you know when he moved to High
11 Point?

12 A. Well, I think Jill Harris and Jimmy
13 Soles got married October the 29th, 2005. So I
14 assumed he moved there then.

15 Q. Prior to his death in 2014 was Charlie
16 involved in your mother's care?

17 A. Yes, he was. He came every day and he
18 stayed at night at times. Either he stayed or Mike
19 stayed at night.

20 Q. Prior to your mother's death in
21 November of 2016 tell us about her general health
22 situation.

23 A. Well, in 2008 we saw memory problems
24 and things disappearing and just normal little
25 things that everybody else might not notice, but we

1 noticed it.

2 So she got diagnosed and then she just
3 continuously got worse. In 2012 she depended on us
4 to tell her -- try to help her make her decisions.
5 And then in 2014 when Charlie died it really,
6 really got bad. And then in September of 2014 she
7 spent the night with me -- well, her house got
8 robbed, and that really upset her. And she just
9 continuously got worse.

10 Q. For the last four or five years of her
11 life did you see your mother on a regular basis?

12 A. Yes, sir, I did. Every day except for
13 the times that she went to visit Jimmy.

14 Q. And Jimmy came to visit from time to
15 time?

16 A. Yes, he did.

17 Q. And did Michael see your mother on a
18 regular basis during the last years of her life?

19 A. Yes, sir. Every day. Sometimes more
20 than once a day.

21 Q. At that point in time the few years
22 before your mother's death were you able to leave
23 her alone?

24 A. No, sir. You could not leave her alone
25 any.

1 Now, sometimes I would leave her in the
2 house 30 minutes or so, but Mike would be right out
3 there in the yard cutting her grass. But you could
4 not leave her because she smoked cigarettes and she
5 burned holes everywhere. The carpet, the bars, the
6 bathroom sink, the counters. She would try to
7 light her cigarettes with the stove. So there was
8 just no possible way we could leave her by herself.

9 Q. Did she ever spend the night alone?

10 A. No, sir. Since 2012 she has never been
11 left alone.

12 Q. Did at times you -- well, who would
13 spend the night with her and how was that done?

14 A. Well, to start with Charlie spent
15 nights and then the nights that Mike was -- because
16 he worked as a correctional officer at the prison.
17 So the nights that he was off he spent the night.
18 And if there was some reason Charlie couldn't stay
19 she spent the night with me.

20 Q. Would you take her to your house?

21 A. Yes, sir.

22 Q. Now, I think you said your mother
23 started having memory problems in 2008. When did
24 she stop driving a car?

25 A. I'm guessing, but I would say around

1 2010.

2 Q. When did she stop doing her housework
3 and managing her affairs?

4 A. Well, really I've always basically
5 cleaned her house, and then she also had some
6 people that came in and cleaned her house. But
7 when Angela Fowler started sometime 2008 or so --
8 '08 or '09. Somewhere in that area. She done the
9 light housework, the cooking, the washing clothes,
10 taking care of my father, taking care of my mother.
11 So she really -- you know, just whatever she wanted
12 to do.

13 Q. I believe you said your father died in
14 2012.

15 A. Yes, sir.

16 Q. What was his health like for the last
17 two years of his life?

18 A. He was kind of bedridden the last two
19 years, but his mind was fine. But his internal
20 organs quit working because he had Parkinson's
21 disease.

22 Q. Prior to your father's death in 2012
23 did both your father and your mother need
24 assistance?

25 A. Yes, sir. Because mother couldn't

1 drive. She couldn't cook because you couldn't rely
2 on -- she might leave the stove on high. She burnt
3 holes everywhere with cigarettes. So we just --
4 she just had to have constant care. But her mind
5 was kind of okay, but still there was a lot of
6 problems.

7 Q. And I believe she was first diagnosed
8 with dementia when?

9 A. I think in 2008.

10 Q. Well, when your father died in 2012
11 what, if any, effect did his death have on your
12 mother?

13 A. She was very upset. She cried a lot.
14 She depended on us -- Mike, Jimmy, Charlie and I
15 -- to kind of make decisions on what needed to be
16 done.

17 Q. Was she able to go to the doctor on her
18 own?

19 A. No, sir.

20 Q. After your father's death in 2012 was
21 your mother capable of taking care of herself?

22 A. No, sir.

23 Q. Now, when did Mike start handling her
24 business affairs?

25 A. I'm not for sure, but he started

1 handling them before daddy died because daddy said
2 that momma was not capable of handling them. So
3 Mike and daddy handled them up until daddy died,
4 and as far as I know Mike handled the business
5 affairs.

6 Q. Who was responsible for hiring and
7 scheduling sitters or caregivers?

8 A. I did that, but I also consulted Mike
9 to see if everything was okay with him. But I did
10 most of that.

11 Q. Was Mike also involved?

12 A. I asked him about it and we agreed.

13 Q. Now, I think you mentioned that your
14 brother Charlie died on April 7, 2014.

15 A. Yes.

16 Q. And how did that affect your mother
17 mentally?

18 A. Well, if she would have been capable I
19 wouldn't doubt that she wouldn't have crawled in
20 the casket with him and died. But she didn't
21 really know. Sometimes she would say "my son died"
22 or whatever. But she was upset and it just took a
23 really bad toll on her.

24 And also in 2014 not long after he died
25 she spent the night with me and her house got

1 robbed. So she really lost it. So she had so many
2 traumatic injuries that it was just -- she was bad.

3 Q. The medical reports -- and I think you
4 have mentioned your mother became hostile. In
5 fact, would strike out at people.

6 A. Yes, sir.

7 Q. Tell us about that. When did that get
8 to be a problem?

9 A. I think it got worse in 2014. She
10 would throw her food down, throw it in the trash
11 can. She wouldn't eat if she didn't think it was
12 cooked right. She started hitting people. She
13 slapped Charlie -- I witnessed her slap Charlie
14 twice. I witnessed her slap Jimmy once. She tried
15 to hit Mike, but Mike kind of grabbed her hand.
16 And she tried to hit me, but I grabbed her hands
17 also.

18 She threw cups at people. She cut
19 Lovanda across the face. She left a knife laying
20 on the bar. All the silverware was put up, the
21 knives, forks. Everything was put up on a high
22 shelf. And she was cooking lunch and she forgot
23 and left a knife laying on the counter and went to
24 the bathroom. When she walked out of the bathroom
25 momma was there and she sliced her across her face.

1 Q. That was Lovanda?

2 A. Lovanda Hyatt.

3 Q. She was a hired caregiver?

4 A. Yes, she was.

5 Q. Did Lovanda at times take her to see

6 Dr. Barrett?

7 A. Yes. Because she would take her and I
8 would meet them there.

9 Q. Did she have problems driving your
10 mother to the doctor?

11 A. Yes, she did, because she would grab
12 the steering wheel. So Lovanda had to start
13 putting her in the back seat. So then Lovanda
14 completely quitting carrying her because -- I don't
15 know if I should say this or not. Because she had
16 applied for disability and her doctor was in the
17 same office as Dr. Barrett, so she -- this is the
18 reason she told me. So she wouldn't carry her
19 anymore.

20 Q. After Charlie died in 2014 who were her
21 primary caregivers?

22 A. Angela Fowler, Lovanda Hyatt, and we
23 hired Faye Platt for about 20 hours a week.

24 Q. How about from a family standpoint; who
25 were the primary caregivers?

1 A. Marcia Anderson, which is me, and
2 Michael Soles.

3 Q. Did your mother at times have problems
4 identifying people?

5 A. Yes, she did. Sometimes I would tell
6 her: Here is so and so, momma. And when I would
7 tell her the name she might would recognize it, and
8 then they would be gone maybe 15, 20 minutes and I
9 would say: Momma, I'm so glad you had company
10 today. And I would say the name, and she would
11 say: Well, I hadn't seen them today.

12 Q. Did she ever misidentify your brother
13 Michael?

14 A. Yes, she did. She thought he was
15 Euclid Soles, my father, many a times. He would be
16 cutting grass. She would think it was him. If he
17 came over with a water bottle, drinking water, she
18 would think he was drinking alcohol. She said:
19 Look at him. Look at him. We're going to leave
20 when he leaves.

21 Q. Did your mother use inappropriate
22 language?

23 A. Yes, she did. Words I have never heard
24 before her say. She might have said some kind of
25 minor words in the past, but nothing much. But she

1 said words that I never heard her say before.

2 Q. During the last years of her life did
3 your mother have issues with personal hygiene?

4 A. Yes. My mother was -- she didn't like
5 to take a shower, and she might try to wipe off a
6 little bit in the sink. And if you asked her if
7 she had took a shower or tried to give her a shower
8 she would refuse.

9 Q. Did she have accidents in the bathroom?
10 That sort of thing?

11 A. She wore pull-ups. She would have a
12 lot of accidents and she would not even know she
13 had done it.

14 Q. Let me ask you about your personal
15 relationship with your mother. Describe that for
16 us.

17 A. Well, before she got really sick we
18 done a lot of things together. We bowled. We
19 bowled on a league; bingo'd. We went shopping;
20 took her to casinos.

21 The time we took her to the casino you
22 had to watch her. You couldn't leave her by
23 herself because she would leave her pocketbook wide
24 open or she would get up and wander to a different
25 machine and leave her money in there. So you had

1 to watch her. You could not leave her.

2 Q. Describe Charlie's relationship with
3 your mother.

4 A. My mother loved Charlie very much and
5 he loved her very much, and he was good to my
6 mother.

7 Q. What about Jimmy; did Jimmy have a good
8 relationship with your mother?

9 A. Jimmy loved my mother. My mother loved
10 him. He was a clown and she did love him.

11 Q. Did she have confidence in her son
12 Jimmy?

13 A. I think she did.

14 Q. Let me direct your attention to July
15 21, 2015. About that time.

16 Now, your mother was -- her birthday is
17 in late September -- late August.

18 A. Her birthday is August the 28th, but
19 she's always said it was September 24 -- I mean
20 September 4th.

21 Q. So on July 21, 2015 she would have been
22 about five weeks away from her 89th birthday?

23 A. She was very frail, very weak. I think
24 she was still walking some, but your would have to
25 hold her. I would have to hold her arm and

1 shoulder for her to walk.

2 Q. Tell the Court what your mother's
3 general condition both physically and mentally was
4 on July 21, 2015.

5 A. She was very frail. She was very weak.
6 She probably didn't weigh much over a hundred
7 pounds. She was very, very weak.

8 Q. In July 2015 was your mother
9 susceptible to being influenced by Jimmy?

10 A. Yes.

11 Q. On July 21, 2015 was your mother
12 oriented as to person, place, and time?

13 A. No.

14 Q. On July 21, 2015 did your mother have
15 sufficient mental capacity to understand the nature
16 and the extent of the effect of signing a deed?

17 A. No, sir, she would not.

18 Q. On July 21, 2015 did your mother have
19 sufficient mental capacity to understand the
20 consequences and the effect of signing a deed?

21 A. No, sir.

22 Q. Did your mother know -- on July 21,
23 2015 did your mother know what was going on?

24 A. No, sir.

25 Q. Now, let me ask you: In July of 2015

1 do you remember Jimmy taking your mother to Conway?

2 A. Yes, I do.

3 Q. What did he tell you about that trip?

4 A. He told me he was taking momma to lunch
5 to meet his son in Conway, and I said: Oh, that is
6 so nice.

7 So they went to Conway and they were
8 gone a right good while, and when they came back
9 sometime during the conversation I asked momma did
10 she have a good time. She said yes and she said:
11 And Jimmy started me a bank account.

12 So I asked Jimmy -- I said: Jimmy, did
13 you start momma another bank account?

14 He said no.

15 Well, I never thought about it anymore
16 until I went to Miss Dingle's office. Guess what?
17 The bottom floor is a bank. And that's when it
18 dawned on me.

19 Q. Did Jimmy tell you he was taking your
20 mother to meet with an attorney?

21 A. No, sir.

22 Q. Did Jimmy tell you he had instructed
23 the lawyer in Conway to prepare a deed transferring
24 the property in question to himself?

25 A. No, sir.

1 Q. Was transferring this property by deed
2 contrary to the Will your mother signed in 2013?

3 A. Yes, sir.

4 Q. Did Jimmy tell you he was paying \$5 for
5 the tract of land?

6 A. No, sir.

7 Q. Could your mother at that stage in July
8 of 2015 -- could she call a lawyer she didn't know
9 and schedule an appointment?

10 A. No, sir.

11 Q. Did Jimmy tell you he was going to pay
12 the lawyer for the deed?

13 A. No, sir. I didn't know anything about
14 it.

15 Q. When did you discover the deed or the
16 codicil? When did you discover that the property
17 had been transferred by your mother?

18 A. Jimmy came to my house. I was feeding
19 mother. Mother was in the wheelchair and I was
20 feeding her. We had stew beef and rice and
21 whatever. And he came in and he says: I thought
22 we might go eat.

23 I said: I've already cooked and I'm
24 feeding mom. I said: Why don't you fix you a
25 plate?

1 So he did, and he ate. And when we got
2 through he was sitting at the table and I told him
3 -- I said: Jimmy, that land on No. 9, we need to
4 make sure we get that straight.

5 He said: Oh, no. That is mine.

6 That's when I found out. I said:
7 What?

8 He said: That is mine.

9 I said: Jimmy, Mr. Phipps told you you
10 were to sell that land and to split it four ways
11 and that was what was in the Will.

12 He said: Well, no. It's mine.

13 So I called my brother, which lives
14 right next door, and I said: Mike, you need to
15 come over here a minute.

16 So he did. And I told Mike what Jimmy
17 had done. Jimmy was still sitting there and Mike
18 said: Oh, no. Jimmy, you know you're not supposed
19 to do that.

20 He pushed the chair back and he said --
21 I'm not going to say what he did. He said: You
22 hire you a -- blank -- lawyer, and he walked out
23 the door.

24 And I think the next day or the next
25 day -- I'm not for sure -- I called him because I

1 figure he had calmed down, and I said: Jimmy, what
2 are you doing?

3 He said: I'm at a car wash.

4 I said: Can you talk to me?

5 And he said yes.

6 I said: Don't you think you need to
7 come back and let's get that land straight like
8 we're supposed to do?

9 He said: No, ma'am.

10 So I hung the phone up and I thought
11 about it and thought about it and prayed about it,
12 and I called Mr. Hatfield in Florence and he
13 referred me to you.

14 Q. Did you and Michael spend considerably
15 more time being right there across from your mother
16 taking care of your mother and arranging sitters
17 and getting her to the doctor and seeing that she
18 had meals and didn't spend the night alone and that
19 sort of thing?

20 A. Yes.

21 And she would mess in her pants, but
22 she didn't know it. And Mike would go in there
23 with me, but he would hold her hand and stay in
24 front because she would put her hands in it. So I
25 would clean her, wash her, and put her pull-up back

1 on.

2 And Mike and I spent many a night him
3 on one side of the bed and me on the other side
4 just crying with her. Jimmy does not know that
5 because he wasn't there. And Mike also acted like
6 he had sinuses -- he didn't want me to know he was
7 crying. He would turn around and go to the
8 bathroom. But we stood many a night beside her bed
9 crying because she wanted to go home.

10 Q. Jimmy, of course, loved his mother?

11 A. He loved his mother very much.

12 Q. But he wasn't -- he didn't go through
13 all that because he was up in High Point?

14 A. Yes, sir. He suggested he would take a
15 week, Mike could take a week and I would take a
16 week, but he never did it.

17 Q. In view of what you and Michael did for
18 those years and the fact that Jimmy was away in
19 High Point, did he ever thank you, express his
20 appreciation for what you and Mike did for your
21 mother?

22 A. Not that I can recall.

23 Q. The Will that your mother prepared with
24 the help of Mr. Phipps in 2013 makes reference to
25 there being deeds transferred to all four children.

1 A. Yes, sir.

2 Q. And you got some property, I think, on
3 Highway 9 and Michael got some property and also
4 Charlie received some property.

5 A. Yes, sir. We all did. Daddy had
6 deeded us some property earlier and momma deeded
7 hers in 2013. And he did -- daddy did it at
8 different times.

9 Q. Did Jimmy also receive property from
10 the family?

11 A. He received the river house at Little
12 River, North Carolina. I think it's in North
13 Carolina. It might be South. And then mother give
14 him some land there at the homeplace.

15 Q. The river house -- I think the family
16 referred to it as the river house.

17 A. Yes.

18 Q. -- consisted of an acre on Little River
19 Neck.

20 A. Yes, sir. I believe it's Harrelson
21 Street.

22 Q. That's in South Carolina?

23 A. Yes.

24 Q. Did it have a house on it?

25 A. Yes. It had a small block house on it.

1 Q. And he lives not in that house, but he
2 lives on that property today?

3 A. Yes, he does.

4 Q. What kind of development is it?

5 A. Where he lives from his side of the
6 road down are very nice homes. On the front part
7 they might not be, but they're working on -- from
8 where he lives on down the street and on the side
9 they're very nice homes.

10 Q. What about the property that he
11 received there on Cox Town Road? Did he sell that
12 to Michael?

13 A. Yes, he did.

14 Q. So he did receive property?

15 A. Yes, he did.

16 Q. And if your mother was of the
17 impression that he didn't receive any property from
18 the family, that would not be correct, would it?

19 A. That would not be correct.

20 MR. JOHNSON: Thank you. Answer any
21 questions Mr. McCutchen may have.

22 THE WITNESS: Yes, sir.

23 THE COURT: All right, Mr. McCutchen.

24

25

EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. McCUTCHEN:

Q. Miss Anderson, how are you today?

A. I'm fine.

Q. Thank you, ma'am. You lived across the street from your mother for how long?

A. Well, we moved from Texas in 1964 and I was still going to school, so I stayed with them until '71, I think. And then I moved to the beach for a little while, but then I moved back. And I basically have been there all my life.

Q. And I think from your testimony you and Mike were the primary caretakers in the family --

A. Yes.

Q. -- after Charlie died; is that correct?

A. Yes, sir. Charlie helped. As long as he was living Charlie helped with my mother.

Q. Did you and your mother get along well later in her life?

A. When she got dementia we got along, but she would throw a fit sometimes. We talked to her about a bath, and she would really get mad. She would throw things. And then sometimes she would say: Why don't you just hit me? Go ahead and hit me.

1 And I would say: Momma, you know I
2 wouldn't hit you.

3 But she was like that. And then
4 sometimes she was good as gold.

5 Q. What does that mean "sometimes she was
6 good as gold?"

7 A. Sometimes she was sweet, sometimes she
8 was nice, and then sometimes she was violent.

9 Q. Sometimes she was sweet and nice.
10 Could you carry on a conversation with her?

11 A. You could talk to her, but that doesn't
12 mean she understood you. She might say yeah. But
13 you might have asked her did she go to Tabor City,
14 and she might say yeah, but that not be what you
15 asked her.

16 Momma could not hear good, so she
17 answered you the best she could.

18 Q. Is it your testimony that she could not
19 carry on conversations with people about what --
20 any kind of matters.

21 A. She could talk more about the past than
22 she could the short term. But the past she
23 remembered more.

24 Q. Let's take a given day. Since we're
25 looking at July 21, 2015, during the month of July

1 -- or that period of time, if you can recollect.

2 Is it your testimony here today that
3 she could not articulate a conversation with you
4 and understand it at any time during those months?

5 A. You could ask her: Momma, would you
6 like a cup of applesauce? She would say yes.

7 "Momma, do you want some Coke?"

8 "Yes."

9 "Momma, don't you want to take a bath?"

10 "I've already took one," knowing she
11 hadn't. I mean, it was like that. She really did
12 not comprehend, but she would answer you.

13 Q. So are you saying that during the
14 summer of 2015 she could not comprehend and carry
15 on a conversation with you about virtually any
16 matter?

17 A. Not anything that called for any
18 details. Something simple, yes. But at 2015 my
19 mother was very, very weak; very frail. You had to
20 help her to the car. She could still walk a little
21 bit, but you would have to help her in the car.
22 You would have to get her in the car, get her out
23 of the car.

24 And then when we would leave she would
25 say -- I would tell her a lot of times: We're

1 going to go see Esther. Because I would try to get
2 her to visit. And we tried to keep her in a normal
3 routine, because Dr. Barrett said if we kept her in
4 a normal routine she would do better. So that's
5 why in the daytime we hired sitters so she could
6 stay at home.

7 Lovanda usually left around 2:30 to get
8 her son, and sometimes she would come back and
9 sometimes she wouldn't. But we tried to keep her
10 in a regular routine with her hair. We tried to
11 keep her hair fixed. We tried to -- I laid her
12 clothes out every night that she was going to wear.
13 I went to Ann's Fashions in Tabor City and bought
14 her outfits so she would always have a nice clean
15 outfit at Mother's Day, Christmas, birthdays. Any
16 kind of special occasion.

17 Mike Soles, my brother, and his wife
18 would bring her presents. Jimmy and Jill brought
19 her presents. And they would mostly bring candy.
20 She would hide candy in her bedroom. She didn't
21 want nobody to have it. She would hide it. She
22 would hide some of her clothes. She just did
23 things like that. She would hide cigarettes that
24 we would find later.

25 Q. You talked about her physical condition

1 significantly right there. She was frail.

2 A. She was very frail.

3 Q. She was older.

4 A. She was older.

5 Q. But that has nothing to do with her
6 mental ability. Your testimony still is that she
7 could not carry on a conversation --

8 A. Her mental ability was terrible. We
9 carried her to a neurologist. I carried her to
10 Dr. Barrett all the time. I carried her to a
11 kidney doctor because she had a lot of trouble with
12 her bladder.

13 Momma could not hear good. She had
14 hearing aids, but half the time they would get gone
15 or they got lost.

16 She had a heart doctor. She threw fits
17 in the doctor's office and Dr. Barrett's office.
18 Dr. Lisa's office she threw fits. She thought if
19 she went she was not supposed to wait. She thought
20 she was supposed to go right back there.

21 Q. So when you talk about a heart doctor
22 or a kidney doctor or these other physicians, they
23 are all dealing with physical ailments.

24 A. My mother had a lot of physical
25 ailments.

1 Q. And a lot of elderly people have a lot
2 of physical ailments.

3 A. Yes. She has a bunch.

4 Q. But again, you're talking about
5 physical ailments of your mom. I'm asking you to
6 confirm that she could not carry on a conversation
7 with you about anything for any period of time in
8 the summer of 2015.

9 A. She could talk, but that didn't mean
10 she understood. She could talk and she would
11 answer you, but sometimes she did not even know
12 what she said. But she would give you an answer.

13 Q. So you're testifying that she didn't
14 have the capability of carrying on a conversation
15 with you during the summer of 2015?

16 A. Not a good one. I'm not going to say
17 she -- I'm not going to say she couldn't talk,
18 because she did.

19 Q. It's extremely important. Mr. Johnson
20 has asked you all about the summer of 2015 --

21 A. She was completely not got.

22 Q. So your testimony is she did not have
23 the capability of making an informed decision about
24 signing a deed in July of 2015; is that correct?

25 A. No, sir. If anybody -- it doesn't



1 matter who it was. It didn't matter if it was
2 Jimmy; it didn't matter if it was Mike; it didn't
3 matter if it was Charlie; it didn't matter if it
4 was me. I could stick a piece of paper up there
5 and say: Momma, will you sign it? She would try,
6 but she couldn't sign good anymore.

7 Q. But that would be you submitting the
8 paper to her; correct?

9 A. Anybody. I don't care if it was
10 somebody she didn't know. They would say "sign
11 it," and she might try.

12 Q. Were you at the deposition of Miss
13 Catherine Dingle?

14 A. Yes, sir.

15 Q. Did you hear her testimony?

16 A. Yes, I did.

17 Q. Did you hear her state that she had
18 this conversation with your mother and your mother
19 heard her through that conversation?

20 A. Yes. And she also said she didn't
21 remember who brought her. She also said --

22 Q. She didn't know how she got there.
23 This is in the room with Miss Dingle.

24 A. She said that she did not remember
25 whether she went in there by herself or not. But

1 there is no possible way under the sun that she
2 went in that room by herself. Because she did not
3 hear good. She would not have understood.

4 The note that she has on the side of
5 her paper that she wanted Jimmy to have more
6 because she wanted that done before she checked out
7 -- my mother did not talk like that. She would
8 have said "before I die." And she never talked
9 about death because she didn't like to talk about
10 death.

11 One time that I can remember in my life
12 -- and I think it was in 2015. I'm not for sure.
13 But she said: I'm going to die.

14 And I said: Well, not today, momma.

15 And then that was it. She went back
16 into another state. She might for a minute or two
17 say something, but it was gone. She told me she
18 saw my daddy, and he was gone. And I would say:
19 Momma, you did see daddy? She said yeah.

20 Q. Isn't it true people can have periods
21 of lucidity?

22 A. I think so.

23 Q. But what you're saying right now is
24 that whatever Miss Dingle said about that
25 conversation simply is not true?

1 A. I'm not going to say it wasn't true. I
2 wasn't sitting there, but I do know for a fact she
3 didn't drive.

4 And I remember that day specifically
5 because it was warm weather. Jimmy Soles told me
6 out of his own mouth -- he said: Me and momma are
7 going to Conway to eat lunch with Beau. I said:
8 Well, that will be good.

9 Well, they stayed gone a long time. I
10 thought: Well, God, they are staying a long time.
11 But I did not know he took her to Miss Dingle. I
12 did not know anything about this until -- I say
13 four to six weeks before my mother died. I knew
14 nothing. He told us nothing.

15 Q. And you're aware that there was another
16 attorney who also interviewed her and had a
17 document signed in North Carolina 13 days before
18 that?

19 A. I heard that.

20 Q. Mr. Rochford.

21 A. I heard that.

22 Q. So tell me what -- in your Complaint
23 you've alleged a number of matters that Jimmy -- he
24 exerted fraud, trick artist, abuse, overreaching,
25 et cetera.

1 Tell me what he did. I need to know
2 what he did that you're saying he shouldn't have
3 done to get this deed executed.

4 A. Okay. Some of these people are gone,
5 so they cannot testify. Edith Soles, Jimmy Soles,
6 Charles Soles, Bill Phipps. They went to that
7 office and they decided how the land was going to
8 be dealt out. I had nothing to do with it. Mike
9 Soles had nothing to do with it.

10 Q. Please answer my question. I'm asking
11 you what he did as a trick artist or whatever you
12 want to call it to get your mother to sign this
13 deed.

14 He was not in the room with her, so
15 what did he do? You've asserted that he did X, Y
16 and Z to get her to sign that deed. What did he
17 do?

18 A. Well, he got her to sign that deed over
19 to him, which he knew it was supposed to be divided
20 four ways. He did this in secret. Nobody knew it.
21 And he also waited -- why didn't momma give him
22 that land in 2013? Why did he wait until Charlie
23 passed away? And all of a sudden Charlie passed
24 away and he got Power of Attorney. All of a sudden
25 he went to these lawyers and he had this done, and

1 it was never told.

2 Q. I'm still trying to figure out what you
3 say he did -- what act did he take to get your
4 mother to sign the deed?

5 Miss Dingle testified she was in there
6 with your mother by herself and she asked all these
7 questions.

8 A. Yes. That's what she said.

9 Q. And she said it under oath. She's been
10 practicing law for 22 years.

11 A. Yes. I'm saying -- she is a fine lady,
12 I'm sure, but I'm telling you she did not go in
13 that room by herself because she would not have
14 understood and she would not have heard unless
15 somebody was right beside her and talking in her
16 ear and made sure she knew it. She did not -- I'm
17 just as sure as I'm sitting here she did not
18 understand.

19 Q. She did not understand what she was
20 doing?

21 A. No, sir, she did not. I am positive of
22 that as I'm sitting in this chair.

23 Q. I think you've also reviewed the
24 affidavits of Lovanda Hyatt and Faye Platt, have
25 you not?

1 A. Yes, I did.

2 Q. And didn't you say --

3 A. Most of it was false. The vast
4 majority of it was false.

5 Q. They really just were not true?

6 A. They were not true. There was a few
7 truths in between it, and I told you the true part
8 and I told you the part that was relevant. And I
9 also told you that Lovanda was a very needy person.

10 She -- and I told her as long as she
11 kept things done up there I didn't care. She made
12 baskets that she sold to people. She done
13 crocheting up there she sold to people. And I told
14 her that was fine as long as she took care of
15 momma. But she put earbuds in her ear and she said
16 that was to keep from hearing momma's cussing and
17 fussing.

18 Q. So that we can review this, what we
19 have is your statement under oath here today that
20 what Miss Dingle testified to is not correct. Is
21 that what you're saying?

22 A. She might have thought it was correct,
23 but I don't.

24 Q. You're saying it's not correct; is that
25 right?

1 A. I'm saying I wasn't there. I don't
2 know. But I do know that she was took to --
3 somebody made an appointment for her, because she
4 didn't make it. I'm telling you she didn't drive
5 there and I am telling you she didn't get up there
6 by herself and I am telling you she was not in that
7 room by herself. I know that. I know my momma
8 that well. I know that.

9 I wasn't there, so I can't say, but in
10 my opinion -- in my opinion she was not in that
11 room by herself.

12 Q. And you were not in there?

13 A. I was not in there.

14 Q. So what you're doing is saying
15 whatever --

16 A. In my opinion.

17 Q. And Miss Dingle is not telling the
18 truth?

19 A. She may be telling the truth to the
20 best of her ability.

21 Q. And you're also saying that Lovanda
22 Hyatt did not tell the truth in her --

23 A. No, sir.

24 MR. JOHNSON: Excuse me. I hate to
25 interrupt, but just to say that a witness was not

1 telling the truth in a deposition -- if he could
2 point out the line and question. She said so and
3 so. She can't just make a general statement about
4 her not telling the truth. That's too broad.

5 MR. McCUTCHEN: She already has.

6 THE COURT: I think what she is --
7 maybe I can clear it up. Because you're saying an
8 opinion.

9 Well, you can't have an opinion as to a
10 fact. I think Mr. McCutchen is asking you -- Miss
11 Dingle has apparently said in her deposition that
12 your mother was in the room with Miss Dingle by
13 herself.

14 THE WITNESS: Yes, ma'am. That's what
15 Miss Dingle said.

16 THE COURT: So this is the fact that
17 Mr. McCutchen is asking you, whether you are saying
18 that you believe or disbelieve; is that correct?

19 THE WITNESS: I do not --

20 THE COURT: You don't believe that?

21 THE WITNESS: I do not believe that she
22 was in that room by herself. Because she couldn't
23 hear. You would have to -- I would have to go over
24 to the court reporter and I would have to get right
25 in her ear for her to understand.

1 There is no way they talked across the
2 table and she understood. And she wouldn't have
3 understood anyway. She might have said yeah, but
4 she did not -- she did not understand. But I'm --
5 Miss Dingle sees a lot of people. I'm very sure
6 she's a nice attorney.

7 THE COURT: Well, why could it not be
8 that Miss Dingle could not have explained it to
9 her?

10 THE WITNESS: Most of her testimony was
11 she didn't remember; she didn't remember; she
12 didn't remember.

13 MR. McCUTCHEN: Objection.
14 Characterization of her testimony. Mr. Johnson has
15 also submitted that as an exhibit or is going to,
16 but her testimony is that she remembered all facets
17 of being in the room with her and what she told her
18 and what that interaction was.

19 Miss Dingle will be here tomorrow, but
20 I am trying to figure out why she's calling Miss
21 Dingle out.

22 THE COURT: Okay.

23 THE WITNESS: I'm not saying she's
24 untrue.

25 THE COURT: My question to you is why

1 isn't it that Miss Dingle could not have answered
2 any questions that your mother may have --

3 THE WITNESS: I think Jimmy answered
4 those questions.

5 THE COURT: I don't know because I
6 haven't seen the deposition. I haven't questioned
7 Miss Dingle yet because she's not been in here yet,
8 but based on what everyone has said so far I
9 believe Miss Dingle is going to say she doesn't
10 recall Jimmy Soles being there. Is that correct?

11 MR. McCUTCHEN: Yes, ma'am.

12 THE COURT: Jimmy Soles is going to
13 say: I wasn't in that room. Is that correct?

14 THE WITNESS: He did go because --

15 THE COURT: Wait a minute. You weren't
16 there; is that correct?

17 THE WITNESS: He left the house with
18 her.

19 THE COURT: I think what you're saying
20 is you believe in your heart of hearts that he was
21 in there, but you don't know because you weren't
22 there.

23 THE WITNESS: I was not there.

24 THE COURT: Now we've got it.

25 THE WITNESS: I was not there. So I



1 can't prove it, but I know for a fact that day she
2 was with him.

3 THE COURT: So now we understand. You
4 can't prove or disprove, but you believe in your
5 heart of hearts he was in that room.

6 THE WITNESS: Yes, I do.

7 THE COURT: Miss Dingle doesn't recall
8 -- she said he wasn't in there; is that right?

9 MR. McCUTCHEN: Yes, ma'am.

10 THE COURT: Miss Dingle says nobody was
11 in the room with your mother.

12 THE WITNESS: That's what she said.

13 THE COURT: Very good. And Mr. Jimmy
14 Soles says he wasn't in there?

15 THE WITNESS: Yes.

16 THE COURT: I've got the picture.

17 BY MR. McCUTCHEN:

18 Q. And to make sure, both Miss Lovanda
19 Hyatt and Judy Platt -- you say the majority of
20 those are also false?

21 A. Most of their answers were false. Not
22 all of them, but most of them.

23 Q. You weren't at Mr. Rochford's
24 deposition, were you?

25 A. No, sir.

1 Q. Have you read it?

2 A. Yes, sir.

3 Q. And do you know how he questioned your
4 mother concerning the execution of a document --

5 A. No, sir.

6 Q. May I finish?

7 -- July 8, 2015?

8 A. I was not there.

9 Q. But have you read the deposition?

10 A. I've read the deposition.

11 Q. And do you understand he followed a
12 protocol in asking her about the execution of a
13 document in his office?

14 A. From what I read, yes.

15 Q. Do you have a recollection that he said
16 he walked through a procedure in conformity with
17 the Andrews case in order to ask the questions? Do
18 you remember that?

19 A. Repeat that, please.

20 Q. What do you remember about reading his
21 deposition? Didn't he confirm that he asked her a
22 series of questions about whether or not she wanted
23 to do this and execute this document?

24 A. I believe he did.

25 Q. And did he not give an affidavit also

1 in support of his position?

2 A. Yes, sir.

3 Q. Did you read his affidavit?

4 A. Yes, I did.

5 Q. Do you disagree with his affidavit?

6 A. Yes, I do.

7 Q. So today we are in this courtroom.

8 We've got a deed that has been conveyed by Miss
9 Soles and we've got four people who say that she
10 had the ability at times to execute documents or
11 undertake these kind of affirmative actions, to
12 which you say they're all lying?

13 A. I'm not calling anybody a liar, but am
14 I saying that I disagree? Yes; I disagree.

15 Q. And tell me this. Again, I'm asking
16 about Jimmy Soles and what you're saying about --
17 what did Jimmy do that got this -- what is his
18 specific act? What you say in your Complaint is
19 that he did these various matters that resulted in
20 the conveyance of this deed.

21 A. Well, if it wasn't a secret then why
22 didn't he tell us? And why did he wait until
23 Charlie died and he got Power of Attorney? Why did
24 he do all this secretly?

25 Because at Bill Phipps' office Bill

1 told him specifically: Now, Jimmy, you know you're
2 supposed to sell this and divide it four ways. You
3 are not supposed to give yourself a gift.

4 He said: Yes, sir.

5 Q. You're saying that Bill Phipps told
6 Jimmy Soles that?

7 A. Yes, sir, he did.

8 Q. Are you saying that this deed was
9 conveyed by Power of Attorney through Mr. Soles?

10 A. Yes, sir, I am.

11 Q. Have you read the deed, the deed that's
12 at issue in this case?

13 MR. JOHNSON: Excuse me. Your Honor,
14 that's a legal question. She's not in a
15 position --

16 THE WITNESS: I'm not a lawyer. I'm
17 not that smart with stuff like that. I can just
18 tell you honestly what I think. That's the best
19 that I can do.

20 Q. (Continued) Have you seen the deed
21 that conveyed title to Jimmy Soles by Miss Soles?

22 A. I don't think I have.

23 Q. Do you know that's the issue in this
24 case, is that deed? You haven't read it?

25 A. I don't think I have. I'm not going to

1 say I hadn't, but I don't think I have.

2 THE COURT: Someone is going to put it
3 into evidence sooner or later, I believe.

4 MR. JOHNSON: It's in now, your Honor.

5 MR. McCUTCHEN: No. All you did was
6 mark it.

7 THE WITNESS: I may have read it.
8 There has been so much going on. I may have read
9 it. But I do know that he did the wrong thing. He
10 did not do the right thing. It doesn't really
11 matter what it says. I just know he did the wrong
12 thing.

13 MR. McCUTCHEN: Your Honor, this was
14 previously marked Exhibit 4 from the plaintiff.

15 THE COURT: Plaintiff's 4?

16 MR. McCUTCHEN: Plaintiff's 4.

17 THE COURT: You all have agreed, so
18 Plaintiff's 4 is so admitted.

19 BY MR. McCUTCHEN:

20 Q. Ms. Anderson, I'll give you a copy of
21 the deed that has been marked as Plaintiff's
22 Exhibit 4 and ask you if you've ever seen this
23 document.

24 MR. JOHNSON: Your Honor, I think --

25 A. I think I may have seen it. I think I

1 may have seen this. Like I say, there is so much
2 really going on that I don't really remember, but I
3 think I did see that.

4 Q. Can I ask you: On Page 2 how is it
5 signed?

6 A. It's signed "Edith Soles."

7 Q. So it's not signed by Jimmy Soles as
8 Power of Attorney, is it?

9 A. I have no idea. I wasn't there.

10 Q. How is it signed?

11 A. It's got Edith Soles' name on it, but I
12 don't know who signed it.

13 Q. So you understand that --

14 THE COURT: Do you know your mother's
15 signature?

16 THE WITNESS: Yes, I do.

17 THE COURT: Is that your mother's
18 signature?

19 THE WITNESS: I don't think so.

20 Q. (Continued) And who were the witnesses
21 here and the notary for Miss Soles? Could you tell
22 me their names, please.

23 A. It looks like something "King." I
24 can't read the first name. And Catherine H. --
25 something.

1 Q. Is that Dingle?

2 A. It looks like her name, but I do not --
3 that possibly could be my mother's signature, but I
4 really don't think so.

5 Q. So you really think that this is not
6 your mother's signature on the deed that was
7 witnessed by Catherine Dingle; is that correct?

8 A. I don't think momma could write that
9 straight. All the checks and things that I've got
10 wrote -- but Jimmy was Power of Attorney, so I'm
11 sure he could sign for it. Honestly I don't know,
12 but I can't say with certainty it is.

13 MR. McCUTCHEN: Your Honor, I would
14 just like to bring judicial notice to the fact that
15 Catherine Dingle is the notary on this document and
16 she's also notarized the second page on July 21st,
17 2015 as witnessing the signature of Edith Soles.

18 THE COURT: Okay. And that Plaintiff's
19 4 has been stipulated by counsel?

20 MR. McCUTCHEN: Yes.

21 THE COURT: Thank you.

22 Does anyone need a break? You go ahead
23 and take your two-minute break and then we'll
24 finish up with this witness before we take a longer
25 break. But while he's taking a break everyone can

1 stand up and stretch if you would like.

2 (Short recess taken.)

3 BY MR. McCUTCHEN:

4 Q. You testified about the deed and what
5 you said about it. And again, nobody signed it as
6 Power of Attorney written down here?

7 A. I'm saying it is possibly momma's, but
8 I know the last signature that I seen her write was
9 not like that. But it is possibly hers. I'm not
10 going to say it isn't because I didn't see it.

11 Q. Thank you. But it doesn't say anything
12 typed on here: Jimmy Soles, Power of Attorney to
13 Edith Soles? Does it say that there?

14 A. No, sir. It's got her name on it.

15 Q. So it just says "Edith Soles?"

16 A. Yes, sir, it does.

17 Q. You have read Lovanda Hyatt's
18 affidavit; is that correct?

19 A. Yes, sir, I have.

20 Q. And you've also read Miss Platt's?

21 A. Yes, sir, I have.

22 Q. And those are the two I asked you about
23 before, but you disagreed with the vast majority of
24 what is in there?

25 A. I disagreed with most of it. There are

1 some truths in it.

2 MR. McCUTCHEN: Your Honor, I think
3 that will wrap it up for now. Thank you, ma'am.

4 THE COURT: Redirect?

5 EXAMINATION

6 BY MR. JOHNSON:

7 Q. After Charlie died in 2014, April 7,
8 2014, who became your mother's Power of Attorney?

9 A. Jimmy Soles.

10 Q. Please identify these photographs. Do
11 you know when those photographs were taken?

12 A. This one was took at my momma's 89th
13 birthday. You can see I have her propped up with a
14 pillow. You can look at her eyes and tell. But
15 this was her 89th birthday.

16 Q. And that would be about five weeks
17 after July 21, 2015?

18 A. I guess. But this was on her 89th
19 birthday.

20 Q. Who took the picture?

21 A. I think Deanna, which was Mike's
22 daughter, took this picture. Because Deborah was
23 in this picture. So I think Deanna took this one.

24 Q. Who took the one behind it? Look at
25 the one behind it.

1 A. I think Angela took a selfie with that
2 one.

3 Q. Angela is who?

4 A. Angela Fowler. She was the caregiver.

5 Q. Do you know when that photograph was
6 taken?

7 A. I'm almost positive it was took in
8 2015. I don't know exactly what month, but I'm
9 pretty sure that was taken in 2015 and I'm sure
10 that was a selfie because of the way momma's hair
11 looks.

12 MR. JOHNSON: Thank you, your Honor. I
13 would like to introduce those two photographs.

14 THE COURT: As one exhibit,
15 Mr. Johnson?

16 MR. JOHNSON: Yes, ma'am. Let me ask
17 one more question.

18 BY MR. JOHNSON:

19 Q. Do those photographs accurately depict
20 how your mother looked on or about 2015?

21 A. Yes. Yes. Because her hair was cut
22 just a little bit shorter than it was on her 89th
23 birthday.

24 THE COURT: Her 89th birthday would
25 have been August 28th, '15?

1 THE WITNESS: Yes. And I can't
2 remember whether I had it exactly on that date or
3 whether I had it off of September the 4th. Her
4 birthday is August the 28th, but she had said all
5 her life her birthday was September 4th.

6 THE COURT: Why?

7 THE WITNESS: Because she said her
8 momma and daddy said she was born on the 4th, and
9 that's what she went by. But her legal documents
10 are the 28th.

11 THE COURT: Okay.

12 MR. JOHNSON: Thank you. That's all I
13 have.

14 THE COURT: What exhibit? I'm sorry.

15 MR. McCUTCHEN: I'm trying to figure
16 out who took the photographs and the foundation for
17 that.

18 EXAMINATION

19 BY MR. McCUTCHEN:

20 Q. Were you there at this party?

21 A. Yes. I gave the party.

22 Q. But you didn't take the photographs?

23 A. No. This one --

24 MR. JOHNSON: Let her explain, your
25 Honor. He asked a question and she's trying to

1 explain it and he interrupts her.

2 THE COURT: Go ahead and finish your
3 explanation.

4 A. (Continued) This one was took at her
5 89th birthday. You can see I have her propped up
6 on the pillow. You can see her eyes. This was on
7 her 89th birthday.

8 THE COURT: That's the one with the
9 little exhibit sticker on it?

10 THE WITNESS: Yes. No. 9.

11 BY MR. McCUTCHEN:

12 Q. Is there a date on this?

13 A. No. I don't have a date on it, but
14 that was her 89th birthday.

15 Q. And were you there?

16 A. Yes; I was there.

17 Q. Who took the picture?

18 A. I think Deanna, Mike's daughter, took
19 that one.

20 Q. But you're not sure?

21 A. Well, it was Deborah's camera, but
22 Deanna took it because Deborah is sitting right
23 here. There were several people there. Because
24 that was on the couch, and Esther got sick and she
25 had to leave.

1 Q. And this one?

2 A. I was not there when this one was took,
3 but this was a selfie they took.

4 MR. McCUTCHEN: Your Honor, I object to
5 the introduction of the photographs. I mean, the
6 taker of the photographs is not here. There is no
7 date on it. There is no foundation. So I object
8 to them. And one of them is a, quote, selfie with
9 no identification whatsoever on it. So I'm
10 objecting to the introduction of both of those for
11 those reasons.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: She was there. It's
14 about a month after July 21st and Marcia says she
15 was there at the party.

16 THE COURT: She was there for one of
17 the photos. She was there for the 89th birthday
18 because she gave that party.

19 MR. JOHNSON: Let me withdraw the
20 second -- the so-called selfie -- and introduce --
21 move to introduce.

22 THE COURT: I'm going to let the 89th
23 birthday photo in. So that's Plaintiff's 9? I'm
24 going to overrule the objection as to the, quote,
25 selfie.

1 Do you want to proffer the other one,
2 Mr. Johnson?

3 MR. JOHNSON: I don't think so. One is
4 enough.

5 THE COURT: Very good. So I'm going to
6 sustain the objection as to the selfie. Did you
7 withdraw that one?

8 MR. JOHNSON: I'll just withdraw that
9 one and introduce what has been marked as
10 Plaintiff's Exhibit 9.

11 THE COURT: Very good. So I'm going to
12 overrule the objection as to Plaintiff's 9. It
13 looks like three women sitting on the sofa,
14 loveseat or --

15 MR. JOHNSON: I guess I should ask:
16 Which one is your mother?

17 THE WITNESS: The one sitting on the
18 end. You can see I have her propped up, because
19 she couldn't sit straight.

20 THE COURT: To the right end is your
21 mother?

22 MR. JOHNSON: In the pink.

23 THE COURT: Very good.

24 MR. JOHNSON: Thank you. You can come
25 down.

1 THE COURT: We want to take a little
2 break now so that you can grab a little bite to
3 eat? Not long. About 30 minutes maybe.

4 MR. McCUTCHEN: May it please the
5 Court, can we make it 1:30?

6 THE COURT: Very good.

7 (Lunch recess taken.)

8 MR. JOHNSON: Your Honor, we call
9 Dr. Gary Barrett.

10 THE COURT: You may be seated. And Dr.
11 Barrett, if you will state your full name for the
12 record, please.

13 THE WITNESS: Gary Joseph Patrick
14 Barrett.

15 THE COURT: Mr. Johnson?

16 GARY J. P. BARRETT, M.D.

17 being first duly sworn, testified as follows:

18 EXAMINATION

19 BY MR. JOHNSON:

20 Q. Dr. Barrett, I believe you are a
21 practicing physician in Loris, South Carolina.

22 A. That is correct, sir.

23 Q. How long have you practiced medicine in
24 Loris?

25 A. It will be 37 years come July.

1 Q. What is the name of your practice?

2 A. It is McLeod Primary Care Medicine.

3 Q. Do you specialize in any particular
4 area?

5 A. Internal medicine.

6 Q. Are you board certified?

7 A. Yes, sir, since '82.

8 Q. Let me ask you about your educational
9 background and your medical training. Tell us
10 about your educational training and undergraduate
11 work, medical school, and so on.

12 A. Well, Bachelor of Arts from Temple
13 University from 1971 to '75. Medical school at the
14 Medical College of Pennsylvania. That was '75 to
15 '79. Internship, residency and chief medical
16 residence at Monmouth Medical Center in New Jersey,
17 '79 to '82.

18 Q. Are you a member of any professional
19 organizations or associations?

20 A. The American Medical Association and
21 Southern Medical Association.

22 Q. And are you licensed by any government
23 agency?

24 A. By South Carolina and the federal
25 government for my drug license.

1 Q. And are you recognized and have you
2 been recognized as an expert to testify in the
3 courts of our state?

4 A. I've been to court before. I don't
5 know about expertise, though.

6 Q. Have you had the occasion to treat in
7 the course of your practice -- did you have the
8 occasion to treat an Edith Soles?

9 A. Yes, sir.

10 Q. Can you tell us when you first saw Miss
11 Soles.

12 A. August 17th, 1994.

13 Q. I see. And since 1984 did you see and
14 treat her on a regular basis?

15 A. Yes.

16 Q. Do your records indicate when you first
17 saw her for problems with her memory?

18 A. I do not recall exactly, but it became
19 a concern about approximately 2008.

20 Q. All right, sir. Doctor, first I want
21 to ask if you can identify what has been marked as
22 Plaintiff's Exhibit 7. It's a group of medical
23 reports.

24 Can you identify those as your records
25 in regards to your treatment of Edith Soles?

1 A. Yes, sir.

2 MR. JOHNSON: Your Honor, these have
3 been marked. I would now like to introduce those
4 in the record.

5 MR. McCUTCHEN: Are those the ones that
6 you went over in his deposition?

7 MR. JOHNSON: Yes.

8 THE COURT: No objection? Plaintiff 7
9 without objection.

10 BY MR. JOHNSON:

11 Q. Doctor, it probably would be best if I
12 give these to you and I'll ask you to refer to a
13 particular report.

14 Let me direct your attention to the
15 report of September 10, 2012. Do you see that
16 report?

17 A. Yes, sir.

18 Q. Would you read into the record the
19 first two sentences of that report.

20 A. "Patient is reluctant historian due to
21 her anxiety and recent demise of her spouse and
22 secondary to her Alzheimer's dementia."

23 Q. Was that the first time that she was
24 diagnosed by you with Alzheimer's dementia?

25 A. No, sir.

1 Q. When did you first diagnose her with
2 dementia or Alzheimer's?

3 A. It became a concern in 2008 when the
4 first referral was made to a neurologist.

5 Q. Did you refer the patient to a
6 neurologist?

7 A. Yes, sir.

8 Q. Why did you refer her to a neurologist?

9 A. The concern was of her memory loss and
10 what was the etiology. In trying to confirm the
11 etiology the referral was made to a specialist.

12 Q. Did they agree with your diagnosis of
13 Alzheimer's dementia?

14 A. It was a working diagnosis at that
15 time.

16 Q. What does that mean?

17 A. There was still a number of things to
18 be ruled out, medical and other causes of dementia.

19 Q. What is the prognosis of a patient with
20 Alzheimer's disease?

21 A. Progressive decline.

22 Q. And what exactly -- how does
23 Alzheimer's disease affect a patient's brain?

24 A. Well, they have generally deterioration
25 of their mind and their memory over time.

1 Q. All right, sir. You used the term --
2 and it's used throughout your reports -- "reluctant
3 historian." Could you define that or explain that
4 to us.

5 A. That's a little bit of a euphemism,
6 sir. It's a substitution for a poor historian, but
7 "poor" can have a lot of other connotations, too.
8 So someone who is a little bit reserved but also
9 may be a poor historian.

10 Q. Was she able to respond to your
11 questions: How are you doing? Tell me how you
12 feel today and that sort of thing? Would she
13 respond appropriately?

14 A. At that point in time, yes.

15 Q. You also mention in that particular
16 report, your report of September 10, 2012, that she
17 was with her son; is that correct?

18 A. Yes, sir.

19 Q. And that would be -- I think he's
20 referred to as her constant caregiver.

21 A. Yes, sir.

22 Q. Would that be her son Charlie?

23 A. Yes, sir.

24 Q. From 2008 until her death in 2016 was
25 Miss Soles ever able to come to see you, to visit

1 you for a doctor's visit on her own?

2 A. For multiple years before her demise
3 she always needed continual assistance. I can't
4 say exactly when she was by herself.

5 Q. But it would have been several years
6 before her death?

7 A. Yes, sir.

8 Q. Back in September 10, 2012 her son was
9 with her on that visit; right?

10 A. Yes, sir.

11 Q. Doctor, let me refer you to a report --
12 I think it's the next page -- of October 8, 2012.

13 A. I have it.

14 Q. In this report there is reference to
15 extreme volatility. And what exactly does that
16 mean?

17 A. Her behavior and emotional stability
18 was very variable.

19 Q. Is that a symptom that's associated
20 with a particular problem?

21 A. It could go along with the patient's
22 emotional problems and mental problems from
23 Alzheimer's disease.

24 Q. Also there is the term you used in that
25 same report, "emotional labile."

1 A. Yes, sir.

2 Q. What does that mean?

3 A. Their affect can change very regularly
4 over a very short duration of time.

5 Q. Is that also associated with her
6 hostility and being angry and losing her temper
7 quickly?

8 A. Yes, sir.

9 Q. And are those -- volatility and labile,
10 are those particular conditions or symptoms common
11 with Alzheimer's dementia?

12 A. Yes, sir.

13 Q. In the report of October 8, 2012 at the
14 bottom of the page under General Appearance --
15 would you read that into the record beginning with
16 "emotionally labile."

17 A. "Emotionally labile but alert and
18 oriented, cooperative with her ability to
19 comprehend with her profound deafness."

20 Q. She was profoundly deaf?

21 A. Yes, sir, which only exacerbated the
22 situation.

23 Q. I believe in 2012 she would have been
24 about 86 years old. Or 86 years old.

25 A. Yes, sir.

1 Q. Dr. Barrett, in addition to reports of
2 September 10, 2012 and October 8, 2012 there are
3 reports of November 26, 2012; December 5, 2012.

4 It looks like you were seeing her on a
5 monthly basis at that time.

6 A. Practically, yes.

7 Q. In your December 5, 2012 report there
8 is a reference to her mental state. Would you look
9 at that December 5, 2012.

10 A. I have it, sir.

11 Q. What does that say? Would you read
12 that into the record.

13 A. The first sentence?

14 Q. Beginning with "poor," her mental state
15 December 5, 2012.

16 A. I have the report here, sir, but I'm
17 not sure what you're alluding to right now.

18 Q. "Poor historian, partially complicated
19 by dementia."

20 A. This is the 5th of December?

21 Q. Yes, sir. Is there any reference to
22 her mental state on that visit?

23 A. I see where you're referring to.

24 "The patient admits to feeling
25 symptomatically better. This is agreed by her son,

1 her major caretaker, with the patient being a poor
2 historian, partially complicated by dementia."

3 Q. There is also a reference in the fall
4 of 2012 of Miss Soles being a willing or unwilling
5 patient. Could you find that and read that into
6 the record.

7 A. This would be when, sir?

8 Q. I don't have the exact date. Do you
9 see that?

10 A. Yes, sir.

11 Q. Why would someone in this condition be
12 a difficult patient, whether to see you or any
13 other doctor?

14 A. Because she was becoming increasingly
15 difficult to mobilize, kind of fixed in her own
16 routine, and just did not desire to reach out of
17 her own niche.

18 Q. And during the course --

19 A. Hopefully nothing to do with me
20 personally.

21 Q. During the course of your treating Miss
22 Soles did you notice a change in her condition?

23 A. Yes, sir.

24 Q. What was that change?

25 A. It was becoming increasingly difficult

1 to maintain her hygiene, increasingly difficult to
2 move out of the home and come to the office even
3 for a reasonable presentation.

4 Q. Was it difficult for her to get around
5 in your office?

6 A. She required assistance.

7 Q. She required assistance?

8 A. Yes, sir.

9 Q. As early as 2012?

10 A. I couldn't tell you at that time if she
11 was independent or not as far as ambulation.

12 Q. Would you mind referring to -- let's
13 move on to 2013. There is a report of February 20,
14 2013.

15 A. I have it, sir.

16 Q. I believe at the beginning of the
17 report there is a reference to the reason for her
18 visit. What was the reason for her visit?

19 A. No. 1 reason, for uncontrolled blood
20 pressure. The second reason was she had a
21 respiratory tract infection. The third one, family
22 complains of increasing difficulty with memory and
23 tremor.

24 THE COURT: I didn't hear that. What
25 was that at the end?

1 THE WITNESS: No. 3: Family complains
2 of increased difficulty with memory and tremor.

3 THE COURT: Thank you.

4 BY MR. JOHNSON:

5 Q. Dr. Barrett, let me refer you to the
6 report of February 20, 2013. There is a reference
7 to her seeing a neurologist.

8 A. Yes, sir.

9 Q. And there is also a statement about how
10 long she had been seeing a neurologist. Do you see
11 that?

12 A. Yes, sir.

13 Q. How long had she been seeing a
14 neurologist?

15 A. At that point in time five years.

16 Q. So that was 2013. So that would be
17 2008.

18 A. That's correct.

19 Q. And you referred her to a neurologist,
20 I think, because of your suspecting Alzheimer's
21 dementia?

22 A. Yes, sir.

23 Q. In 2013 the record indicates that you
24 saw her in February, March, June, August, November
25 2013. And again, did you notice any change in her

1 mental state? Was she getting better or worse?

2 A. Unfortunately you don't get better,
3 sir. It's a progressive decline.

4 Q. And that would apply to her -- and
5 you're referring to Alzheimer's?

6 A. That's correct, sir.

7 Q. Now, in November 2013 there is a
8 reference to medication by neurologist.

9 Would you mind reading that into the
10 record. It begins with "continued current
11 medication." November 2013.

12 A. I see these records of October 2013.

13 Q. Do you find any statement about
14 continuous caretaker surveillance of her family?

15 A. I'm not sure what date you're referring
16 to, sir.

17 Q. There is another report in November of
18 2013.

19 A. I have June 2013 and then it goes
20 October 2013.

21 Q. Is there any reference in October 2013
22 of her being treated by a neurologist?

23 A. And her Diagnosis No. 10: Patient has
24 been followed over five years by neurologist.
25 Patient is sensory deprived with her profound

1 deafness. Despite her recent hospitalization her
2 mental situation and status has tenably stabilized.
3 Patient to follow up with neurologist as necessary.

4 Q. There is a comment in the records
5 regarding caretaker's surveillance. Could you
6 comment on that.

7 Could she be left alone? Do you know
8 if her family could leave her alone?

9 A. Not for any duration.

10 Q. Let's go on to 2014. There is a report
11 of January 24, 2014.

12 A. I have it.

13 Q. Are there any references to her mental
14 condition at that time? Why was she seeing --

15 A. At that time she had a sinus infection.

16 Q. Anything in regards to her mental
17 condition, January 24?

18 A. None at that time.

19 Q. Doctor, is there a distinction between
20 Alzheimer's and dementia?

21 A. Yes, sir. Alzheimer's is a form of
22 dementia. There is many forms of dementia,
23 Alzheimer's being one of the more aggressive types
24 and my medical approach with the disease.

25 Q. Is in fact Alzheimer's a disease?

1 A. Yes, sir.

2 Q. At one time was it thought of just a
3 natural aging process? Can you comment on that?

4 A. Well, decades ago it was clarified as
5 being senile, and it was thought to be a natural
6 progression in life and not a disease that should
7 be treated.

8 Q. And so Alzheimer's dementia is in fact
9 a disease?

10 A. Yes, sir.

11 Q. And on March 5, 2014 I believe there is
12 a reference to one of her medicines, Namenda.

13 A. Yes, sir.

14 Q. Are you familiar with that medicine?

15 A. Yes, sir.

16 Q. What is it prescribed for?

17 A. For Alzheimer's dementia.

18 Q. In June of 2014 -- I think there is a
19 report of June 2014. There is a statement as to
20 why she was brought in.

21 A. Yes, sir.

22 Q. Do you see that?

23 A. Yes, sir.

24 Q. What does it say? Read that for us.

25 A. No. 1 would be cough and congestion.

1 No. 2 is hypertension. No. 3 is dementia. No. 4,
2 urinary retention. No. 5, back pain.

3 Q. Is there any reference in June of 2014
4 to her becoming more erratic?

5 A. Not at that time, sir.

6 Q. In the spring of 2014 I believe there
7 is a reference to her losing her son Charlie.

8 A. Yes, sir.

9 Q. He was previously described as her
10 constant caregiver.

11 What, if any, effect would the loss of
12 a loved one or caregiver have on a patient with
13 Alzheimer's dementia?

14 A. Well, since he was a stable influence
15 in her environment, the removal of that from the
16 environment would be very destabilizing for the
17 patient emotionally.

18 Q. Did she decline after the loss of her
19 son?

20 A. Yes, sir.

21 Q. Let me refer you to a report of
22 November 5, 2014.

23 A. I've got it.

24 Q. There is a description of her behavior.
25 I think her caregiver made reference to her

1 behavior. Do you see that?

2 A. Yes, sir.

3 Q. Would you mind reading those into the
4 record.

5 A. "She presents to the office at that
6 time for chaotic behavior."

7 Q. There is also a reference to a list of
8 her behavior problems. Do you see that?

9 A. Yes, sir.

10 Q. Would you mind reading that.

11 A. "She was expressing anger, rudeness,
12 jealousy, yelling, mischievousness, profanity,
13 veracity issues, vengeful, spitefulness,
14 balefullness, mischievousness, mental and physical
15 abuse against persons in the environment."

16 Q. Was there times Miss Soles -- or do
17 your records reflect that Miss Soles was at times
18 hostile and violent with her caregivers?

19 A. Yes, sir.

20 Q. Is there a reference to a sitter -- do
21 you see that reference to a sitter that came in
22 with a black eye?

23 A. Yes, sir.

24 Q. Your records use the expression
25 "changing of her effect." Could you explain that

1 to us.

2 A. I think it would be "changing of
3 affect."

4 Q. Affect. I'm sorry. What does that
5 mean?

6 A. That, again, she was being very
7 emotionally labile.

8 Q. Is it burdensome for families and
9 caretakers to take care of someone like Edith Soles
10 at this point, about 2014?

11 A. Yes, sir. Extremely so.

12 Q. Why is that?

13 A. Because of their affect, lack of
14 ability to reason, a lack of ability to accept what
15 would be a normal routine in adult life.

16 Q. Was Miss Soles at that point having
17 difficulty with her reasoning?

18 A. Definitely.

19 Q. There is a comment in your report that
20 you sometimes felt you were not in fact treating
21 the patient but her family or caregivers. Could
22 you comment.

23 A. Well, in that intervention for
24 someone's affect when it becomes so volatile, there
25 is no medication that you can really offer that you

1 know is going to have the desired effect on the
2 patient trying to assist them in the home.

3 Q. Dr. Barrett, let me refer you to a
4 report of July 20, 2015.

5 A. I have it, sir.

6 Q. There is a reference to her personal
7 hygiene. Would you mind reading that beginning
8 with "she was being" --

9 A. "Patient is brought to the office by
10 her family in that her behavior had been extremely
11 volatile. Patient has struck out against her
12 caretakers and family. Patient has been very
13 uncooperative in reference to her hygiene."

14 Q. Is there any reference to her
15 threatening her family?

16 A. I don't know if it was vocalized, but
17 obviously it was physical.

18 Q. Did she actually hit or strike out at
19 her caregivers?

20 A. Yes, sir.

21 Q. Doctor, about July of 2015 she was, I
22 think, almost 89 years old. She had been diagnosed
23 with Alzheimer's dementia. She was treated by --
24 had been treated by neurologists for dementia since
25 as early as 2008.

1 Would you describe in general terms
2 both her physical and mental condition in July of
3 2015.

4 A. Well, physical condition was very frail
5 and fragile. Her nutrition was failing. Her
6 appetite was failing. As you can see, she had
7 multiple medical problems besides her Alzheimer's
8 dementia.

9 Q. At that point could you state whether
10 or not Miss Soles was mentally competent?

11 A. She was incompetent.

12 Q. At that point what degree -- or what
13 was her degree of Alzheimer's dementia?

14 A. Advanced.

15 Q. Is there anything -- is there a higher
16 or more severe category?

17 A. Basically it would be three categories:
18 Mild, moderate, and advanced.

19 Q. By this point hers was advanced?

20 A. Yes, sir.

21 Q. Doctor, in regards to her mental
22 condition in July of 2015, do you have an opinion
23 based on a reasonable degree of medical certainty
24 as to whether or not Edith Soles had sufficient
25 mental capacity to understand in a reasonable

1 manner the nature of a legal document such as a
2 deed or the nature of a transaction in signing a
3 deed? Would she have sufficient mental capacity to
4 understand the consequences and effect of a
5 document such as a deed?

6 A. No, sir.

7 Q. Is there any question in your mind?

8 A. Not at all.

9 Q. And what about any legal document?

10 Could she understand the significance of any legal
11 document?

12 A. Not at all, sir.

13 Q. Doctor, you were asked about the
14 possibility in people with Alzheimer's dementia or
15 dementia do have what we call lucid intervals.

16 A. Yes, sir.

17 Q. Is it possible -- do you have an
18 opinion, again based on reasonable medical
19 certainty, as to whether Edith Soles could have had
20 a lucid interval on July 21, 2015 and understood
21 the significance or the effect of her signing a
22 deed transferring property to someone?

23 A. Not at all, sir.

24 Q. We took your deposition -- I think it
25 was August 29, 2017 -- and you were asked about

1 that. And then you asked for a copy of the
2 deposition. Do you remember that?

3 A. Yes, sir.

4 Q. And afterward you addressed a letter to
5 myself and to Mr. McCutchen. Could you identify
6 what has been marked as Plaintiff's Exhibit 8.

7 A. Yes, sir.

8 Q. Would you mind reading that into the
9 record.

10 A. "Dear Sirs. After contemplation and
11 review of the deposition I felt obliged to further
12 elaborate on Miss Edith Soles' mental situation.
13 As stated, even with advanced Alzheimer's/vascular
14 dementia there could possibly be episodes of
15 lucidity. It is extremely doubtful that the person
16 could comprehend the profundity of decisions or
17 their ultimate consequences. In that this is not
18 included in the deposition, if required to testify
19 I would be amenable if agreed by you gentlemen."

20 Q. Thank you.

21 MR. JOHNSON: Your Honor, I would like
22 to admit this previously marked exhibit as
23 Plaintiff's Exhibit 8.

24 THE COURT: Plaintiff's 8 so admitted.

25 MR. McCUTCHEN: He testified to that,

1 what was in the letter?

2 MR. JOHNSON: He read it.

3 MR. McCUTCHEN: Was the letter sent to
4 me?

5 MR. JOHNSON: Yes. It's addressed to
6 you.

7 Q. (Continued) Do you recall sending that
8 letter to both attorneys?

9 A. I believe so, sir. Yeah. There is no
10 reason why I would exclude one versus the other.

11 THE COURT: Okay.

12 MR. JOHNSON: Thank you, Doctor.

13 That's all the questions I have. Mr. McCutchen may
14 have a question or two.

15 THE COURT: All right. Mr. McCutchen?

16 EXAMINATION

17 BY MR. McCUTCHEN:

18 Q. How are you, sir?

19 A. I'm fine.

20 Q. Luther McCutchen, and I represent Jimmy
21 Soles in an ongoing matter for which you had your
22 deposition taken and for which you're giving
23 testimony today.

24 Are you familiar -- have you ever read
25 the Complaint in this matter?

1 A. Am I acquainted why we're here in court
2 today?

3 Q. Yes.

4 A. I believe it's because of the execution
5 of a document.

6 Q. So have you ever read the deed that is
7 at issue in this case?

8 A. No, sir.

9 Q. I asked you some questions and I've
10 heard your testimony today.

11 So when you have Alzheimer's do you
12 have good days and bad days? Can you?

13 A. Yes, sir.

14 Q. And on the days where you have a good
15 day can you have periods of lucidity?

16 A. That would be a degree of consciousness
17 to your environment and also the ability to think
18 more profoundly about issues.

19 I don't mean to digress, but my father
20 had severe Alzheimer's disease and one day he would
21 recognize me as his son and the next day not. And
22 whether that was a profound decision to make, that
23 was not really germane.

24 Q. And I'm reading from previous
25 deposition testimony. I asked you: And during

1 these periods of lucidity would a person be
2 competent to make pragmatic decisions?

3 A. No.

4 MR. McCUTCHEN: I think we need to get
5 the original deposition. Mr. Brown Johnson I
6 assume has that with him here today.

7 THE COURT: Your question was pragmatic
8 decisions, not legal decisions?

9 MR. McCUTCHEN: I said "pragmatic."

10 MR. JOHNSON: Is he asking me for the
11 deposition?

12 THE COURT: He's asking you for the
13 original deposition of Dr. Barrett. That is
14 correct; right?

15 MR. McCUTCHEN: Well, I beg to differ
16 with what is on the deposition, and I think your
17 Honor needs to have that.

18 THE COURT: Yes, sir.

19 BY MR. McCUTCHEN:

20 Q. What you have said to that question is
21 no, you could not; is that correct?

22 A. I'm --

23 Q. Before we go any further, "are there
24 days when you can have significant periods of
25 lucidity?"

1 You said: Yes, sir.

2 "And during those periods would a
3 person be competent to make pragmatic decisions?"

4 And I believe your answer was: No,
5 sir.

6 A. No, sir. Yes.

7 THE COURT: Let the record reflect that
8 I am opening the sealed deposition of Dr. Barrett
9 and it's sealed by the court reporting service on
10 10/10/17. What page again?

11 MR. McCUTCHEN: Page 45, your Honor,
12 Line 11 through 14.

13 THE COURT: Okay. I'm there.

14 MR. McCUTCHEN: And the answer as given
15 in his deposition previously was "yes, sir" on Line
16 14 and today it's "no, sir."

17 MR. JOHNSON: Would you mind reading
18 the question?

19 THE COURT: The question is: Okay.
20 And during those periods of lucidity would a person
21 be competent to make pragmatic decisions?

22 ANSWER: Yes, sir.

23 BY MR. McCUTCHEN:

24 Q. So what we found here right now is that
25 you've change your testimony to "no, sir" today; is

1 that correct?

2 A. If that's what the record states, but
3 that's why I also wrote the letter trying to define
4 the term a little bit better.

5 Q. And your testimony was "yes, sir"
6 before to that question.

7 A. If that's what it states in the
8 document, yes.

9 Q. So now you have changed it to "no,
10 sir;" is that correct?

11 A. It is based on the information that I
12 obtained from further thought about the question I
13 was answering.

14 Q. And the next question -- Mr. Johnson
15 asked you about certain documents in July of 2015,
16 and your answer was: Yes, sir.

17 "Is it possible that during those times
18 wherein she had periods of lucidity where she made
19 pragmatic decisions?"

20 And what would be your response to
21 that?

22 A. Based on what we call pragmatic
23 decisions, sir -- I mean, if I'm hungry today, can
24 I get lunch? Yes. That's sounds practical.

25 Q. But you would have -- but your

1 definition of "pragmatic" would be not to the
2 extent of executing a legal document; is that
3 correct?

4 A. That's correct, sir.

5 Q. I further asked you this question on
6 Page 46: Would people that had seen her on a daily
7 basis, caregivers, et cetera -- would they be able
8 to form opinions to whether or not she had periods
9 of lucidity?

10 And what would be your answer to that?

11 A. Yes.

12 Q. And another question I asked: And
13 could they -- I mean would they -- could they
14 believe that there was significant periods of
15 lucidity while dementia was in a progressive state?

16 A. Yes.

17 Q. And so help me here. When you answered
18 these questions, is that a generalized response
19 that you're giving to me and not necessarily to
20 Miss Soles?

21 A. That would be generalized.

22 Q. Okay. Here is another question: Is it
23 possible that when these documents -- and we're
24 talking about the deed -- were executed in the
25 presence of attorneys and others that Miss Soles

1 appeared to be lucid to those witnesses?

2 And you gave a response. Do you
3 recollect?

4 A. I believe that would be correct.

5 Q. I am trying to understand. In response
6 to Mr. Johnson's question you will find, I think,
7 that Miss Soles did not have the capability of
8 executing a deed or a document like that on the
9 date in question, July 21st, 2015.

10 A. Correct.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. Can you help me understand the zone
14 between pragmatic decisions and/or decisions
15 concerning legal documents; how we got from one to
16 the other? Can you just help me?

17 A. Well, we're talking about a topic here
18 that is not easily defined as an explicit answer.

19 If I can digress again, even in the
20 nursing home where there is plenty of people with
21 Alzheimer's and dementia, a caretaker can come in
22 and say: That is a pretty ring. And Mrs. Soles
23 says: Oh, thank you, dear. You can have it.

24 Now, that sounds lucid to me, but it's
25 totally inappropriate. And those occasions occur

1 many, many times.

2 Q. Thank you. Were you there at the
3 execution of the deed?

4 A. No, sir.

5 Q. Have you ever discussed the execution
6 of the deed with any of the witnesses that were
7 there?

8 A. No, sir.

9 Q. Please help me understand how on July
10 21, 2015 there can be no ability to execute a
11 document such as a deed in Mrs. Soles' condition?

12 A. Well, the condition -- again, when
13 someone is diagnosed with Alzheimer's disease there
14 is a progressive decline in their mental
15 deterioration.

16 Miss Soles to live ten years after that
17 initial diagnosis was extraordinary. Most people
18 cannot have that longevity, especially when you
19 affiliate it with all these other problems that she
20 had: Respiratory disease, multiple infections,
21 hypertension, volatility to blood pressure. I can
22 go on and on. She had 20 diagnoses.

23 Now, she was also deprived of
24 sensations because of profound deafness. You need
25 all our faculties valid to try and keep intention

1 with the world. And also she also had
2 arteriosclerosis, which is another form of
3 dementia, and had some long, outstanding
4 hypertension and cigarette use. So for her to be
5 eight years after that diagnosis and to have really
6 any kind of mental capacity would be just not
7 appropriate.

8 Q. Did you continue to see Miss Soles
9 through the rest of the year of 2015?

10 A. Yes, sir.

11 Q. Do you have a recollection -- I don't
12 know if you have those notes here or not about her
13 condition towards the end of 2015.

14 A. She presented on multiple occasions
15 with multiple problems and progressive decline.

16 Q. Was the decline more progressive in
17 2016? If you recollect.

18 A. A slow deterioration.

19 Q. It's just deterioration over a period
20 of time?

21 A. It wasn't really -- one of the reasons
22 Miss Edith did so well is because she had such
23 astute attention by her family as opposed to being
24 in a nursing home, where not in a neglectful
25 situation, but you cannot provide the same amount

1 of attention.

2 MR. McCUTCHEN: No further questions.

3 Thank you, sir.

4 THE COURT: Anything on redirect,
5 Mr. Johnson?

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q. I want to show Page 45 of the
9 deposition, Dr. Barrett -- he's referring to
10 periods of lucidity and that sort of thing. The
11 question is: Is it possible that during those time
12 frames she had periods of lucidity where she made
13 pragmatic decisions?

14 What was your response to that
15 question?

16 A. That would be very doubtful.

17 MR. JOHNSON: Thank you, sir. That's
18 all I have.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: Thank you, sir. Dr.
21 Barrett, you certainly may be excused to go back to
22 your practice or golf.

23 MR. JOHNSON: Your Honor, we call
24 Plaintiff Michael Soles.

25 THE COURT: Yes, sir. Mr. Soles, if

1 you'll come around, sir.

2 MICHAEL SOLES

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. JOHNSON:

6 Q. Mr. Soles, you and your sister Marcia
7 have brought this suit against your brother, Jimmy
8 Soles, to set aside a deed from your late mother,
9 Edith Soles. I believe the deed was signed on July
10 21, 2015 and transferred land to Jimmy Soles.

11 Before going into the facts let me get
12 some background information. Where do you live?

13 A. 584 Cox Town Road.

14 Q. And how long have you lived there on
15 Cox Town Road?

16 A. Present location, 49 years.

17 Q. Has that property been in your family
18 or your mother's family for a long time?

19 A. Several generations.

20 Q. Now, where is your house in relation to
21 your late mother's house? Where is it?

22 A. Almost directly in front of it.

23 Q. And how long did your mother live --
24 you and your mother live there on Cox Town Road?

25 A. How long did both of us live there

1 together?

2 Q. Together. When you were close
3 together.

4 A. Well, I've been in that house right in
5 front of her for 49 years.

6 Q. Then your sister lives next door to
7 you.

8 A. Correct.

9 Q. Let me ask you about -- I want to ask
10 you about your work experience.

11 Are you from the Tabor City area? Tell
12 us where you're from, where you went to school and
13 your work experience.

14 A. Went to school 1st grade Loris, South
15 Carolina, the 2nd grade to halfway through the 7th
16 Tabor City, North Carolina. 7th through halfway
17 through 10th grade, Landstuhl, Germany. The
18 balance of the 10th Coppers Cove, Texas. The 11th
19 and 12th, Tabor City, North Carolina.

20 Q. I believe your father was a military
21 man.

22 A. Career military.

23 Q. Is that why that address in Texas -- is
24 that Fort --

25 A. Coppers Cove, Texas. Ft. Hood.

1 THE COURT: And the Germany address as
2 well?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: That was military?

5 THE WITNESS: Yes, ma'am.

6 BY MR. JOHNSON:

7 Q. Now, your brother, Charlie -- let me
8 ask: Are you the oldest?

9 A. Yes, sir.

10 Q. The oldest of four children. Who is
11 second?

12 A. Jimmy.

13 Q. And who is third?

14 A. Marcia.

15 Q. And the last is Charlie?

16 A. Charlie.

17 Q. Four children. Charlie, the youngest,
18 he died in 2014?

19 A. Correct.

20 Q. Now, Jimmy Soles recently moved back to
21 the North Myrtle Beach area. Where did he live
22 before moving back to North Myrtle Beach? I think
23 in 2016.

24 A. High Point, North Carolina.

25 Q. Do you know how long he had lived in

1 High Point?

2 A. I couldn't really answer that because I
3 really don't know.

4 Q. Was it more than ten years?

5 A. I assume so.

6 Q. So for the last ten years or so -- the
7 last ten years of your mother's life he lived in
8 High Point?

9 A. Yes, sir.

10 Q. Let me ask you about your mother's
11 health.

12 When did your mother first have
13 problems with her memory?

14 A. Dr. Barrett stated she was diagnosed in
15 2008. Just before my father passed he already said
16 momma was having problems with her memory and not
17 doing things like she should.

18 Q. During the last ten years of your
19 mother's life did you see her on a regular basis?

20 A. Just about daily.

21 Q. When did you first learn that your
22 mother was diagnosed with Alzheimer's or dementia?

23 A. 2008.

24 Q. Now, Dr. Barrett was her primary
25 treating physician?

1 A. Yes, sir.

2 Q. Did she also see a neurologist?

3 A. Yes, sir.

4 Q. Did the neurologist also treat her
5 dementia?

6 A. To my knowledge, yes. I never went
7 with her.

8 Q. Michael, when did your mother stop
9 driving a car? If you recall.

10 A. I want to say 2010.

11 Q. And when did she stop preparing meals
12 and doing housework?

13 A. 2008, '09, '10. Somewhere in there. I
14 know that's a big range, but that's pretty much it.

15 Q. From the time of -- let's say 2010
16 until the time of her death in 2016 was she able to
17 go to the doctor on her own?

18 A. I don't never recall her going by
19 herself.

20 Q. Let me ask you about your father, who I
21 believe died in 2012.

22 Did he have a long battle with
23 Parkinson's disease?

24 A. Yes, sir.

25 Q. Describe his physical condition for the

1 last two years of his life.

2 A. Pretty much bedridden.

3 Q. Did you have any responsibilities or
4 did you assume any responsibilities for taking care
5 of his house?

6 A. I took care of everything on the
7 outside of the house and everything on the inside.

8 Q. How many years did you do that?

9 A. From 1985 until he passed away in 2012.

10 Q. By the way, did you pay rent for the
11 property -- what was that arrangement?

12 A. I paid -- from 1970 to 1985 I paid
13 rent. I paid \$10 a month, I believe, for the first
14 five years, \$15 for the second five years, and \$45
15 for the last five years more or less.

16 Q. Was that on your house?

17 A. It's on the house I stay in right now.

18 Q. Now, was your mother, Edith, able to
19 care for your father by herself toward the last
20 years of his life?

21 A. No, sir.

22 Q. Was it necessary to hire caregivers to
23 take care or to help with both your father and your
24 mother?

25 A. Yes, sir.

1 Q. Now, do you recall when you first hired
2 an outside caregiver?

3 A. I'm thinking eight or nine.

4 Q. 2008 or 2009?

5 A. Right.

6 Q. Now, what did the caregivers do for
7 your mother and father?

8 A. They did -- well, she did light
9 housework; did minimal cooking; did their
10 medicines; checked the blood pressure and all kind
11 of stuff like that. More or less just stuff like
12 that.

13 Q. Your father died in 2012?

14 A. Correct.

15 Q. And what effect did that have on your
16 mother?

17 A. Well, it pretty much devastated her for
18 quite awhile because they had been married about 67
19 years.

20 Q. Did your mother -- did you notice a
21 decline in your mother's condition after your
22 father's death in 2012?

23 A. Yes, sir.

24 Q. From that point on, 2012, were you and
25 your sister Marcia involved with your mother's

1 care?

2 A. Yes.

3 Q. And was your son Charlie, who was then
4 still alive -- was he involved with her care?

5 THE COURT: Not his son.

6 Q. (Continued) Pardon me. Your brother,
7 Charlie.

8 A. Yes, sir.

9 Q. When did you start managing your
10 mother's affairs? And by that I mean paying her
11 bills.

12 A. I started taking care of business for
13 both of them in about 2010 and continued right on.

14 Q. Now, who was responsible for hiring and
15 scheduling caregivers?

16 A. Marcia did the hiring; did the
17 scheduling. And she would ask me about it, and I
18 said: Whatever you decide is fine with me.

19 Q. Did your brother Charlie -- was he
20 involved in your mother's care prior to his death?

21 A. Yes, he was.

22 Q. Did he often take your mother to Dr.
23 Barrett and maybe other doctors?

24 A. He did take her to the doctor, yes.

25 Q. And when the medical reports refer to

1 her son accompanying your mother and being her
2 constant caregiver, which son would that be?

3 A. That would have been Charlie.

4 Q. Now, after your father's death in
5 2012 --

6 THE COURT: That is your brother? It's
7 your baby brother?

8 THE WITNESS: Yes.

9 Q. (Continued) After Charlie's death --
10 baby brother -- in 2014 were you and Marcia able to
11 leave your mother alone?

12 A. No, sir.

13 Q. Was she ever left alone?

14 A. No, sir.

15 Q. Did she ever spend the night by
16 herself?

17 A. Not from 2012 that I know of.

18 Q. Tell me what arrangements were made to
19 see that your mother never spent the night alone.

20 A. Well, she had her caregivers during the
21 day. At night I worked at the Department of
22 Corrections, and I worked shift work, which was
23 12.25 hours a day. I worked two days on, two days
24 off. Worked the weekend. Then the next week I
25 would work -- off Monday and Tuesday, work

1 Wednesday and Thursday and be off that weekend. It
2 just rotated like that the whole year.

3 The days that I worked Charlie stayed
4 at night. The days I didn't work I stayed at
5 night. Then when Charlie passed away in 2014 I
6 still stayed the same schedule. Marcia took the
7 other two nights, but she pretty much carried momma
8 home most of the time, but I still stayed at
9 momma's house at night.

10 Q. Charlie died on April 7, 2014.

11 A. That's correct.

12 Q. How did that affect your mother?

13 A. It devastated her just like my dad,
14 because it had only been about a year and a half
15 since daddy had passed.

16 Q. Was Charlie -- he was the baby?

17 A. Yes, he was.

18 Q. And he was close to your mother?

19 A. Yes, he was.

20 Q. Now, at this point for ten, 15 years
21 before your mother -- actually before Charlie's
22 death in 2014 and then your mother's death in 2016
23 Jimmy lived where?

24 A. As far as I know, High Point. I never
25 really kept up with Jimmy.

1 Q. Was Jimmy involved as much as you and
2 Marcia and Charlie when he was alive in her
3 day-to-day care?

4 A. No. No.

5 Q. You would agree that Jimmy loved his
6 mother and your mother, Edith, loved Jimmy?

7 A. Correct.

8 Q. And they had a good -- even though he
9 was three hours away, they had a good son/mother
10 relationship?

11 A. Correct.

12 Q. And Jimmy would visit when he could?

13 A. Correct.

14 Q. And sometimes your mother would go and
15 stay with him for --

16 A. Correct.

17 Q. Now, did your mother, especially after
18 -- let's talk about after Charlie's death in 2014.
19 Did she have problems with confusion?

20 A. Yes, sir.

21 Q. Did she at times misrecognize people or
22 have problems identifying people?

23 A. Yes, sir.

24 Q. Did she also have problems with anger
25 and getting mad at her caregivers and family

1 members?

2 A. Yes, sir.

3 Q. Did she strike out sometimes and hit
4 and slap and then on one occasion actually cut one
5 of her caregivers?

6 A. Yes, sir.

7 Q. Did she also have issues with personal
8 hygiene?

9 A. Yes, sir.

10 Q. Was it difficult to get her to take a
11 shower?

12 A. Yes, sir.

13 Q. Was it difficult to get her to change
14 clothes and brush her teeth and do those things?

15 A. Yes, sir.

16 Q. Mike, you retired from the Department
17 of Corrections?

18 A. Yes, sir.

19 Q. How old are you now?

20 A. I'm 72.

21 Q. And when did you retire?

22 A. November 1st, 2016.

23 Q. How long did you work with the
24 Department of Corrections?

25 A. Nine years.

1 Q. Before that where did you work?

2 A. I worked for Sunbelt Homes.

3 Q. How many years were you there?

4 A. About three years.

5 Q. Where else did you work during your
6 career?

7 A. Going backwards, B. Edwards would be
8 next.

9 Q. How long were you there?

10 A. About ten years.

11 Q. Where did you work before that?

12 A. Georgia Pacific.

13 Q. How long were you there?

14 A. 12 years.

15 Q. How about Teloff?

16 A. 13 years.

17 Q. Have you worked all of your life?

18 A. Two years before that United States
19 Army.

20 Q. Have you ever taken a vacation?

21 A. Not since 1982.

22 Q. Now, Jimmy lived three hours away.
23 Was he as involved as you and Marcia
24 and Charlie when he was alive in your mother's
25 care?

1 A. When he was down he was involved.

2 Q. But it is true that family members
3 other than Jimmy primarily took care of your
4 mother?

5 A. That's correct.

6 Q. Did he ever thank you and Marcia for
7 all you did? Because you lived right there and you
8 were there day to day. Did he ever thank you for
9 that?

10 A. He may have, but I'm not one that
11 really thinks about things and stuff like that. I
12 just do things and I don't worry about it.

13 Q. Now, your mother did a Will with the
14 help of Attorney Bill Phipps in 2013; is that
15 correct?

16 A. That's correct.

17 Q. And that Will made reference to their
18 property transferred to all four members of the
19 family prior -- during the lifetime of your
20 parents.

21 A. That's correct.

22 Q. Now, your sister Marcia received some
23 property -- I think the house she lives in now.
24 There was an old house there?

25 A. There was an old house there.

1 Q. And that was torn down and she and her
2 husband bought a double-wide?

3 A. That is correct.

4 Q. And you also received -- did you
5 receive some property? What did you receive?

6 A. The house I stay in.

7 Q. Now, is it the same house? Or have you
8 built?

9 A. Same house. Been there since 1964.

10 Q. Charlie also received some farmland and
11 a house.

12 A. That is correct.

13 Q. And Jimmy, what did Jimmy receive?

14 A. He received the river house from pop
15 and acreage right there along the side of the road
16 from where I stay at.

17 Q. Describe for me if you would -- I
18 believe the river house is located in what is known
19 as the Waccamaw Neck section of -- Little River
20 Neck. Is that a nice --

21 A. As far as I know, because I haven't
22 been down there in years.

23 Q. But it's a nice section there?

24 A. That's what I hear.

25 Q. Can he see the water or could you see

1 the water from the river house?

2 A. Yeah. When it's high tide, yeah.

3 Q. Was the property that you received when
4 the property was deeded out before the death of
5 your mother -- was it worth as much as what Jimmy
6 got?

7 A. Not according to the tax office.

8 Q. What happened to the property that
9 Jimmy -- the acreage there off of Cox Town Road?
10 Did you buy that property from him?

11 A. Yes, sir.

12 Q. And how much did you pay?

13 A. 15,000.

14 Q. There are records -- or there will be
15 testimony about your mother stating that she had
16 deeded property to the members of her family, her
17 other children, and now it was time for Jimmy to
18 receive his. There seems to be an indication that
19 Jimmy didn't receive anything.

20 If that was your mother's impression,
21 that was wrong, was it not?

22 A. That is correct.

23 MR. JOHNSON: Thank you, Mike. Answer
24 any questions Mr. McCutchen might have.

25 THE COURT: Mr. McCutchen?

EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. McCUTCHEN:

Q. Mike, how are you today?

A. Very well.

Q. What is the amount of the acreage that you're suing on the Complaint to get back into the estate?

A. Around 52 acres.

Q. It's not 56; right?

A. I guess it could be variable. I really don't know. It could be 56; it could be 52, 53, but it's in the 50s.

Q. Mr. Johnson asked you a whole lot of questions about a whole lot of other property and whatnot.

Tell me why you're suing Jimmy in this lawsuit over this 56-acre tract.

A. The 56-acre tract, according to my mother in 2013, was supposed to be sold and divided four ways.

MR. McCUTCHEN: Move to strike.

MR. JOHNSON: He asked the question and asked why. He should be allowed to answer the question.

THE COURT: Well, that's his answer.

1 How else was he supposed to answer it?

2 MR. McCUTCHEN: Your Honor, I'm just
3 saying he's saying what the momma said. You can't
4 say what the momma said.

5 THE COURT: Under the Dead Man statute
6 or under hearsay or both?

7 THE WITNESS: I guess the way the Will
8 was stated -- It was written that way.

9 THE COURT: I guess so. He likes that
10 answer better.

11 THE WITNESS: Okay.

12 BY MR. McCUTCHEN:

13 Q. What did Jimmy do wrong or what trick
14 -- or what did he do that you're suing for?

15 A. I have no idea what he did. I just
16 know that the deed -- the Will wasn't carried out
17 the way it was supposed to be.

18 Q. So you really have no --

19 A. I'm not answering what he did, didn't
20 do, because I don't know.

21 Q. So in the Complaint there are various
22 allegations about him. This fraud, this trick,
23 these various terms that are set forth in the
24 Complaint that you as a plaintiff now say occurred
25 for which he got the property.

1 Do you have any specific information
2 about any of these matters?

3 A. This is the terminology that was
4 written by lawyers such as yourself, and I just
5 kind of agreed with that. That's about all I can
6 say.

7 Q. So again, you don't have any specific
8 testimony as to what Jimmy Soles may or may not
9 have done that created this issue?

10 A. Well, that's why we brought Mr. Brown
11 in. He's an attorney. I'm not an attorney. I'm
12 not familiar with the law. So that's the best
13 answer I can give you.

14 Q. And what do you hope to gain out of
15 this lawsuit?

16 A. It really doesn't -- just so it's done
17 fairly. That's all.

18 Q. What would happen if it's done fairly
19 in your opinion?

20 A. Well, that's what we're here for. I'm
21 not going to answer that question because that
22 would be left up to the legislature.

23 Q. Well, how is the Will set up?

24 A. Supposed to be sold, divided four ways.
25 So that would be fair.

1 Q. Is that what you want to have
2 accomplished?

3 A. That would be fine with me, sir.

4 Q. So the purpose of your joining in this
5 lawsuit or being a plaintiff in this lawsuit is to
6 void the deed and get the property back; is that
7 correct?

8 A. That is correct.

9 Q. And were you a primary caregiver for
10 your mother?

11 A. Yes, I was.

12 Q. And did Jimmy live in High Point for a
13 long period of time while your mother was -- from
14 2008 to '15 or something. To the best of your
15 knowledge.

16 A. Yes, sir.

17 Q. Did he participate when he could?

18 A. Yes, sir.

19 Q. And were you there at the deposition of
20 Miss Dingle?

21 A. Yes, I was.

22 Q. Do you agree with your sister
23 concerning the deposition testimony provided by
24 Miss Dingle?

25 A. There was no point in changing it

1 because that's basically what happened.

2 Q. You lost me.

3 Do you believe that Miss Dingle was not
4 telling the truth in her deposition testimony?

5 MR. JOHNSON: Objection, your Honor.

6 That is too -- it's too broad. If there is some
7 point that he wants to question Michael about, he
8 should refer to the question, not just the
9 deposition. That's just too broad. He shouldn't
10 be expected to answer that.

11 THE COURT: Well, Mr. McCutchen, can
12 you ask him specifically anything that he may
13 disagree with in the depo?

14 MR. McCUTCHEN: Well --

15 THE COURT: Is there anything in the
16 depo you disagree with, Mr. Soles, or is there
17 anything she testified to that you disagree with?

18 THE WITNESS: Well, since I wasn't
19 really there when all this happened I don't know
20 what happened in there. I mean, I was there for
21 the deposition, but to speak about her statement of
22 what she did when my mother was there, I can't
23 disagree with anything she said because I don't
24 know.

25 THE COURT: Okay.

1 THE WITNESS: Does that answer your
2 question, sir?

3 MR. McCUTCHEN: I think so.

4 BY MR. McCUTCHEN:

5 Q. You said you don't disagree with
6 anything that she said because you do not know?

7 A. That is exactly right.

8 Q. In the summer of 2015 could your mother
9 carry on a conversation with you?

10 A. No, sir. I could ask if she wanted
11 some water. She would say yes.

12 I say: Momma, do you want to go for a
13 ride? She said yeah.

14 I said: You want some ice cream? She
15 said yeah. But she could not really return any
16 conversations back to you.

17 Q. And did your mother progressively go
18 downhill more in late 2015, early 2016?

19 A. She went down more in 2016, but she was
20 in progression real fast in '15.

21 Q. And in the summer of 2015?

22 A. Yes, sir.

23 Q. Were you a constant caretaker for her?

24 A. I was caretaker of her from basically
25 2010 until her death.

1 Q. But again, I just want to make sure I
2 understand this.

3 Do you have any testimony today as to
4 what Jimmy Soles did -- or would it be your
5 position that he did -- to influence your mother
6 related to this deed?

7 A. If you were with my mother you could
8 influence her. Me, Marcia, Jimmy. Anybody that
9 was with her at the time could influence her.

10 Q. But do you have any specific act that
11 he did of influencing her concerning the deed at
12 issue in this lawsuit?

13 A. I was not with him when he was with
14 her, so I cannot say no to that.

15 MR. McCUTCHEN: No further questions,
16 your Honor.

17 THE COURT: Thank you, Mr. McCutchen.

18 MR. JOHNSON: You can come down, Mike.

19 THE COURT: Let's take a short break
20 and see if you can find Mr. Phipps.

21 (Short recess taken.)

22 MR. JOHNSON: Your Honor, we call
23 Attorney William Phipps.

24 THE COURT: For the record, Mr. Phipps
25 and I have known each other for -- I guess since

1 before I started law school or about the time I
2 started law school.

3 THE WITNESS: Probably somewhere around
4 40 years.

5 THE COURT: His brother and I taught
6 school together before I started law school and
7 Mr. Phipps actually dated one of my friends in law
8 school. So we have known each other for quite some
9 time.

10 WILLIAM PHIPPS
11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. JOHNSON:

14 Q. Mr. Phipps, since we all know you I'm
15 going to be real brief as far as an introduction is
16 concerned.

17 I believe you are a practicing attorney
18 in Tabor City, North Carolina.

19 A. That's correct.

20 Q. And you've practiced in Tabor City
21 since 1978?

22 A. 1978.

23 Q. And you are a member of both the South
24 Carolina and the North Carolina Bar?

25 A. That is correct.

1 Q. Sir, during the course of your practice
2 have you done work for the Soles family in Tabor
3 City?

4 A. Well, there is a lot of Soles families
5 in Tabor City, but if you're talking about Miss --

6 Q. Edith Soles.

7 A. Edith and her husband, Mr. Euclid.
8 I've done work for them and I've done work for
9 their children.

10 Q. When did you first do work for Edith
11 and Euclid or the children?

12 A. Probably in 1978 or 1979. They were
13 clients of my partner, who was at that time R.C.
14 Soles, Jr. And he didn't do a lot of real estate,
15 and so I ended up picking up those areas, and I got
16 to meet Miss Edith and Mr. Euclid both very early
17 in my practice.

18 Q. Good. And did you know the four
19 children? I'm going to name them by birth.

20 Michael is the oldest. Jimmy, Marcia
21 and Charlie.

22 A. I knew of them except Jimmy until Mr.
23 Euclid's death. I knew Michael because he worked
24 at Taloff, and I worked there during one summer. I
25 knew Marcia because she was a little bit behind me

1 in school and we seen each other various other
2 places. And Charlie was a regular at our office
3 for a long time. Quite a rambunctious young man.
4 Fortunately he grew up.

5 Q. And would you agree that he was --
6 everybody said he was Miss Edith's favorite.

7 A. He would have been the baby boy who was
8 the favorite.

9 Q. And why didn't you meet -- I think Mr.
10 Euclid died in 2012. Why didn't you know about
11 Jimmy? Did he live somewhere else?

12 A. He lived somewhere around Thomasville,
13 and he just wasn't here and didn't have anything to
14 do with the ongoing days and businesses, I guess,
15 of the -- I just never met him.

16 Q. Were you involved in Mr. Euclid's
17 estate in 2012?

18 A. Yes. I conducted the estate.

19 Q. And I think you also -- let me ask you
20 about in 2012 you did a Health Care Power of
21 Attorney. Do you remember that?

22 A. Yes, I do.

23 MR. JOHNSON: Your Honor, may I
24 introduce it? This has not been -- I didn't
25 introduce this with my exhibits. Does anybody have

1 an objection to this?

2 MR. McCUTCHEN: Is that for Mr. Euclid?

3 MR. JOHNSON: No. It's for Miss Edith.

4 BY MR. JOHNSON:

5 Q. Let me ask if you can identify this
6 document.

7 A. Yes, I can.

8 Q. Tell us what that is.

9 A. The document is a North Carolina
10 statutory form Health Care Power of Attorney that
11 was appropriate for use in the year of 2012 at that
12 particular time. It was executed by Miss Soles
13 naming Charles Luther Soles as the primary attorney
14 in fact, health care agent, and Jimmy R. Soles as
15 the secondary or substitute health care agent.

16 Q. Now, I believe Charlie died in 2014.

17 A. That's correct.

18 Q. And so Jimmy became her Health Care
19 Power of Attorney?

20 A. That's correct.

21 Q. Does the Health Care Power of Attorney
22 in North Carolina -- and that's what that was.
23 Does it carry any fiduciary duties?

24 A. Yes. It's like all Powers of Attorney.
25 It's a fiduciary relationship between the principal

1 and the agent, and it involves a fiduciary
2 requirement to use the best of your abilities to do
3 what the agent is assigned to do in the document.

4 Q. In South Carolina do you use the term
5 "act in good faith and in the best interests" --
6 similar? Very similar?

7 A. The same type theory. Yes, sir.

8 Q. Let me also ask you -- and this has
9 been identified or marked. This has been marked
10 Plaintiff's Exhibit 2. This is designated Last
11 Will of Edith Soles.

12 THE COURT: Wait a minute, Mr. Johnson.
13 Did you introduce that one?

14 MR. JOHNSON: I'm sorry. This would be
15 10.

16 (PLF. EXH. 10, North Carolina Statutory
17 Form Health Care Power of Attorney, marked for
18 identification.)

19 THE COURT: That's Plaintiff's 10 and
20 that's the Health Care Power of Attorney. So
21 admitted.

22 BY MR. JOHNSON:

23 Q. I'm going to change the order. I think
24 you also did a Power of Attorney that's dated May
25 20, 2013. Can you identify that, Bill.

1 A. Well, it says at the top of the first
2 page that I prepared it. And that's my usual
3 thing. We do that in all our documents in North
4 Carolina; and quite frankly, when I do South
5 Carolina I file the same thing so the people know
6 who did it. And yes; that is the general statutory
7 Health Care Power of Attorney that I prepared for
8 Miss Edith Soles.

9 Q. And who was the designated Power of
10 Attorney?

11 A. Charlie.

12 Q. And who was the alternate?

13 A. Jimmy.

14 MR. JOHNSON: Can I introduce this,
15 your Honor?

16 THE COURT: Yes, sir. That's going to
17 be Plaintiff's 3. The first one was --

18 MR. JOHNSON: The Health Care Power of
19 Attorney.

20 THE WITNESS: This one is a general
21 durable statutory Power of Attorney.

22 THE COURT: That's Plaintiff's 3.

23 MR. JOHNSON: Yes, ma'am.

24 THE COURT: Plaintiff's 3 so admitted.

25

1 BY MR. JOHNSON:

2 Q. Under the Durable Power of Attorney you
3 said that Charlie was appointed primary.

4 A. That's correct.

5 Q. And Jimmy also was the alternate?

6 A. He was the alternate or substitute.
7 Sometimes words kind of interchange.

8 Q. So again, when Charlie died on April 7,
9 2014 Jimmy would have been Power of Attorney for
10 his mother?

11 A. Yes. He would have fallen into that
12 role by virtue of being named as a substitute. And
13 the thing says that if he's not able to serve, he
14 dies or is unable to serve for any reason ...

15 Q. I also believe that in November of --
16 it was filed in November of 2016, but you did a
17 Last Will and Testament for Edith Soles on January
18 29, 2013.

19 A. That's correct.

20 Q. Does this appear to be a copy of that
21 Will?

22 A. It is the Last Will and Testament of
23 Miss Edith Soles as appears in the estate filed in
24 Columbus County.

25 Q. Who was named as executor?

1 A. I think Jimmy was. Yes; Jimmy was.

2 Q. It says: Hereby constitute and appoint
3 my son, Jimmy Soles, as executor of my Last Will
4 and Testament.

5 A. That's correct.

6 Q. So on July 21, 2015 Jimmy Soles was
7 acting Health Care Power of Attorney for his
8 mother; is that correct?

9 A. That's correct.

10 Q. And also on July 21, 2015 Jimmy was
11 acting as the durable Power of Attorney?

12 A. That also is correct.

13 Q. And under the Last Will and Testament,
14 which was executed on January 29, 2013, he was
15 appointed as the executor.

16 A. That also is correct.

17 Q. So he had an abundance of fiduciary
18 duties to his mother?

19 A. As to the two power of attorneys
20 probably. I doubt very seriously as to the Will
21 because the Will is not valid -- or not of any
22 effect until she died, but once she died he owed a
23 fiduciary duty to her estate.

24 Q. Let me direct your attention to Item 2
25 of the Last Will and Testament.

1 THE COURT: Mr. Johnson, are you going
2 to put the Will in?

3 MR. JOHNSON: Yes, ma'am.

4 THE COURT: Is that Plaintiff's 2?

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: Plaintiff's 2 admitted. We
7 have already premarked and you and Mr. McCutchen
8 have already agreed --

9 MR. JOHNSON: Yes, ma'am.

10 THE COURT: So it's in.

11 BY MR. JOHNSON:

12 Q. Mr. Phipps, let me direct your
13 attention to Item 2 of the Last Will and Testament.
14 Do you see that?

15 A. Well, I don't see it because I don't
16 have it in front of me, but I think I know what
17 you're talking about. I think it's the one where
18 it refers to all the deeds and the land.

19 Q. Would you just read the first
20 paragraph, the half paragraph about the deeds that
21 were deeded out.

22 A. Item 2 says: For purposes of this Last
23 Will and Testament I acknowledge that I have
24 previously deeded subject to my life estate the
25 following properties that I own as follows: And to

1 my son Charles Luther Soles, my home and a portion
2 of the property immediately adjoining his property
3 which lies on the south side of the road and behind
4 the home track and a portion of the tract across
5 the road on the north side lying to the north and
6 east of the tract previously deeded to him. And
7 then to my son Jimmy R. Soles the balance or
8 remainder of said tract on the south side of the
9 road where my home is located so as to give Jimmy
10 R. Soles at least one acre more on the south side
11 of the road than Charles Luther Soles receives on
12 the south side of the road. And I have deeded to
13 Marcia Soles Anderson the land lying behind her
14 home surrounding her properties to the northeast
15 corner of the home tract of Michael W. Soles as
16 shown in Platt Book 78, Page 18, and to my son
17 Michael W. Soles a life portion of the balance of
18 the tract as lies to the east of said division line
19 and accepting therefrom a track adjacent to a track
20 previously deeded to Charles Luther Soles as
21 appears in Deed Book 664 at Page 859, Columbus
22 County Registry, which lies to the north and east
23 of said tract. It being my intent that Marcia
24 Soles Anderson and Michael W. Soles after first
25 deducting the land conveyed to Charles Luther Soles

1 receive the same number of acres in the remaining
2 track that lies on the north side of the road
3 opposite beside where my home is located and being
4 where both of their respective homes are located.

5 In the event these deeds not been
6 drawn, signed and recorded at the time of my death
7 then I do will, devise and bequeath said properties
8 as herein described above to the devisees herein
9 named of said respective interests.

10 Q. Thank you. I didn't mean for you to
11 read so much. But there is also a provision --
12 what was that? That was an attempt to summarize
13 transfers from the family to the children?

14 A. Yes. And amazingly enough, this thing
15 was taken probably a couple of months before and
16 with plats and references to deeds and everything.
17 The day she signed the Will she also signed the
18 deeds.

19 And so there were four separate deeds
20 which were a lot more specific than that provision,
21 but basically gave the same type properties to all
22 four of the children.

23 Q. So all four children got property?

24 A. Property. Yes, sir.

25 Q. This would be late January 2013?

1 A. That's correct.

2 Q. Now, in addition were you aware that
3 Jimmy Soles received from his father, Euclid, the
4 river house?

5 A. I knew nothing about the river property
6 at the time that those deeds were done.

7 Q. Let me ask you if you can identify
8 Plaintiff's Exhibit 1. You didn't prepare it,
9 but --

10 A. It purports to be a deed from Euclid W.
11 Soles to Jimmy Ray Soles for a piece of property on
12 Little River Township. It looks like Lot 7 of
13 Little River Neck, surveyed and subdivided in 1946,
14 and a second tract that looks like a portion of Lot
15 6 of Oceanview Estates.

16 Q. And the consideration paid for that --
17 does it indicate?

18 A. \$5.11.

19 Q. So that was a gift from Euclid to Jimmy
20 Soles?

21 A. That's what I would construe it to be.

22 Q. Are you familiar with Waccamaw Neck
23 section -- excuse me. The Little River Neck
24 section of --

25 A. I'm familiar with it a little bit. Not

1 a lot because I'm from North Carolina, but I know
2 where it's at and I know people who live in that
3 area.

4 Q. It's a nice area?

5 A. A very nice area.

6 Q. You can see the water?

7 A. Oh, yes. Right there on the waterway.

8 Q. You were unaware of this?

9 A. I did not know anything about that
10 deed.

11 MR. JOHNSON: I do want to introduce
12 it.

13 THE COURT: That's going to be
14 Plaintiff's 1. So admitted.

15 BY MR. JOHNSON:

16 Q. Was there a meeting in your office
17 prior to executing these documents on who was going
18 to get what?

19 A. Yes, there was.

20 Q. Do you have any recollection of that?

21 A. I know that Charlie and Jimmy were both
22 there and I know Miss Edith was there, and at some
23 point during the process I seem to recall that all
24 four of them were there.

25 We met several times because the

1 marching orders she gave me to prepare the deeds
2 left a lot to interpretation, but we tried to
3 prepare them -- she did not want to incur the
4 expenses of a survey, and in the deed she actually
5 says that she didn't want to incur and if there was
6 a problem with it that she wanted to have it
7 surveyed and to carry out the means. So we tied it
8 to plats and corners stuff like that where it could
9 be done.

10 THE COURT: Let me stop you. You said
11 all four were there?

12 THE WITNESS: All four children at one
13 time.

14 THE COURT: All four children plus Miss
15 Soles?

16 THE WITNESS: Miss Soles.

17 THE COURT: So there would have been
18 five people?

19 THE WITNESS: Five people there.

20 THE COURT: Very good. I guess I did
21 mean to interrupt.

22 BY MR. JOHNSON:

23 Q. If Michael Soles said that he was not
24 there, would you argue with that? Do you have a
25 specific recollection --

1 A. I just remember him being in at some
2 time. As to a specific day or time, no. I would
3 not -- I could not tell you which day. I just
4 remember seeing them all at one time in there.
5 Whether it was a day we signed or whether it was a
6 time before, I don't know.

7 Q. Jimmy Soles got a tract of land, some
8 15 or so acres.

9 A. He got a tract of land that was
10 adjacent to Miss Edith's house, which consisted of
11 -- it was the poorest tract of all. It consisted
12 of bottom land with trees on it and swamp, and it
13 was a place that holds the world together. It was
14 not -- it may have had a section that had a little
15 bit of cultivatable land on it, but very little.

16 Q. And he promptly or at some time after
17 2013 sold that piece of property, that tract of
18 land, to Mike?

19 A. That is correct. I prepared the deed
20 for that.

21 Q. Do you recall the consideration being
22 \$15,000?

23 A. No. The consideration that is shown on
24 our deed was it was a deeded gift.

25 Q. They were trying to beat -- what was

1 the idea? Do you know what was paid?

2 A. They told me -- no. I know nothing
3 about what was paid. Jimmy told me that he was
4 giving it to his brother.

5 Q. But you don't know whether or not money
6 actually exchanged hands?

7 A. If money would have exchanged hands
8 there would be a HUD done and the rest of the
9 documentation. The 1099s would have been done.

10 I knew nothing about it. I prepared
11 the deed, and I think that my deed basically says
12 it's the only document preparation.

13 Q. Did Jimmy mischaracterize the
14 transaction?

15 A. Well, what he told me is what I went by
16 when I drafted it. I think I talked to him. I
17 don't think I actually talked to Mike when I
18 drafted it. And there was never a mention of money
19 to me and no money passed in front of me.

20 Q. But you're not saying that there was
21 not a possibility -- if Mike said he paid \$15,000
22 for it, could you argue with that? Do you have
23 any --

24 A. No. I couldn't argue with it because
25 of the fact that if you ever find a client who

1 tells the truth about everything, please let me
2 know who he is. I want to hire him.

3 Q. Now, there was another deed done on
4 August 21, 2015 -- let me, first of all, talk about
5 the Highway 9 property, which consisted of 50-some
6 odd acres. There is a specific provision in the
7 Will about that piece of property, and I'll hand
8 you the exhibit and you can just read that and
9 explain that to the Court.

10 A. It's out of No. 5 of the Will. It
11 says: The piece of property that I own at the
12 junction of Highway 66 and South Carolina Highway
13 No. 9 I will devise and bequeath the same to my
14 executor, Jimmy R. Soles, upon the terms and
15 conditions that the executor shall cause the same
16 to be sold and the proceeds therefrom divided
17 equally among my four children: Michael W. Soles,
18 Jimmy R. Soles, Charles Luther Soles, and Marcia
19 Soles Anderson.

20 "I direct that no commission be due to
21 the said Executor; however, a commission may be
22 paid to a real estate agent upon the sale of the
23 same and do note that the only reason for devising
24 it to the executor is to comply with North Carolina
25 law concerning an executor selling a portion of the

1 property without having to acquire court approval." ¹⁴³

2 Q. So as I understand it, Jimmy Soles as
3 executor was directed to sell the property. He
4 didn't have any ownership in it. That was just a
5 provision to avoid your having to go to court after
6 Miss Soles' death to get court approval; is that
7 correct?

8 A. That's correct.

9 Q. Now, was there any misunderstanding
10 about that? Was there any disagreement among those
11 at the meeting?

12 A. I explained at the time the reason it
13 was done in North Carolina law, if you wish to
14 avoid a special proceeding to file -- the only
15 thing you can sell property for in North Carolina
16 is to create assets in the event that there are
17 insufficient assets to satisfy the debts of the
18 estate. So if you're going to sell any other time,
19 you have to file a special proceeding to sell it
20 and you have to notify all the parties who have an
21 interest.

22 By deeding it to the executor with
23 directions it falls under one of the statutory
24 provisions which allows an executor to sell it and
25 to divide the proceeds -- it requires no ownership,

1 but it actually gives him the property and the
2 title so that he doesn't have to do -- get the
3 permission from anyone else to do it.

4 Q. There was a later deed, July 21, 2015
5 -- and you were not involved in that -- in which
6 Edith Soles transferred that piece of property, the
7 Highway 9 property, to Jimmy Soles for \$5. It was
8 a gift. The attorney who did it, Miss Dingle
9 across the street, described it as a gift deed from
10 a mother or parent to a son.

11 Were you involved in that?

12 A. I knew nothing about it until the
13 caveat was filed in North Carolina.

14 Q. Now, if Jimmy Soles had come to you in
15 July of 2015 and said "please prepare a deed,"
16 would you do that without conferring with Edith
17 Soles?

18 A. No.

19 Q. In view of all the fiduciary duties
20 under which Jimmy was through these various
21 documents that we have discussed would it concern
22 you that he would make arrangements with another
23 attorney and pay for the deed, schedule the
24 closing, take his mother to the lawyer's office and
25 have the deed transferred from his mother to

1 himself when his mother was then weeks away from
2 her 89th birthday? Would that concern you,
3 Mr. Phipps? He had all these fiduciary duties.

4 A. He had the fiduciary duties. It would
5 concern me more if he signed it as the attorney in
6 fact.

7 Q. Which he did not do.

8 A. But it is concerning the fact that
9 everybody knew that that was in the Will and that
10 it was done after. But other than that, that would
11 be my only real concern.

12 I don't know about Miss Edith's health
13 during that particular time. The last time I saw
14 her was probably in 2014.

15 Q. Would that be at Charlie's funeral?

16 A. It would have been around Charlie's
17 death. Shortly after. Because to be quite frank,
18 she was very distraught and very emotional because
19 she was the pick of the litter -- or he was the
20 pick of the litter.

21 Q. And he probably -- when you were
22 dividing things up, property, he probably got the
23 better tract of land?

24 A. Well, he got the house and the tract
25 that had good farmable land, and it adjoined land

1 that he already owned, which made it that much more
2 attractive.

3 Q. A codicil was done, I think, 15 days
4 before the deed. You had nothing to do with that,
5 did you?

6 A. I did not.

7 Q. Do you know why Jimmy Soles -- you
8 represented that family since 1978. You knew all
9 the parties. You knew all the players. Why didn't
10 he come to you?

11 A. Well, I knew all the parties except
12 Jimmy. The first time I met Jimmy was when we did
13 Mr. Euclid's estate; and to be quite frank with
14 you, Miss Soles was named as the executrix in that
15 estate. And I would have been a dog to a doughnut
16 that she would have named Charlie, but she named
17 Jimmy. Like I said, I didn't know anything about
18 Jimmy at that particular time.

19 Q. Well, he had her Power of Attorney, her
20 Health Care Durable Power of Attorney. She named
21 him as executor. She must have had confidence and
22 faith in him.

23 A. Obviously. She named him as a
24 substitute on the two power of attorneys, but she
25 named him as the executor, and obviously she

1 resigned her position -- renounced in favor of him
2 in Mr. Euclid's Will.

3 Q. And certainly she must have trusted
4 him?

5 A. Yes.

6 MR. JOHNSON: Thank you, sir. Answer
7 any questions.

8 THE COURT: Mr. McCutchen?

9 EXAMINATION

10 BY MR. McCUTCHEN:

11 Q. How are you today, sir?

12 A. I'm just fine, Mr. McCutchen. How
13 about yourself?

14 Q. Fine, sir.

15 The Health Care Power of Attorney that
16 was submitted by Mr. Johnson -- the North Carolina
17 Health Care Power of Attorney. What does that do?

18 A. The Health Care Power of Attorney is an
19 advanced directive given to an agent to take
20 actions on the part of an individual whenever they
21 are not able because of unconsciousness, because of
22 vegetativeness, because of being in a coma or
23 whatever to take care of their own affairs. And
24 basically it speaks to the administration of
25 extraordinary care measures such as resuscitation,

1 feeding tubes and hydration and the withholding of
2 the same, and it's a far step above what we refer
3 to as a living will. Because a lot of people are
4 very squeamish about it and where it has to be, and
5 this can come in even though they've already put on
6 some type of extraordinary care or extraordinary
7 thing such as resuscitate. And they can actually
8 remove it, whereas the Will does not allow you to
9 do that. It's got to be there when it goes on or
10 it doesn't have any effect. They will install it.
11 Once they install it they can't take it off.

12 Q. So those duties would arise when
13 somebody was in real bad shape?

14 A. Real bad shape.

15 Q. So until that time there are no duties
16 under that particular Power of Attorney until that
17 personal reaches that state?

18 A. That's correct.

19 Q. He also showed you the Will that you
20 prepared, and you've read some of that into the
21 record. And he was named as executor?

22 A. He was named the executor in that.

23 Q. And when do those duties arise as
24 executor?

25 A. At death. There is nothing before

1 that. Because the thing about a Will is until
2 you've drawn your last breath you can always change
3 it. I do not do seaonic wills. Not for anyone.

4 Q. A what?

5 A. Seaonic, where you have a seance and
6 bring them back and redo the Will. That's a joke.

7 Q. So the executor position is not, of
8 course, until death. So those duties arise at
9 death.

10 And then there was another Power of
11 Attorney here also. I think that Mr. Johnson
12 showed you a deed -- I think Plaintiff's Exhibit
13 4 -- where Edith Cox Soles gave to Jimmy Soles a
14 piece of property. Did you see that one, that
15 deed?

16 A. I don't think he showed it to -- well,
17 yes, he did. No. He didn't show this one to me.
18 I saw the one where he got the river walk, but I
19 did not see this one.

20 Q. And how is this one executed? At least
21 on the face of it.

22 A. On its face -- well, the granting
23 clause says: Edith Cox Soles also known as Edith
24 Soles. And a signature line says Edith Soles and
25 the acknowledgement acknowledges that she

1 personally appeared before someone called Dingle.

2 I don't know what that first name is.

3 Q. So on the face of that deed there was
4 no execution by Jimmy R. Soles as a Power of
5 Attorney; is that correct?

6 A. That's correct.

7 Q. So from your review -- from your just
8 reviewing like you did, it doesn't appear that he
9 had any role in the execution of this document
10 granting him title to that property.

11 A. Nothing in the deed would say that, no.

12 Q. So he went over with you the durable
13 power of attorney that obviously has the powers
14 that it does in it. I've talked about the deed.
15 There is no execution by Jimmy R. Soles.

16 The Health Care Power of Attorney only
17 comes up in the event of -- you're close to death?

18 A. That's right.

19 Q. And then the Will is when you're at
20 death; is that correct?

21 A. It's when you've died. The Power of
22 Attorney ceases to exist at death because you have
23 to have a principal agent relationship, and the
24 Will takes over the moment of death.

25 Q. Thank you.

1 A. So says Dr. Meads anyway.

2 Q. When was the last time you recollect
3 seeing Miss Edith?

4 A. Shortly after Charlie's death. He died
5 on April of 2014. So I would say it had been in
6 the month of April of 2014.

7 Q. So you didn't see her for the next year
8 and a half or -- let me rephrase.

9 Did you see her at any time prior to
10 the execution of the deed that I just showed you as
11 July 21, 2015?

12 A. No.

13 Q. And you had no role in that deed, did
14 you?

15 A. I had nothing to do with it. Knew
16 nothing about it until -- I think Marcia may have
17 told me something about it in a call to me asking
18 me about it, and then whenever the caveat after
19 Miss Edith's death was filed in Columbus County.

20 Q. The caveat -- I think there is a
21 question about it. The caveat action is ongoing
22 now; correct?

23 A. The caveat action is ongoing. It's
24 technically been stayed waiting for a decision by
25 this court to avoid inconsistencies. And this suit

1 was filed long before the caveat was, and so this
2 suit had some priority -- depending on how it's
3 resolved, the caveat may resolve.

4 Q. But you really have no information
5 about Miss Edith's condition or the execution of
6 this deed after you -- you saw her in 2014 after
7 Charlie death and then you didn't see her again --

8 A. When I saw her in April of 2014 she
9 wasn't much different than she was in January of
10 2013 when she signed the Will and the deed. I
11 mean, she may have failed a little, but she was
12 still basically in control with the exception of
13 she was extremely emotional because of Charlie's
14 death.

15 MR. McCUTCHEN: I think I have nothing
16 further, your Honor. Thank you.

17 MR. JOHNSON: That's all.

18 THE COURT: Let me ask you one
19 question. How old was Charlie when he died? Do
20 you know about how old he was?

21 THE WITNESS: How old he was?

22 THE COURT: Charlie, the baby.

23 THE WITNESS: Charlie? Charlie was
24 probably 55 when he died.

25 THE COURT: Did he die suddenly?

1 THE WITNESS: Yes. He had -- I'm not
2 sure. It seemed like either something broke loose
3 and caused a stroke or a heart attack. I'm not
4 sure which, but he died very suddenly. He was not
5 expected to die and he had not been -- he had had a
6 back problem.

7 THE COURT: So it was very traumatic?

8 THE WITNESS: A traumatic problem. But
9 that death was a shocker, and I know it shocked
10 Miss Edith.

11 THE COURT: All right. Thank you very
12 much.

13 MR. JOHNSON: Your Honor, we have one
14 more brief witness. I can't get her here today.
15 It won't take long.

16 THE COURT: Can you put anyone up
17 today?

18 MR. McCUTCHEN: We had planned to start
19 in the morning, your Honor.

20 MR. JOHNSON: I certainly understand if
21 he wants to put this up. It will be brief.

22 THE COURT: Okay. So y'all want to be
23 through for today? is what you're saying.

24 MR. JOHNSON: Yes, ma'am.

25 THE COURT: Okay. Do y'all want to

	I N D E X		
		Page	Line
1			
2			
3			
4	MARCIA SOLES ANDERSON	18	21
5	EXAMINATION	18	23
6	BY MR. JOHNSON		
7	EXAMINATION	41	1
8	BY MR. McCUTCHEN		
9	EXAMINATION	65	5
10	BY MR. JOHNSON		
11	EXAMINATION	67	18
12	BY MR. McCUTCHEN:		
13	GARY J. P. BARRETT, M.D.	71	16
14	EXAMINATION	71	18
15	BY MR. JOHNSON		
16	EXAMINATION	93	16
17	BY MR. McCUTCHEN		
18	EXAMINATION	102	6
19	BY MR. JOHNSON		
20	MICHAEL SOLES	103	2
21	EXAMINATION	103	4
22	BY MR. JOHNSON		
23	EXAMINATION	119	1
24	BY MR. McCUTCHEN		
25	WILLIAM PHIPPS	126	10

1	EXAMINATION	126	12
2	BY MR. JOHNSON		
3	EXAMINATION	147	9
4	BY MR. McCUTCHEN		
5	CERTIFICATE OF REPORTER	155	1

E X H I B I T S

		Page	Line
10			
11	PLF. EXH. 1, Title to Real	3	1
12	Estate		
13	PLF. EXH. 2, Last Will and	3	3
14	Testament of Edith I. Soles		
15	PLF. EXH. 3, Power of Attorney	3	5
16	PLF. EXH. 4, General Warranty	3	7
17	Deed		
18	PLF. EXH. 5, Mortgage	3	9
19	PLF. EXH. 6, group of	3	11
20	documents		
21	PLF. EXH. 7, group of medical	3	13
22	records from McLeod Physician		
23	Associates		
24	PLF. EXH. 8, letter, 10/4/2017	3	16
25	to Brown W. Johnson and		

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 157

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mumford McCutchen from Gary
Barrett, M.D.
PLF. EXH. 9, photograph 3 19
PLF. EXH. 10, North Carolina 130 16
Statutory Form Health Care
Power of Attorney