

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No.: 2021-001413

Jacquelyn Gladden and Patricia Reed, Respondents,

v.

Cyndy Reed Stewart, Appellant.

RECORD ON APPEAL
Volume 1

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2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:
THEODOCIA REEDJacquelyn Gladden and Patricia Reed,
Petitioners,

vs.

Cynthia Stewart,
Respondent,and
Theodocia Reed,
An Allegedly Incapacitated Person.)

IN THE PROBATE COURT

Case Numbers: 2009-GC-40-00009
2009-GC-40-00010

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FILED

ORDER REGARDING HEARING

AMY A. SCULLION
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER IS BEFORE THE COURT upon the filing of a Summons and Petition for Appointment of Guardian and Conservator on January 16, 2009, by Jacquelyn Gladden and Patricia Reed; both of whom are represented by Charles Black, Jr., Esq. The Petitioners are the daughters of Theodocia Reed (hereinafter, "Mrs. Reed"). In their Petition, Jacquelyn Gladden and Patricia Reed allege that Mrs. Reed's remaining daughter, Cynthia Stewart, who is designated as Mrs. Reed's attorney-in-fact under a General Power of Attorney executed December 12, 2008, is not capable of properly caring for and supervising Mrs. Reed. Petitioners further allege that Cynthia Stewart used this document to make several changes to bank accounts held jointly by all three daughters with Mrs. Reed, and made an improper disbursement of \$7,000.00, subsequent to the execution of the December 12, 2008 General Power of Attorney.

On January 27, 2009, Cynthia Stewart responded to the Petition, contending that she is capable of, and has been, providing adequate care for Mrs. Reed. She further asserts in her answer that the alleged bank account designations have not been altered and that the Petitioners

are still listed as joint owners. Cynthia Stewart also alleges that any disbursements made from this account, were done for the benefit and care of Theodocia Reed.

Subsequent to that, a status hearing was held on March 23, 2009, and the parties were given until April 24, 2009, to resolve all outstanding issues by their own agreement. As the parties did not reach a full resolution of the disputed issues between them, they were directed to mediation, pursuant to the Probate Court Pilot Mediation Program. The parties, including Mrs. Reed and her court-appointed Guardian ad Litem, N. Bruce Holland, Esq., met with mediator Tim Harbeson, Esq., on June 22, 2009. The parties attempted to resolve their differences through mediation, and all parties signed a mediation agreement at the conclusion of the mediation conference, but the agreement was repudiated the following day by Cynthia Stewart. Mrs. Stewart then retained Stephen Fitzer, Esq., to represent her in these proceedings.

After Mr. Fitzer was retained, he, Mr. Holland, and Mr. Black discussed the case further in an attempt to come to some agreement, but were unable to resolve all issues. Mr. Fitzer's client's position is that Mrs. Reed was not incapacitated and, therefore, she had the capacity to revoke her prior power of attorney, and to execute a new power of attorney on December 12, 2008, which designated her as her mother's attorney-in-fact. Mr. Black's clients' position is that Mrs. Reed was incapacitated and, therefore, unable to revoke the power of attorney that was in effect prior to December 12, 2008, which would then give all three daughters joint decision-making authority, under the power of attorney in effect prior to December 12, 2008. Finally, Mr. Holland's position, on behalf of Mrs. Reed, is that she has capacity, that she is capable of making all of her own decisions about health care and her finances, and that she desires that all three of her daughters get along and make decisions together.

A hearing was held in this matter on October 19, 2009. Present were: Theodocia Reed; N. Bruce Holland, Esq., the court-appointed GAL for Mrs. Reed; Jacquelyn Gladden and Patricia Reed, the Petitioners; Charles Black, Jr., Esq., attorney for the Petitioners; Cynthia Stewart, the Respondent; Stephen Fitzer, Esq., attorney for the Respondent, Elizabeth Stubbs, sister of Mrs. Reed, Jesse Stewart, son-in-law of Mrs. Reed, Earline Williams, and Hayward Garvin. The purpose of the hearing was to discuss and resolve the capacity of Mrs. Reed; payment of allocation of attorneys' fees and mediator's fees by the parties; the Motion for Transfer of Venue filed by Cynthia Stewart; and the continuation of these actions in Richland County.

The Court gave Counsel and the Guardian ad Litem the opportunity to make statements regarding the issues to be discussed, and the Court asked several questions in response to the information presented by the attorneys, including seeking clarification as to why a mediation agreement had been signed and later repudiated by Mrs. Stewart. Mr. Holland informed the Court that it continued to be his position on behalf of his client that she had capacity and, therefore, the ability to make her own decisions about her health care and her financial affairs. He encouraged the Court to meet privately, in chambers, with Mrs. Reed to make its own assessment as to her capacity. As the ability to make or revoke a power of attorney is based on contractual capacity, the Court agreed to speak with Mrs. Reed privately to determine whether she appeared to have the necessary capacity to make her own decisions, including the ability to designate who would handle her financial affairs. The parties agreed that if the Court could determine from its questions of Mrs. Reed that she possessed such capacity, that she should be allowed to make her own decisions and that neither a Physician's Affidavit or an Examiner's Report would be necessary.

The Court went into recess to meet privately with Mrs. Reed in chambers for approximately twenty-five minutes. Also present was the Court's judicial law clerk, Jesse Near. The conversation with Mrs. Reed included questions from the Court about Mrs. Reed and her family, including her age, where she lived, with whom she lived, the status of her health, what conditions she was seeing a doctor for, her medications, and how often she sees the doctor. The Court also asked about current events, such as who the President of the United States is, and the year, date and month of the year.

Throughout this meeting, Mrs. Reed was oriented as to date, time, and place. When asked if she understood the dispute that was going on between her daughters, she answered affirmatively and indicated that they were disagreeing about who should make decisions for her and where she should live. The Court also inquired as to her understanding of a health care power of attorney and a power of attorney for her business affairs. Mrs. Reed answered that the health care power of attorney lets someone make decisions for her about her medical treatment, who her doctor will be, and where she will live. However, Mrs. Reed firmly indicated that she wanted to choose her own doctor and make decisions about her health care, and that she would want her daughters to make decisions together about her health care if she could not make the decisions herself. In addition, she indicated that the power of attorney would let someone handle her money and pay her bills. Mrs. Reed said that she needed assistance with paying her bills, but wanted to make her own decisions about her finances. If she needs someone to make decisions about her finances in the future, Mrs. Reed indicated that she would want Cynthia Stewart to take care of her finances, because it would be more convenient, but she would want Jacquelyn Gladden and Patricia Reed to know about everything going on with her finances.

When asked where she wanted to live, Mrs. Reed indicated that she wanted to live in Florida with Mrs. Stewart and her family, because she likes it there. However, she wants to be able to visit with her other daughters in South Carolina whenever she desires, and for as long as she desires. Mrs. Reed was aware that she owns property in Bamberg County, South Carolina, and indicated that she did not want that house to be sold, but wanted it to be kept for her to go visit whenever she wished to do so.

Mrs. Reed clearly had an understanding of what it meant to give authority to someone under a health care power of attorney and a power of attorney for business affairs. She also had very definite ideas about the fact that she could make her own decisions, but may not be able to do so in the future. She acknowledged some health issues, stating that she is 84 years old, but those conditions do not seem to have affected her ability to be aware of the type of decisions she would need to make for herself, or to actually make those decisions for herself.

Finally, as Mrs. Reed has the ability to make her own decisions, the Court asked her if she would want to have new powers of attorney done that reflect exactly what she stated regarding her wishes, or if she wanted the Court to do an order. She firmly stated that she wanted the Court to do an order, because she was tired of the disagreements and wanted everyone to try to work together. The Court explained to Mrs. Reed that an order could be issued stating that she had the ability to make her own decisions and that she did not need a guardian or conservator at this time. Mrs. Reed stated her desire that the Court make a ruling on her capacity and enter an order addressing the specific things she previously indicated.

The Court reconvened to advise the other parties of its assessment of Mrs. Reed's capacity, giving a summary of the aforementioned information. At that point, Mr. Holland added that he had met with Mrs. Reed on three separate occasions, the latest being prior to the hearing

on October 19, 2009, and that he found her understanding and answers to be the same. He reasserted his statement that his client is not incapacitated.

The other issues to be addressed at the hearing were those regarding whether venue should be transferred to Bamberg County, and who should pay attorneys' fees in this action. As the Court did not have any indication that Mrs. Reed was incapacitated, the petitions should be dismissed. This eliminates the need for a transfer of these actions to Bamberg County. With regard to attorneys' fees, the Court expressed its opinion, but also sought input from Mrs. Reed. Mrs. Reed conferred with Mr. Holland, and then stated that she wanted each of her daughters to be responsible for the fees and costs for their own attorneys. The cost of mediation is to be split between Mrs. Reed and her daughters, with each of them paying one-fourth of the cost of the mediation. The bills of Mr. Holland and of Mrs. Clingman will be paid from Mrs. Reed's funds.

After reviewing the entire record, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jurisdiction. That this Court has subject matter jurisdiction of these proceedings, pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. Venue. That Theodocia Reed currently resides with her daughter Cynthia Stewart in Florida. Mrs. Reed also owns property in Bamberg County, South Carolina, where she resided prior to moving to Florida. Therefore, pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended, venue for these proceedings would properly be laid in either Florida or Bamberg County. However, Mrs. Reed, with advice of counsel, has requested that this Court make findings and enter an order in this matter, since these are before it at this time. Mrs. Reed indicated that she wants the issue concluded now, and desires that her daughters follow her wishes.

- 2 3. Incapacity. That the Court hereby finds that Theodocia Reed does not meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1), 1976, as amended, due to any mental condition or physical condition. Ms. Reed has sufficient capacity to make her own health care and financial decisions. Ms. Reed is further entitled to choose her own doctors.
4. No Guardian or Conservator. That based on Mrs. Reed's capacity, the Court concludes that does not need a Guardian or Conservator appointed for her at this time.
5. Dismissal of Petitions. That based on the above finding of capacity, the Petitions for Appointment of Guardian and Conservators, both filed January 16, 2009, are dismissed.
6. Status of Powers of Attorney. That Mrs. Reed indicated that she did not wish to have a durable power of attorney or health care power of attorney in place unless she is not able to make decisions for herself. However, the Court strongly encourages Mrs. Reed to execute those documents now, but to include provisions which trigger the use of the document only at the time in which Mrs. Reed becomes incapacitated or unable to make decisions for herself. The Court also encourages the attorney preparing those documents to incorporate the terms of this Order because they reflect the wishes and desires of Mrs. Reed.
7. Assistance with Financial Matters. That at the request of Theodocia Reed, Cynthia Stewart will provide her with assistance with financial matters, such as paying bills; however Mrs. Reed will have the ultimate decision making authority and will be consulted with respect to all matters affecting her finances. At the request and direction of Mrs. Reed, Cynthia Stewart will keep Jacquelyn Gladden and Patricia Reed promptly and adequately informed of all of Mrs. Reeds financial matters, including providing full

copies of all bank statements for accounts held in Mrs. Reed's name or held for her benefit, and keeping them informed of other matters affecting Mrs. Reed's finances (such as lease arrangements for the Orangeburg County property and the management and any renovations of Mrs. Reed's real property in Bamberg County, etc.).

8. Delegation of Additional Authority. Mrs. Reed may delegate additional authority as she deems appropriate. In the interim between the filing of this Order and the execution by Mrs. Reed of new planning documents, Cynthia Stewart, Patricia Reed, and Jacquelyn Gladden shall take direction from their mother as to who she wants to handle specific tasks, including those related to the management of any and all farmland lease arrangements.
9. Bamberg County Residence. That neither Cynthia Stewart, Jacquelyn Gladden, nor Patricia Reed will be permitted sell any property owned by Mrs. Reed, which includes the former residence in Bamberg County. This house will be retained by Mrs. Reed for future visits of open duration. All of Mrs. Reed's daughters shall have equal access to the Bamberg County residence, but other family members may only visit that property when accompanied by one of the daughters. None of these individuals, as well as any other individuals at their direction, shall sell, disturb, or remove the contents of this house, unless specifically authorized to do so by Theodocia Reed.
10. Living Arrangements and Visits. That Theodocia Reed will decide when and where she wishes to reside, for any length of time, whether it is in Florida, or South Carolina. As detailed above, Mrs. Reed indicated at the hearing that she wishes to reside permanently in Florida, but wishes to visit her daughters in South Carolina for as long as she desires.

Given the above finding of capacity, Ms. Reed will be permitted to change her current place of residence in the future, if she so desires.

11. Expenses During Visits. That Mrs. Reed may incur expenses during visits to her home in Bamberg County, or with her daughters, and should have a means for meeting such expenses even when absent from her primary place of residence. Therefore, Mrs. Reed's daughters shall cooperate in providing a meaningful process for Mrs. Reed to pay such expenses herself (e.g., by cash, check, credit card, debit card, prepaid debit card, etc.).

Should any expenses be personally incurred on Mrs. Reed's behalf by any individual, Mrs. Reed shall have the sole discretion to determine whether those expenses should be reimbursed. No one shall have the authority to reimburse themselves from Mrs. Reed's funds for any expenses unless specifically authorized to do so by Mrs. Reed.

12. Healthcare Matters. That Mrs. Reed indicated her desire for all three of her daughters to be involved in her healthcare decisions, if she cannot make those decisions for herself. To that end, the daughters shall keep each other reasonably informed of Mrs. Reed's healthcare status and any issues that arise in connection therewith. In addition, they shall provide full and complete information to each other concerning Mrs. Reed's medications and any other health-related requirements as may be necessary and appropriate to maintain Mrs. Reed's health and well-being at all times. Absent emergency or exigent circumstances, all three daughters shall be informed of, and allowed to participate in, any major health-related decisions for Mrs. Reed, if she cannot make those decisions for herself. If any emergency or other exigent circumstances preclude such information and participation, then every reasonable effort shall be made to provide full and complete information to all of the daughters as soon as possible.

13. Payment of Attorneys' Fees. That based on the requests of Theodocia Reed, as well as this Court's equitable considerations, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart will each bear the cost of their own attorneys' fees. The attorneys' fees of Bruce Holland and Sarah Clingman will be paid from the funds of Mrs. Reed.
14. Payment of Guardian ad Litem's Fees. That Bruce Holland, Esq., the Court-appointed attorney and Guardian ad Litem for Theodocia Reed is entitled to payment for his extensive services in this matter, in the amount of \$190.00 per hour.
15. Payment of Mediation Fees and Costs. That total fees and costs of \$1,560.00 were incurred by Mediator at the June 22, 2009 mediation conference (7.8 hours at \$200.00 per hour = \$1,560.00). Of this total, \$1,365.00 in fees and costs are approved by the Court (7.8 hours @ \$175.00 = \$1,365.00) and will be split equally among Mrs. Reed, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart. Each one-fourth share of this \$1,365.00 in Court-approved fees and costs equals \$341.25. The additional \$195.00 in fees and costs were incurred due to the fact that the Mediator's rate of \$200.00 per hour as actually charged exceeds the Court-approved rate of \$175.00 per hour. This additional \$195.00 will be split equally among Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart, with each one-third share of this amount being \$65.00. The Mediator's total charges of \$1,560.00 have been paid out of the funds of Mrs. Reed that were paid to Warner, Payne & Black, L.L.P. by Patricia Reed and Jacquelyn Gladden at the commencement of these actions.
16. Reimbursement to Mrs. Reed. At the commencement of these actions, a net sum of \$8,000.00 was paid by Patricia Reed and Jacquelyn Gladden to Warner, Payne & Black, and L.L.P... The source of these funds was a bank account whose funds belong to Mrs.

Reed. Because the Court finds that each party should bear its own fees and costs, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed for the \$8,000.00 that was transferred from her account for the purpose of paying Patricia Reed's and Jacquelyn Gladden's legal fees and costs. As noted above, \$1,560.00 of these funds were paid to the mediator for fees and expenses that are to be born by the four parties as specified in paragraph 15. Therefore, Cynthia Stewart's shares of the mediator fees (\$341.25 + \$65.00 = \$406.25) should be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden, and Cynthia Reed should pay her share of such fees (\$406.25) directly to Mrs. Reed. Likewise, Mrs. Reed's share of the mediator fees (\$341.25) should also be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden. As a result, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed a total of \$7,252.50 and Cynthia Stewart shall reimburse Mrs. Reed a total of \$406.25. These payments shall be made within sixty (60) days of the issuance of this Order, and will result in total reimbursement to Mrs. Reed of \$7,658.75 of the \$8,000.00 (\$7,252.50 from Reed and Gladden plus \$406.25 from Stewart), with the remaining \$341.25 representing Mrs. Reed's contribution to the mediator fees.

17. Restoration of Bank Accounts. In addition to the \$8,000.00 transfer of Mrs. Reed's funds as discussed above, additional monies from Mrs. Reed's accounts were transferred by Patricia Reed and Jacquelyn Gladden into a newly-created account at NBSC entitled "Theodocia K. Reed, by Patricia Reed & Jacquelyn Gladden, Trustees" (Account # XXX-XXX-140-9). The transfers of Mrs. Reed's certificates of deposit were previously reversed by the banks, but some funds do remain in this account. Within ten (10) days of the issuance of this Order, this account shall be closed and the proceeds of the account



paid to Mrs. Reed. Mrs. Reed shall also be furnished with copies of all statements for this account. In addition, all other accounts containing Mrs. Reed's monies shall be restored to the "original" ownership status as established by Mrs. Reed prior to any actions by any agent under a Power of Attorney or other person with access to any such account. No person other than Mrs. Reed acting individually shall take any action to alter any account from this "original" ownership status.

18. Safe Deposit Box. All three of Mrs. Reed's daughters shall be made aware of the location of any safe deposit box to which Mrs. Reed is a party or which contains any items belonging to her. No one shall remove any items from any such safe deposit box without the express consent of Mrs. Reed, and the notification of all three daughters.
19. Timber Contracts. That any information or documentation that any of Mrs. Reed's daughters have with respect to any timber contracts concerning Mrs. Reed or her property shall be provided to Mrs. Reed within ten (10) days of the issuance of this Order, with copies to all of her daughters.
20. Farming Leases. That any information or documentation that any of Mrs. Reed's daughters have with respect to any farming leases concerning Mrs. Reed or her property shall be provided to Mrs. Reed within thirty (30) days of the issuance of this Order, with copies to all of her daughters.
21. Cooperation. That in order to meet Mrs. Reed's expectations, all three daughters will need to cooperate with each other. In order to facilitate the same, each daughter shall keep her sisters apprised of current contact information, including home address, home telephone number(s), work telephone number(s), cellular telephone number(s), and any other information materially impacting their ability to contact and communication with

one another (e.g., extended travel plans, etc.). No party shall unduly interfere with or restrict access to Mrs. Reed by any other party hereto, or access by any other family member except as set forth herein. The parties shall make reasonable efforts to contact and communicate with each other on a regular basis concerning Mrs. Reed and her affairs. ~~The parties shall only involve law enforcement, social services agencies or like~~ entities in an emergency and as a last resort after having first made reasonable efforts to resolve any issues or questions among themselves.

22. Enforcement. That all provisions of this Order are subject to enforcement by way of agreement reached by all parties at the October 19, 2009 hearing.
23. Further Consultation. That it would be of benefit to Mrs. Reed for her to confer with Mr. Holland, and, as mentioned previously, to have an attorney draft a durable power of attorney and a health care power of attorney for her that addresses the desires and concerns she expressed to the Court, including any type of "triggering clause" that the attorney and Mrs. Reed might find acceptable. Any attorney preparing any such documents on behalf of Mrs. Reed shall be provided with a copy of this Order prior to drafting the documents.

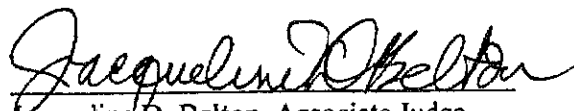
THEREFORE, IT IS HEREBY ORDERED that:

- A. The Petition for Appointment of Guardian for Theodocia Reed, filed June 16, 2009, and the Petition for Appointment of Conservator for Theodocia Reed, filed June 16, 2009, shall be dismissed. Based on the findings of this Court, Theodocia Reed shall be deemed to have capacity with the authority to make her own healthcare and financial decisions.

B. Cynthia Stewart, Patricia Reed, and Jacquelyn Gladden shall each bear the cost of their own attorneys' fees litigating this matter, as set forth above. The costs and attorneys fees of Bruce Holland, Esq., and Sarah Clingman, Esq., shall be paid immediately from the funds of Theodocia Reed.

C. The requests and desires of Theodocia Reed, as detailed in the provisions of this order, shall govern her healthcare and financial matters, unless and until Mrs. Reed consults an attorney and has new planning documents prepared that reflect her desires and concerns regarding the circumstances under which someone else will make decisions for her regarding her business affairs, her living arrangements, and her healthcare.

IT IS SO ORDERED.


Jacqueline D. Belton, Associate Judge
Richland County Probate Court

December 29, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF RICHLAND)

Case Nos: 2009-GC-40-00009

2009-GC-40-00010

IN THE MATTER OF:)

THEODOCIA REED)

ORDER REGARDING
RULE TO SHOW CAUSE
HEARING

THIS MATTER IS BEFORE THE COURT regarding the Rule to Show Cause executed by this Court on May 25, 2010, regarding Patricia Reed (hereinafter P. Reed), Jacquelyn Gladden, and Cynthia Stewart. The aforementioned individuals are the adult daughters of Theodocia Reed. On December 29, 2009 this Court entered an Order in which Ms. P. Reed, Ms. Gladden, and Ms. Stewart were ordered to do certain things, and deadlines were set for the directives they were given. As the Court received reports from various individuals that only part or none of the directives were completed by Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart, a hearing regarding the Rule to Show Cause was set for June 28, 2010.

In addition to providing notice to Ms. P. Reed, Ms. Gladden, and Ms. Stewart, notice of the hearing was also given to Stephen Fitzter, attorney for Ms. Stewart, Charles Black, Jr., attorney for Ms. P. Reed and Ms. Gladden, and N. Bruce Holland, who prepared Mrs. Theodocia Reed's powers of attorney and was formerly her Guardian ad Litem.

The Rule to Show Cause was held as scheduled, on June 28, 2010. Present were Theodocia Reed; Cynthia Stewart, daughter of Mrs. Reed; Stephen Fitzter, Esq., attorney for Ms. Stewart; Jacquelyn Gladden and Patricia Reed, daughters of Mrs. Reed; Charles Black, Jr., Esq., attorney for Ms. Gladden and Ms. P. Reed; Jesse Stewart, spouse of Cynthia Stewart; and Earline Williams, a friend of Theodocia Reed's. Mr. Holland was excused from attending the hearing.

All parties acknowledged that for various reasons the amounts ordered returned to Mrs. Reed's accounts pursuant to this Court's Order of December 29, 2010 had not been completed. Ms. P. Reed and Ms. Gladden felt that they were entitled to additional explanations from Ms. Stewart prior to depositing funds into Mrs. Reed's accounts, and Ms. Stewart felt that because she had spent some of her own funds for the benefit of Mrs. Reed that she was entitled to an offset that "cancelled out" the amount that she was ordered to put back in Mrs. Reed's accounts. Given the lack of trust that exists between these sisters, the Court understands the perspectives of Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart; however, the Court does not agree with and does not condone the actions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart in ignoring the specific directives of this Court to repay funds to Mrs. Reed's accounts. The discord that exists between these sisters apparently prevented them from understanding that the directives of the Order were to be followed and that addressing the Court with their individual concerns was the proper way to handle the matter. Accordingly, all three are in contempt of this Court's December 29, 2009 Order, but sanctions will not be imposed as long as Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart abide by the directives given from the bench on June 28, 2010 and any additional directives stated in this Order.

It should also be noted that the Court conducted a brief examination of Theodocia Reed to determine how she was functioning on the day of the hearing. Based on Mrs. Reed's responses to the Court's questions, she did not appear to be fully oriented as to time, but she did seem to know other facts, such as who she was. Ms. Gladden and Ms. P. Reed indicated that Mrs. Reed is more alert on some days than on others, and that she sees a geriatrician in Columbia, S.C. for health care treatment. All three daughters agreed that Mrs. Reed's capacity has diminished since the last hearing in October 2009, and that at present they believe she is

incapacitated.

After reviewing the entire record, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of these proceedings pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. That Theodocia Reed has been residing with her daughter, Jacquelyn Gladden, in Columbia, South Carolina since the previous hearing, held in October 2009. In addition, the purpose of this hearing is to address the directives of the Order executed on December 29, 2009, which makes Richland County the proper venue for these proceedings. Furthermore, Mrs. Reed, with advice of counsel, previously elected to have this Court make findings and enter an order in this matter.
3. That the Court hereby finds that Theodocia Reed appears to currently meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1), 1976, as amended, though no designated examinations have been conducted to confirm the suspicions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart that their mother is presently incapacitated. Mrs. Reed has valid powers of attorney; if they contain a springing clause the agent is to follow the directives of the power of attorney in establishing her powers to act under the document(s).
4. That this Court has the power to punish for contempt, "which is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, order, and writs of the courts, and consequently to the due administration of justice." Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) (citing Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)).



5. That Ms. P. Reed, Ms. Gladden, and Ms. Stewart all owe funds back to Mrs. Reed's accounts, which should be paid pursuant to this Court's Order of December 29, 2009, minus the offset of any funds paid from their own funds, for which appropriate documentation has been submitted to this Court.
6. That an accounting would be appropriate from all individuals who have spent funds belonging to Mrs. Reed, either at her direction or for her benefit.
7. That an appropriate visitation schedule should be set for Mrs. Reed, which her daughters have proposed be six (6) months in South Carolina and six (6) months in Florida. The terms of the visitation, including who will provide transportation and how Mrs. Reed's expenses will be handled while she is in each location is to be worked out between Ms. P. Reed, Ms. Gladden, and Ms. Stewart and their attorneys. This is not the family court, and this Court will not micro-manage those details, though the final agreement should be committed to writing as an agreement between Ms. P. Reed, Ms. Gladden, and Ms. Stewart, for the benefit of Mrs. Reed.
8. Based on the copies of the powers of attorney provided to this Court by Mr. Fitzer after the hearing, Ms. Stewart has the authority as Mrs. Reed's agent to accept funds for deposit into Mrs. Reed's accounts, and to make payment from the accounts for any expenses owed by Mrs. Reed to any party who presents a legitimate claim for payment.
9. Mrs. Reed should continue to be as involved as possible in her affairs, as dictated by her functional capacity and the directives of her powers of attorney.

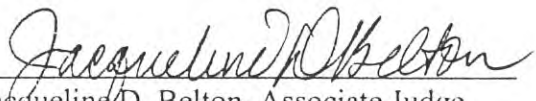
THEREFORE, IT IS HEREBY ORDERED that:

- A. Patricia Reed, Jacquelyn Gladden, and Cynthia Stewart shall pay all funds ordered by this Court's order of December 29, 2009 to Mrs. Reed's accounts,



G. All directives of this Court's Order of December 29, 2009 shall remain in full force and effect, except as modified by this Order or by the powers of attorney executed by Mrs. Reed in January 2010.

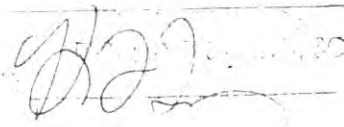
IT IS SO ORDERED.


Jacqueline D. Belton, Associate Judge
Richland County Probate Court

December 30, 2010
Columbia, South Carolina

A TRUE COPY
Attest:

Amy W. McCulloch



1-25-2017

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF BAMBERG)

CASE NUMBER: 2015ES0500091

IN THE MATTER OF:)

Carrie Theodocia K. Reed
(Decedent)**ORDER
APPOINTING PERSONAL
REPRESENTATIVE**

This matter was before the Court on a petition filed by Cyndy Reed Stewart to be appointed as Personal Representative of the Estate of Carrie Theodocia K. Reed. The Court finds that all documents were properly served and notice of the hearing was properly given. All parties attended the hearing, including Cyndy Reed Stewart, Jaquelyn Gladden, and Patricia Reed. Cyndy Reed Stewart was represented by R. Aaron Ness of Ness & Jett law firm. Jaquelyn Gladden was represented by counsel, Bakari Sellers and John Alphin; and, Patricia Reed represented herself pro se.

After considering all documents, as well as the statements of the parties and their counsel, the Petition to Appoint a Personal Representative of the Estate of Carrie Theodocia K. Reed is granted.

The Court makes the following Findings of Fact and Conclusions of Law.

1. The Court finds that no Answers to the petition were filed by either Jaquelyn Gladden or Patricia Reed.
2. A copy of the will is in the possession of the Court, but the original will has not been located to date, however, no party disagrees or objects to a copy of the will being an accurate document. Moreover, no evidence has been presented and no allegations have been made that the will was ever revoked by the testator. Accordingly, the court admits the copy of the will into probate, informally.
3. Under S.C. Code § 62-3-107, each proceeding is considered independent, and accordingly, a formal proceeding for the appointment of the personal representative was held January 12, 2017.
4. Under 62-3-203(d)(3), the appointment of the personal representative who has equal or lower priority is, in the discretion of the court, in formal proceedings.
5. Under 62-3-203(e)(2), the Court finds the contesting parties, Jacquelyn Gladden and Patricia Reed, offered no testimony, even though testimony was requested by the Court,

PROBATE COURT
CASE #: 2015ES0500091

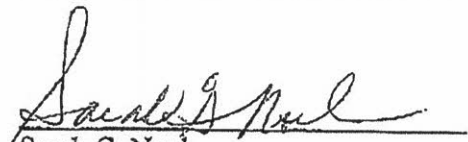
1

IN THE MATTER OF:
Carrie Theodocia K. Reed

as to the suitability or unsuitability of Cyndy Reed Stewart to serve as the sole personal representative.

- #222
EEN
6. The Court finds that Jacquelyn Gladden acted in a manner that showed a degree of irresponsibility when she failed to claim official mail sent to her by Attorney Richard Ness, whose address was known to her from his September 13, 2016 letter, and her conduct disqualifies her as being a suitable personal representative.
 7. The Court finds Patricia Reed is unsuitable to serve as personal representative based upon her acceptance of the Summons and Petition, evidenced by the return receipt, and her failure to Answer or otherwise respond, thereby leaving her in default of the relief sought in the petition.
 8. The Court finds that according to the terms of the will, if any of the three named personal representatives should fail to qualify for any reason, the others may act alone as personal representative.
 9. After considering all of the above, including the petition, arguments, and discussions of parties at the hearing, I grant the petition and hereby appoint Cyndy Reed Stewart as the personal representative of the Estate of Carrie Theodocia K. Reed with full power as allowed by law. Per the will, paragraph 7 waives the requirement of bond, and accordingly this Court does not require bond to be posted by Cyndy Reed Stewart.
 10. The decision of this Court may be appealed within ten (10) days of the date of the Order.

AND SO IT IS ORDERED!


Sarah G. Noel
Probate Court Judge
Bamberg County

_____, SC

_____, 2017

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	Appeal from the Probate Court
COUNTY OF BAMBERG	)	for Bamberg County
	)	
	)	Case No.: 2017-CP-05-00024
IN THE MATTER OF: THE ESTATE	)	
OF THEODOCIA K. REED	)	
	)	
Jacquelyn Gladden,	)	
	)	ORDER
Appellant,	)	
	)	
v.	)	
	)	
Cyndy R. Stewart,	)	
	)	
Respondent.	)	
	)	

This matter came before the Court on August 28, 2017, in Bamberg County, upon an appeal from the Bamberg County Probate Court. Jacquelyn Gladden (Appellant) appeals the findings of the Honorable Sarah G. Noel dated January 26, 2017, in the Probate Court for Bamberg County. Bakari Sellers, Esquire, appeared on behalf of the Appellant, Jacquelyn Gladden. Richard B. Ness, Esquire, and R. Aaron Ness, Esquire, appeared on behalf of the Respondent, Cyndy Stewart. For the reasons stated herein, the appeal is denied and the Order of January 26, 2017, is affirmed.

FACTS

This matter is before the Circuit Court for an appeal of a case that has been pending in Bamberg County Probate Court for the Estate of Theodocia K. Reed since 2016. Theodocia K. Reed passed away on August 15, 2015, at the age of 90. The Last Will and Testament of Theodocia K. Reed, dated June 10, 2008, appointed all three daughters, Patricia Reed, Jacquelyn

Gladden, and Cyndy Stewart, to serve as joint personal representatives.¹ On September 13, 2016, Council for the Respondent sent a letter to Ms. Jacquelyn Gladden and her sister requesting that they renounce their right under the Last Will and Testament to serve as joint personal representatives. The Honorable Sarah G. Noel sent a letter to Jacquelyn Gladden and Patricia Reed, asking if they were in agreement to renounce their right to serve as Personal Representative. Jacquelyn would not consent, and declined to renounce her right to serve as joint Personal Representatives.

Richard B. Ness, attorney for the Respondent, sent official mail enclosing a Renunciation which renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Mrs. Gladden failed to claim this official mail sent to her known address. On November 8, 2017, a petition was filed with the Probate Court of Bamberg County to have Cyndy Stewart appointed as sole Personal Representative for the Estate of Theodocia K. Reed. Patricia Reed failed to answer or otherwise respond, evidenced by the return receipt of the Summons and Petition, to Cyndy Stewart's petition to be appointed as sole Personal Representative. Furthermore, Jacquelyn Gladden never formally petitioned the Probate Court to be appointed personal representative.

DISCUSSION

Appeals taken from the probate court are governed by the provisions of the Probate Code. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993). Pursuant to S.C. Code Ann. § 62-1-308(a) (Supp. 1994), an order or decree of the probate court shall be appealed to the circuit court. The circuit court must hear and determine the appeal "according to the rules of law." S.C. Code Ann. § 62-1-308(d) (1987). The phrase "according to the rules of law" means according to the

¹ The Probate Court admitted a copy of the will into probate, however, the original will has not been located to date. No party disagrees or objects to a copy of the will being an accurate document.

rules governing appeals. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993).

The standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993); *see also* Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below. Id.

"When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them." Byrd v. McDonald, 417 S.C. 474, 478, 790 S.E.2d 200 (S.C. Ct. App. 2016), *citing* Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (S.C. 2005).

If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). A request to remove a personal representative seeks affirmative relief that lies in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993).

Under S.C. Code § 62-3-203(d)(3), the appointment of the personal representative who has equal or lower priority is within the discretion of the Probate Court, in formal proceedings. S.C. Code § 62-3-203(e)(2), explains that "[n]o person is qualified to serve as a personal representative who is... a person whom the Court finds unsuitable in formal proceedings." The

Bamberg County Probate Court has the discretion to find that a person is not qualified to serve as a personal representative. *see* S.C. Code § 62-3-203(e)(2).

"[T]he Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified for the position, and among other things the court calls attention to the fact that the granting of letters of administration is not automatic...." Parkman v. Hanna, 311 S.C. 20, 21, 426 S.E.2d 743 at 744 (S.C. 1992), *citing* In re McClam's Estate, 245 S.C. 315, 319, 140 S.E.2d 478 at 478 (1965) (omitting italics).

Probate Court Judge Noel found Jacquelyn Gladden unsuitable to act as personal representative for a number of reasons. First, Judge Noel found that Jacquelyn Gladden acted irresponsibly by failing to claim Richard B. Ness', attorney for the Respondent, official mail, which enclosed a Renunciation to renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Secondly, Judge Noel found Jacquelyn Gladden unsuitable by her failing to Answer Cyndy Stewart's petition to be appointed as sole Personal Representative. Finally, Jacquelyn Gladden was found unsuitable when she failed to file her own petition requesting to be appointed as the personal representative or counter request her own appointment. Regardless of whether the underlying cause of action is legal or equitable, there is ample evidence to support Probate Court Judge Noel's final Order.

CONCLUSION

The Court has considered the arguments of all attorneys, the submitted memoranda of law, the case law and statutes of South Carolina, and the prior Order of the Bamberg County

Probate Court. The Court finds that the Order of the Probate Court is AFFIRMED. AND IT IS
SO ORDERED!

The Honorable Perry M. Buckner, III
Presiding Circuit Court Judge

_____, South Carolina

_____, 2017



Bamberg Common Pleas

Case Caption: Jacquelyn Gladden VS Cyndy R Stewart

Case Number: 2017CP0500024

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2017-09-30 10:37:13 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
Plaintiff,	)	
	)	
vs.	)	CONSENT ORDER
	)	
Cyndy Reed Stewart,	)	
Defendant.	)	
_____	)	

This matter comes before the Court upon the consent of the parties to resolve Defendant's Motion to Strike filed on September 6, 2018. Therein, Defendant, pursuant to SCRCF, Rule 12(f), sought to strike from the Complaint all references to attorney's fees and *pendente lite* relief.

The parties agree that all references in the Complaint to attorney's fees and *pendente lite* relief shall be deemed stricken in this action, and no award for attorney's fees or *pendente lite* relief shall be granted in this action. The Court concurs, and so direct. This is without prejudice as to any causes of action or relief that may arise hereafter.

IT IS THEREFORE ORDERED, all references in the Complaint to attorney's fees and *pendente lite* relief shall be deemed stricken in this action, and no award for attorney's fees or *pendente lite* relief shall be granted in this action.

AND IT IS SO ORDERED!

_____, 2018
_____, SC

Edgar W. Dickson
Circuit Court Judge

WE SO CONSENT:

s/ R. Aaron Ness
R. Aaron Ness, #102331
Richard B. Ness, #4191
Attorneys for the Defendant

//s// Margaret A. Collins
Margaret A. Collins, #13290
Attorney for the Plaintiffs



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Consent Order

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2018-10-31 11:24:33 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	Case No.: 2018-CP-38-00874
Jacquelyn Gladden and Patricia Reed,	)	
	)	
PLAINTIFFS,	)	
	)	ORDER TO BE RELIEVED AS COUNSEL
v.	)	
	)	
Cyndy Reed Stewart,	)	
	)	
DEFENDANT.	)	
_____	)	

WHEREAS, R. Aaron Ness, Esq. and Richard B. Ness, Esq., counsel for the defendant, made a motion before this Court respectfully requesting to be relieved as counsel in the above referenced action due to the client failing to substantially fulfill an obligation owed to the lawyer. This motion was based on Rule 1.16(b)(5) of the Rules of Professional Conduct as enacted by the South Carolina Supreme Court;

WHEREAS, a hearing was held on Friday, February 14, 2019, at 3:00PM, at the Orangeburg County Courthouse, with the defendant, Cyndy Reed Stewart, and her attorneys, R. Aaron Ness and Richard B. Ness, being present. Counsel for the Plaintiffs consented to the withdrawal of defense counsel prior to this motion being heard;

WHEREAS, through questioning from the bench, the defendant, Cyndy Reed Stewart, understood that her attorneys were asking this Court to allow them to withdraw from the case and would not be representing her in this case moving forward;

NOW, THEREFORE, for good cause having been shown by defense counsel, IT IS, HEREBY ORDERED, that R. Aaron Ness and Richard B. Ness, and the law firm of Ness & Jett, LLC, be relieved from further duties as counsel for the defendant, in the above-captioned matter;

IT IS ALSO ORDERED that the defendant, Cyndy Reed Stewart, shall have 60 days from the date of this Order to find new counsel;

AND IT IS SO ORDERED!

Dated this _____ day of _____, 2019.

_____, SC

Edgard W. Dickson
Circuit Court Judge
First Judicial Circuit



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Relieve Counsel

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-02-25 15:17:19 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE No. 2018-CP-38-00874
	)	
Jacquelyn Gladden, et al,	)	
	)	
Plaintiffs,	)	ORDER
vs.	)	
	)	
Cyndy Reed Stewart	)	
	)	
Defendant.	)	
_____	)	

This matter came before this Court on November 4, 2019 by way of hearings for Plaintiff's and Defendant's multiple motions. This Order serves to address all motions made and heard on November 4, 2019.

RELEVANT FACTS

Unless otherwise admitted or stipulated by all parties, the following facts are merely alleged: Theodocia Reed ("Decedent") is the mother of Jacquelyn Gladden, Patricia Reed ("Plaintiffs"), and Cyndy Reed Stewart ("Defendant"), (collectively "siblings"). During the last years of her life, there was some back and forth between the siblings about the Decedent's capacity and estate plan. As a result, a Conservatorship/Guardianship action, as well as a resulting Order Regarding Hearing ("2009 Order") under docket numbers 2009-GC-40-00009 and 2009-GC-00010 was commenced. The Decedent was found to be competent, and the siblings were prohibited from disposing any of the Decedent's real property, and specifically precluded from selling property with a Power of Attorney. Subsequently, an Order Regarding Rule to Show Cause Hearing ("2010 Order") found that the Decedent was then found to have diminished capacity and to meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1) (1976) as amended.

The Defendant, while caring for the Decedent was named as purported Power of Attorney (“2014 POA”) on June 26, 2014 – four years after Decedent was judicially determined to be incompetent. Power of Attorney was executed in Tallahassee, Florida and attempted to name the Defendant sole POA, rather than having that power shared between the siblings as the previous Power of Attorney, signed in January 2010. This Tallahassee Power of Attorney was recorded in Bamberg County, South Carolina on August 4, 2015.

During her last illness, the Decedent was a patient at Georgetown Memorial Hospital and Tidelands Community Hospice from July 28, 2015 through August 7, 2015, eventually passing away on August 15, 2015. A probate is pending in Bamberg County, South Carolina, 2015-ES-05-00091 and Defendant is also currently the Personal Representative.

In addition to certain Bamberg property, Decedent also owned real estate in Orangeburg County, which is the subject of this action. This Orangeburg property was the subject of a Quitclaim deed purporting to transfer the property to the Defendant and was dated on August 4, 2015. This Quitclaim Deed was purportedly executed by Decedent herself in Georgia. However, this is the same time period when the Decedent was in hospice in Georgetown County, South Carolina, with one of the Plaintiffs assisting with her care. The signature on the Quitclaim Deed reads “Theodocia K. Reed, Grantor” despite the fact she was in hospital and hospice care over 100 miles away. In the Defendant’s Answer and Counterclaim, as well as in her discovery responses, the Defendant admits to signing the Deed. She claimed she signed it using the power granted in the 2014 Power of Attorney.

At the hearing on November 4, 2019, Defendant conceded and agreed to reform the deed by putting the property in the names of all three sisters (the siblings) with equal shares. The Plaintiffs counter-moved for a judgment on the pleadings, or in the alternative, for summary judgment.

STANDARD OF REVIEW

The standard of review for a Rule 12(b)(6) Motion to Dismiss provides that the Court look at the complaint in a light most favorable to the nonmovant to determine if the “facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Williams v. Condon*, 347 S.C. 227, 233 (Ct. App. 2001). If the Court, resolving every possible doubt in favor of the plaintiff, finds that there is nothing to support a cause of action the movant should succeed in its motion. *Toussaint v. Ham*, 292 S.C. 415, 416 (1987). This does not mean that an action should be dismissed because the Court has doubts as to whether the plaintiff will prevail. *Id.*

Similarly, when considering a motion for judgment on the pleadings, the court will view “[a]ll properly pleaded factual allegations [as] deemed admitted. . . .” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122 (Ct. App. 2006). To succeed on a motion for summary judgment, the movant needs to show that there is no genuine issue as to any material facts and that they (the movant) are entitled to a judgment as a matter of law. Whereas a judgment on the pleadings is limited to the pleadings, a motion for summary judgment can at depositions, answers to interrogatories, admission, and affidavits. SCRCP 56.

CONCLUSION

Due to the Defendant conceding during the hearing and agreeing to the reformation of the deed by putting the deed in the name of all three sisters (the siblings) with equal shares, Summary Judgment is GRANTED on behalf of the Plaintiff. All other motions heard on November 4, 2019 are DENIED.

AND IT IS SO ORDERED!

Judge Diane S. Goodstein
First Judicial Circuit

January _____, 2020
St. George, South Carolina



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Other

This Order is Hereby GRANTED!

S/ Diane S. Goodstein (2112)

Electronically signed on 2020-01-10 11:42:40 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE No. 2018-CP-38-00874
	)	
Jacquelyn Gladden, et al,	)	
	)	
Plaintiffs,	)	ORDER GRANTING MOTION
vs.	)	FOR RECONSIDERATION
	)	
Cyndy Reed Stewart	)	
	)	
Defendant.	)	
_____	)	

The parties appeared at a Motions hearing on November 4, 2019. Of the six Motions heard, Motion for Summary Judgement was granted on behalf of the Plaintiffs as Defendant conceded to reformation of the Deed. The other Motions were denied pursuant to this concession.

This Court's Order dated January 10, 2020 granted the Summary Judgment on behalf of Plaintiff as a result of this concession. However, the original Complaint contained eleven causes of action, which included, *inter alia* forgery, fraud and misrepresentation, breach of fiduciary duty, breach of trust, self-dealing, intentional interference with expected inheritance, lack of good faith and fair dealing, as well as Quiet Title and Deed reformation. While the Summary Judgment resolved the deed reformation/quiet title issue, the remaining causes of action were not addressed.

Therefore, Plaintiff's Motion for Reconsider is GRANTED consistent with the statements herein.

AND IT IS SO ORDERED!

January _____, 2020

Judge Diane S. Goodstein
First Judicial Circuit

St. George, South Carolina



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Other

This Order is Hereby GRANTED!

S/ Diane S. Goodstein (2112)

Electronically signed on 2020-01-29 16:15:43 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
Plaintiffs,	)	
	)	CONSENT ORDER
vs.	)	RELIEVING COUNSEL
	)	
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

This matter comes before the Court upon motion of counsel for the Defendant, by and with the consent of counsel for the Plaintiff as well as consent of the Defendant, who has advised the Court pursuant to email to the Court dated March 6, 2020, that, "I am not contesting the motion to Relieve Mr. Comer as counsel—as it is my decision to relieve Mr. Comer . . ."

NOW, THEREFORE, for good cause having been shown by defense counsel, IT IS HEREBY ORDERED, that Evert Comer, Jr., Esquire, be relieved from further duties as counsel for the Defendant, in the above-captioned matter.

IT IS ALSO ORDERED that no more continuances will be granted for lack of counsel and that should the Defendant wish to obtain counsel she should forthwith do the same.

AND IT IS SO ORDERED.

Dated this _____ day of _____, 2020.

_____ SC

MAITE D. MURPHY, CIRCUIT COURT JUDGE,
FIRST JUDICIAL CIRCUIT

WE SO CONSENT:

//s// ELIZABETH D. MOORE
Elizabeth D. Moore, Esquire, #103671
2241 Bush River Road
Columbia, SC 29210
(803) 708-7442 (Ph.); 803-753-9352 (Fax)
lizzy@pslawse.com

//s// EVERT COMER, JR.
Evert Comer, Jr., Esquire, #1347
PO Box 386
Denmark, SC 29042
(803) 793-3403 (Ph.); (803) 793-3550 (Fax)
ecomerjrattorney@aol.com

ATTORNEY FOR PLAINTIFFS

ATTORNEY FOR DEFENDANT



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Relieve Counsel

AND THIS ORDER IS RESPECTFULLY
DENIED.

s/Maite Murphy 2166

Electronically signed on 2020-04-27 12:44:07 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,) Case No.: 2018-CP-38-00874
)

Plaintiffs,)

vs.)

Cyndy Reed Stewart,)

Defendant.)

FINAL ORDER AND JUDGEMENT

Date of Hearing: **April 18-20, 2021**
Judge: **The Honorable Diane Shafer Goodstein**
Plaintiff's Counsel: **Elizabeth D. Moore**
Defendant's Counsel: **Robert Phillips**
Court Reporter: **Katherine A. Spires**

PROCEDURAL HISTORY

This matter came before me pursuant to the Plaintiffs filing a *Summons, Complaint*, and *Lis Pendens* on July 9, 2018. Defendant, initially represented by Aaron Ness, Esquire filed a *Motion to Strike, Motion to Dismiss*, and *Answer and Counterclaim* on September 6, 2018. A *Consent Order* was entered into and filed October 31, 2018, striking claims for attorney's fees, without prejudice to any actions that may arise after the Order. Defendant's counsel sought to be relieved, filing the appropriate motion on December 10, 2018, along with a *Motion for Protective Order* as discovery had been issued to the Defendant. Plaintiffs responded to the December motions in their *Return to Motion to be Relieved as Counsel and Motion for Protective Order* on December 26, 2018. An *Order to be Relieved as Counsel* was filed February 25, 2019, and Aaron Ness dismissed from the case after a hearing on February 14, 2019.

On January 7, 2019, Plaintiffs filed a *Notice of Motion and Motion to Deem Request*

for Admissions Admitted in addition to their already pending Motion to Compel. Plaintiffs filed a *Return to Motion to Dismiss and Notice of Motion and Motion on the Pleadings or in the Alternative Motion for Summary Judgment* on February 13, 2019. Thereafter on May 6, 2019, Plaintiffs filed a *Notice of Motion and Motion to Compel Discovery Responses*. Discovery had been issued to Defendant's previous counsel, Aaron Ness, on November 5, 2018. Also on May 6, 2019, Plaintiff's filed a *Memorandum in Opposition to Defendant's Motion to Dismiss and In Support of Plaintiff's Motion for Judgment on the Pleadings or in the alternative, Summary Judgment*. The parties were to next appear before the Court the week of July 8, 2019.

At the hearing, Defendant represented to the Court that she could not move forward without representation and was struggling to find representation. In an abundance of caution, the Court continued the matter in a Form 4 Order filed July 29, 2019. The Order also required the parties to schedule mediation. Plaintiffs filed a *Motion to be Exempt from ADR* with a proposed Order, and emailed the same to the Chief Administrative Judge, explaining that a conflict existed that could cause issues with mediation. While filed, the Motion did not make it on to the docket and no filing date is available. The *Order for Exemption from ADR Requirements* was filed August 5, 2019.

This trial was then scheduled on the trial roster to come before the Court the week of September 23, 2019. Prior to this trial, David Melnyk filed a *Notice of Appearance* on behalf of Defendant on August 2, 2019. However, Defendant appeared alone and indicated she was unrepresented. Plaintiffs filed a *Notice of Motion and Motion for Sanctions* on October 8, 2019. The trial was continued once more. The parties then were called for motions roster the week of November 4, 2019. Midnight November 4, 2019, Evert Comer, Jr. filed a *Notice of Appearance* on behalf of the Defendant. At the hearing, the Defendant attempted to have the matter continued, however the motions hearing went forward. Thereafter, the parties came up on the trial roster for

the week of November 18, 2019, however both parties had conflicts and agreed to a continuance via *Consent Order of Continuance* on November 15, 2019.

On January 3, 2020, Mr. Comer filed a *Notice of Motion and Motion to be Relieved as Counsel*. The Court issued and filed an *Order* on January 10, 2020, granting summary judgment and denying all other motions. Plaintiffs filed a *Notice of Motion and Motion to Reconsider, or in the alternative Seek Damages in Probate Court* on January 16, 2020. Plaintiffs' motion was granted, see *Order Granting Motion for Reconsideration* filed on January 29, 2020. The parties were again on the trial roster for the week of March 30, 2020, however, due to a trial that took priority pursuant to SCRAC 601, the Plaintiffs filed a *Notice of Motion and Motion for Continuance* on March 2, 2020. On April 28, 2020, Mr. Comer's request to be relieved as counsel was denied by the Court.

On February 16, 2021, Plaintiffs filed a *Notice of Motion and Motion for Continuance and Leave to Contact a Represented Party* as the parties were once again on the trial roster for the week of February 22, 2021. The case was rescheduled and placed on the trial roster for the week of April 18, 2021. On April 15, 2021, Robert Phillip, Defendant's fourth attorney brought into this litigation and third attorney of record, filed a *Notice of Appearance*. Thereafter, Defendant filed a *Motion to Compel Mediation* and a *Motion to Dismiss for Lack of Jurisdiction* on April 18, 2021. Pursuant to *Order Relieving Counsel* filed April 22, 2021, both Evert Comer, Jr. and David Melnyk were relieved as counsel.

FACTUAL BACKGROUND

The parties to this action are sisters. The conflict goes back to 2009. The Decedent whose property is at issue was their mother. On June 10, 2008, Decedent executed a Last Will and Testament dividing all her property in equal portions among the sisters. The Will specifically

contemplated that should any of the sisters receive an advance or anything outside of probate, that amount, or value would be offset.¹ Similarly, on June 23, 2008, a letter indicating that the sisters were all granted Power of Attorneys and informing them how they should sign using that power, was issued from the drafting attorney.² The Decedent intended the sisters to share equally in both authority and inheritance based on the documents from that time period.

In approximately 2009, the Decedent was diagnosed with Parkinson's and dementia. At that time, Ms. Gladden and Ms. Reed, the Plaintiffs, brought conservatorship and guardianship actions in the Richland County Probate Court. Ms. Stewart, the Defendant, in the instant action opposed these actions along with the Decedent. An Order was filed December 29, 2009, under action numbers 2009-GC-40-00009 and 2009-GC-40-00010 holding that the Decedent did not meet the definition of an incapacitated person and further barred any of the sisters from selling or otherwise disposing of any of the Decedent's real property.³ Thereafter, Powers of Attorneys were issued. Specifically, Defendant was granted a limited power of attorney that was intended to be used in Florida, as that is where the Defendant was living.⁴ Each sister had a different Power of Attorney, with Ms. Reed having power over the Bamberg property owned by the Decedent, and with Ms. Gladden having a springing provision for incapacity.⁵

Approximately a year after the Richland County Probate Order and several months after the new Power of Attorneys were drafted, the parties returned to the Richland County Court for a contempt action. At this time, it is Ms. Reed's and Ms. Gladden's recollection that all the sisters agreed that their mother was no longer able to care for herself or deal with her affairs. At this time,

¹ Plaintiff's Exhibit 1

² Plaintiff's Exhibit 2

³ Plaintiff's Exhibit 3

⁴ Plaintiff's Exhibit 4

⁵ Plaintiff's Exhibit 14

the Richland County Probate Court found that the Decedent met the definition of an incapacitated person. This order was filed December 2010.⁶ Following the Decedent went into the care of the Defendant and resided in Florida. Approximately four (4) years later the Defendant was responsible for the Decedent executing a new Power of Attorney granting the Defendant sole power and authority over all of Decedent's assets and property.⁷ This document was prepared by Defendant and signed June 26, 2014. However, it was not recorded until August 4, 2015. Neither Ms. Reed nor Ms. Gladden were aware of this Power of Attorney until after the Decedent's death.

Eight (8) days after this undisclosed Power of Attorney was recorded, a Quit Claim Deed ("Deed") conveying Decedent's Orangeburg Property to the Defendant was also recorded. The Deed is dated July 4, 20____. The Deed was signed August 4, 2015 when the Decedent was in the hospital/hospice care due to the end-of-life illness that caused her death.⁸ Ms. Gladden and Ms. Reed were present with the Decedent in those final days and aver that the Decedent had no capacity to sign any legal document. Decedent was in the hospital from July 28, 2015, through August 7, 2015. Ms. Reed and Ms. Gladden tried to make her comfortable at home but ended up resuscitating her and having the Decedent taken to hospice after a few hours. Decedent passed away August 15, 2015.

After Decedent's death, Ms. Gladden and Ms. Reed became aware of the Power of Attorney and the Quitclaim Deed when the Defendant filed an inventory in the Probate and the Orangeburg Property was not listed.⁹ Plaintiffs then filed this action. At trial the Defendant admitted to signing the Deed for the Decedent, without designating her signature as "agent."

⁶ Plaintiff's Exhibit 5

⁷ Plaintiff's Exhibit 6

⁸ Plaintiff's Exhibit 9

⁹ Plaintiff's Exhibit 10

TRIAL AND TESTIMONY

At the call of the case, present in the courtroom were Plaintiffs, Jacquelyn Gladden and Patricia Reed, with their counsels, Elizabeth D. Moore and Margaret A. Collins. Also, present was counsel for the Defendant, Robert Phillips. Defendant, Cyndy Reed Stewart was not present. As a preliminary matter, the Court heard the Defendant's *Motion to Compel Mediation* and *Motion to Dismiss for Lack of Jurisdiction*. These Motions were denied.

The Court then inquired of the parties regarding exhibits and how long each side anticipated they needed to present their case. Plaintiffs raised the issue that they had received no discovery from Defendant, and therefore, would be objecting to any and all documents proffered, beyond the discovery that they themselves had provided to the Defendant. Defendant's counsel argued that Defendant was protected from having to answer the discovery and therefore, Plaintiff's objections would be improper. The Court ruled that Defendant had no basis for failing to comply with discovery. The Court provided Defendant 24 additional hours in which to provide discovery to Plaintiffs.

Because the Defendant failed to appear in person for the trial the Court provided that she could appear telephonically or virtually. The issue of Defendants three (3) separate counsels was raised as well. Plaintiffs explained what their understanding of the situation was, stating that Mr. Melnyk filed an appearance but failed to appear. According to Mr. Melnyk this failure to appear was because of a stomachache. However, according to Defendant, Mr. did not appear because he did not represent her. Mr. Comer sought relief, but was denied. When Plaintiff's counsel informed Mr. Comer of this denial he asked Plaintiff's counsel how the court could do that.

After these preliminary matters were discussed, including approval for Defendant to appear telephonically and virtually, the parties were dismissed for the day to resume 9:30 am the following

day.

Testimony was taken for the next two (2) days. Both Plaintiffs testified. Pursuant to their testimony, it was established that a 2009 Court Order existed that restrained the sale or disposition of any of the Decedent's property, along with the fact that a year later, the Decedent met the definition of an incapacitated person. Ms. Reed and Ms. Gladden testified that the Defendant has supported and provided testimony at the 2010 hearing in which the Decedent was found to be incompetent.

Ms. Reed and Ms. Gladden testified regarding Decedent's declining health that continued to worsen with time. With regards to execution of the August 4, 2015 deed, Plaintiff, Ms. Gladden testified that her mother, the Decedent was dying and incapable of signing anything. There was an attempt to admit doctor's notes, however, there was an objection and that objection was sustained. Through testimony, Ms. Gladden indicated that she obtained the notes in order to activate her springing power of attorney and make sure that the Decedent's affairs were attended to during her final illness.

Ms. Gladden also testified to discovering the Florida Power of Attorney created by Defendant and signed in 2014. Finally, Ms. Gladden testified to discovering the Quit Claim Deed.

Both Ms. Reed and Ms. Gladden testified as to damages, using the current tax value of the property, and stating that if the Orangeburg property had been sold, instead of conveyed to Defendant. Plaintiff's counsel rested after the sisters' concerning damages.

Defendant proceeded with her case attempting to show that Ms. Gladden and Ms. Reed had taken money. During Defendant's case, Defendant testified extensively about how the Orangeburg property was a legacy property and she was trying to protect the legacy property. On cross examination, Defendant testified that she had not sought legal counsel for the drafting or

preparation of the Florida Power of Attorney or the Deed. Rather, she claimed to have executed the Florida Power of Attorney based on advice from a health care worker and claimed to have signed the Deed as instructed by a notary.

RULING

Based on the testimony of the parties, the evidence submitted, and the arguments of counsel, this Court finds that the Defendant willfully and wantonly forged the Deed to the Orangeburg property; breached her duty as Personal Representative; and attempted to defraud Ms. Gladden and Ms. Reed. The Court finds that the Defendant intentionally executed the Florida Power of Attorney to obfuscate the South Carolina Power of Attorney and intentionally transferred the property to herself for her own benefit.

Based on this willful and wanton conduct, the continual delays and prolonging of this litigation as well as considering statutory provisions of *S.C. Code Ann. 62-8-117(2)* and *16-13-10 et. seq.* the Court hereby sanctions the Defendant and awards Ms. Gladden and Ms. Reed attorney's fees and costs. The attorney for the Plaintiffs shall prepare an Affidavit of Attorney Fees provide the Affidavit of Attorney Fees to counsel for the Defendant and the matter scheduled by the Clerk of Court to allow for the cross examination by Defendant regarding the attorney fees request. Likewise, an Affidavit for Costs will be prepared and distributed and subject to examination.

AND IT IS SO ORDERED!

Honorable Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

_____, South Carolina



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Judgment and Form 4

It is so Ordered!

s/Diane S. Goodstein

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2018-CP-38-00874
	)	
Jacquelyn Gladden and Patricia Reed,	)	
	)	
Plaintiffs,	)	
	)	Order
v.	)	
	)	
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

This court entered a final order and judgment against the Defendant on September 7, 2021.

Subsequently, Defendant filed a motion to reconsider on September 17, 2021. Then Plaintiff filed a motion to dismiss Defendant's motion to reconsider on October 4, 2021. Defendant then filed a memorandum in opposition to the Plaintiff's motion to dismiss on October 7, 2021. Then Plaintiff filed a reply to Defendant's motion to reconsider on October 12, 2021. After reviewing all parties' filings, motions, and memoranda the court finds that it was not properly served pursuant to rule 59(g) SCRCP and even if this court was properly served, there are no new issues to address. Therefore, the motion to reconsider is DENIED.

IT IS SO ORDERED!

November_2021

Diane S. Goodstein
Presiding Judge, First Judicial Circuit



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

Case Number: 2018CP3800874

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,)

DOCKET NO. 2018-CP-38-_____

Plaintiffs,)

v.)

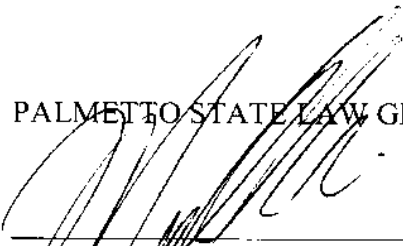
SUMMONS

Cyndy Reed Stewart,)

Defendant.)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and serve a copy of your Answer to said Complaint on the subscriber at her office at 2241 Bush River Road, Columbia, SC 29210, within thirty (30) days from the service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PALMETTO STATE LAW GROUP, LLC


Margaret A. Collins, SC Bar # 13290
2241 Bush River Road
Columbia, SC 29210
Phone (803) 708-7442
Fax (803) 753-9352
meg@pslawsc.com
Attorney for Plaintiffs

July 3, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,)
)
Plaintiffs,)
)
vs.)
)
Cyndy Reed Stewart,)
)
Defendant.)
_____)

Case No. 2018-CP-38-

COMPLAINT

FILED FOR RECORD
VICTORIA M. CLARK
JUL 11 - 9 10 2018
CLERK OF COURT

The Plaintiff's Jacquelyn Gladden and Patricia Reed, complaining of the Defendant,
Cyndy Reed Stewart, would allege as follows:

JURISDICTION AND VENUE

1. The Plaintiffs, Jacquelyn Gladden and Patricia Reed are residents of Columbia, South Carolina and Georgetown, South Carolina respectively.
2. Theodocia Reed ("Decedent") passed away on August 15, 2015 in Georgetown, South Carolina. This action is not being brought under the probate action currently pending, as it relates to a purported deed signed and filed by Decedent immediately prior to her death.
3. Prior to her death, Decedent allegedly transferred property in Orangeburg, South Carolina to Defendant, Cyndy Reed Stewart while Defendant, Cyndy Reed was a fiduciary to Decedent, to wit: her Attorney-in-Fact under a document purporting to be a Power of Attorney by Decedent in favor of Defendant.
4. Upon information and belief, Defendant is a resident of Tallahassee, Florida. However, the situs of the real estate in question is Orangeburg County, South Carolina. As such, this Court has subject matter and *in personam* jurisdiction.

5. The Plaintiffs have commenced this action on their own behalf, for the striking or reformation of the Deed that purportedly conveyed 126 Dickson Street, Orangeburg, SC 29115 ("Property"), more particularly described as:

All that certain piece, parcel or lot, with improvements thereon, situated, lying and being in the City of Orangeburg, County of Orangeburg, State of South Carolina, fronting and measuring on Dickson Street sixty-five (65) feet and measuring on the rear line sixty-five (65) feet and on the respective side lines one hundred and sixty-five (165) feet and bounded formerly or now as follows; On the North by lot of H.L. Smoak; On the East by Dickson Street; On the South by lot of Sinclair Sweat; On the West by lot of Jennie Geddings.

Being the same property conveyed to Alfair Kennedy Brown by George Kennedy, et al, by Deeds recorded in the Office of the Clerk of Court for Orangeburg County in Deed Book 189, at Page 479, Deed Book 191, at Page 4 and Deed Book 191, at Page 50.

TMS # 0173-15-009.0001

6. The Plaintiffs have filed a *Lis Pendens* concurrently with this Complaint, in connection to the Property with this Court.
7. This Court has proper jurisdiction over the subject matter and the parties of this action, and venue is property in Orangeburg County, South Carolina.

STATEMENT OF FACTS

8. The Decedent was the mother of Plaintiffs and Defendant.
9. On or around July 4, presumably of 2015 as there is no year stated on the face of the document, a Quitclaim Deed ("Deed") was drafted conveying the Property from Decedent to Defendant. **Exhibit A.**
10. The signatures for the Deed were allegedly all given and notarized on August 4, 2015 in Richmond County, Georgia.
11. On or around July 28, 2015, Decedent was admitted to Georgetown Hospital in Georgetown, South Carolina, where she remained until she was discharged to Hospice Care on August 7,

MAC

2015. As such, Plaintiffs would aver that the purported deed was forged or otherwise fraudulent in its execution, as Decedent was not, and could not, have signed the deed in Georgia while in-patient in a hospital in Georgetown County, South Carolina.
12. Decedent was suffering from end stage Parkinson's Disease and associated dementia and, as of August 4, 2015, and for a reasonable period prior to that, was declared not competent to handle her affairs by Dr. James Principe at Tidelands Health.
13. The Deed was prepared by Defendant who was serving as the Decedent's Power of Attorney at the time and was for no or nominal consideration.
14. The Deed was subsequently recorded on August 12, 2015 in the Orangeburg County Register of Deeds in Deed Book 01634 at Pages 0323 – 0326.
15. The Plaintiff's became aware of this Deed on or around April 10, 2018 and now bring this action.

FOR A FIRST CAUSE OF ACTION
(Forgery /Fraud and Misrepresentation)

16. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
17. The Plaintiffs are informed and believe that the Deed, specifically the Decedent's signature, was forged.
18. The Deed was allegedly signed by Decedent on August 4, 2015 in Richmond County, Georgia.
19. Decedent was admitted to Georgetown Hospital in Georgetown, South Carolina on July 28, 2015, and was discharged to Tidelands Hospice Community on August 7, 2015.
20. The distance between Richmond County, GA and Georgetown Hospital is approximately 219.6 miles.



21. The Plaintiffs are informed and believe that there is no possible way for the Decedent's signature to have actually appeared on the Deed, or that the notary was fraudulent or improper.
22. The Plaintiffs are informed and believe that the Defendant perpetuated a fraud.
23. The Plaintiffs are informed and believe that the Defendant falsely represented that the Decedent signed the Deed, so that the witnesses to the Deed relied on the false representation, which resulted in the execution and recording of the Deed.
24. As a direct and proximate result of Defendant's forgery and fraud, the Plaintiffs have suffered injury.
25. The Plaintiffs are informed and believed that due to the Defendant's forgery and fraud they are entitled to an Order of the Court striking the Deed.
26. In the alternative, the Plaintiffs are informed and believe they are entitled to an Order of this Court reforming the Deed so that they are also named owners to the Property.

FOR A SECOND CAUSE OF ACTION
(Lack of Capacity/Insanity/Infirmary of the Mind)

27. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
28. In the alternative, the Plaintiffs are informed and believe that Decedent lacked the capacity at the time of the purported execution of the Deed as she was suffering from late stage Parkinson's with associated dementia and sepsis at the time of the Deed execution.
29. The Decedent was previously found to be incapacitated in an *Order Regarding Rule to Show Case Hearing* ("Order"), signed December 30, 2010 under case numbers 2009-GC-40-00009 and 2009-GC-40-00010 in the Richland County Probate Court. **Exhibit B.**

30. As stated in the Order, "All three daughters agreed that Mrs. Reed's capacity has diminished...and that at present they believe she is incapacitated."
31. The Richland County Probate Court did a brief examination of the Decedent and found, "that Theodocia Reed appears to currently meet the definition of an incapacitated person."
32. Due to insanity or infirmity of the mind, Decedent could not have entered into any conveyance of property with the requisite sound mind or mental capacity necessary to transfer property by way of a deed.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty/ Breach of Trust/Self-Dealing)

33. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
34. The Plaintiffs aver that the Defendant was placed in such a position of trust and confidence with the Decedent as her Power of Attorney and that there existed a fiduciary relationship between the parties where the Defendant owed the Decedent a fiduciary duty.
35. At the time of the Deed signed, Decedent was in a hospital over 200 miles away.
36. The Deed conveyed Property that the Defendant already had a 1/3 interest in pursuant to Decedent's will.
37. The Plaintiffs are informed and believe that the Defendant took advantage of Decedent's Power of Attorney to achieve full ownership of the property.
38. The Plaintiff's further aver that an *Order Regarding Hearing* ("Hearing Order") filed December 29, 2009, under case numbers 2009-GC-40-00009 and 2009-GC-40-00010 limiting the powers of the Durable Power of Attorney to sell or otherwise dispose of real property.

39. The Plaintiffs are informed and believe that the Property is now standing empty, while the Plaintiffs continue to insure it.
40. The Plaintiffs are informed and believed that the empty property is decreasing in value and that the Defendant is contributing to the waste of the Property by allowing it to stand empty without any care taker.
41. The Plaintiffs are informed and believe that the Defendant is breaching her duty of trust by allowing waste of the Property to occur.
42. The Plaintiffs aver that the Defendant breached her fiduciary duty, acted in bad faith, and took advantage of Decedent's weakened state to benefit herself in violation of the trust and confidence the Decedent placed in her.

FOR A FOURTH CAUSE OF ACTION
(Duress/Undue Influence)

43. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
44. As stated previously, the Defendant held Decedent's Power of Attorney, thereby placing her in a position of trust and confidence for Decedent.
45. The Plaintiffs are informed and believe that the purported Deed was procured by the Defendant using duress and undue influence.
46. The Defendant undertook these actions when she knew or should have known she was in a weakened physical and mental state, due her end-stage Parkinson's.

FOR A FIFTH CAUSE OF ACTION
(Lack of Consideration)

47. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.



48. As a fiduciary, Defendant has the burden to establish that the consideration and transaction was fair, reasonable and equitable to Decedent.

49. Upon information and belief, Plaintiffs would aver that the transfer was not supported by any consideration, or in the alternative, was for inadequate consideration under the facts and circumstances.

FOR A SIXTH CAUSE OF ACTION
(Unconscionability)

50. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.

51. Under the facts and circumstances herein, the enforcement of the purported Deed would be unconscionable.

FOR A SEVENTH CAUSE OF ACTION
(Intentional Interference with Expected Inheritance)

52. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.

53. The Property the questionable Deed conveyed was disposed of in Decedent's Will.

54. The Will provided that the Plaintiffs and the Defendant would each get an equal 1/3 interest in the property at Decedent's death.

55. The Plaintiffs are informed and believe that the Defendant's actions indicated herein constitute intentional interference with the Plaintiff's expected inheritance of 2/3 of the real property in question.

56. The Plaintiffs would aver that the Property rightfully belongs to the Decedent's Estate and/or the parties equally.

57. The Plaintiffs would aver that they are entitled to all actual, consequential, special and punitive damages found appropriate by the trier of fact, as well as attorney's fees and costs

associated with bringing this action. This would include, but not be limited to reasonable compensation for loss of possession of the real property, which Defendant has wrongfully taken, as well as increased cost for insurance, loss of potential rental income and other damages to be shown at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

58. The Plaintiffs reallege each and every allegation contained herein as if fully repeated herein verbatim.
59. As a result of her actions, the Defendant has been unjustly enriched.
60. Specifically, the Defendant now owns the Property outright as a result of forgery, fraud, breach of fiduciary duty, and generally taking advantage of the Decedent's weakened state and Power of Attorney.
61. The Plaintiffs aver that they are entitled to all actual, consequential, special and punitive damages a found appropriate by the trier of fact, as well as attorney's fees and costs associated with bringing this action.

FOR A NINTH CAUSE OF ACTION
(Lack of Good Faith and Fair Dealing)

62. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
63. The Plaintiffs would aver that Defendant had a duty of good faith and fair dealing in her business interactions with Decedent.
64. The Plaintiffs are informed and believe that the Defendant violated the doctrines of good faith and fair dealing with regard to the purported Deed. Specifically, Defendant knew or should have known the following:

- a. The Decedent was physically and mentally unwell and unable to handle these business matters in her weakened state;
- b. The Defendant secreted the Decedents Power of Attorney for the purposes of effectuating her plan to Deed the would be shared property to herself solely; and
- c. There was no compensation for the property purportedly conveyed which would make this a fair purchase rather than an avoidance of the Will.

FOR A TENTH CAUSE OF ACTION
(Quantum Meruit)

65. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
66. The Plaintiffs would aver that the Defendant has benefited from obtaining the Property.
67. The Plaintiffs are informed and believes that the Defendant has had use of Decedents real property without payment to Decedent or Decedent's estate.
68. The Plaintiffs are informed and believes that the Defendant conveyed the Property to herself in order to get around the Plaintiffs respective interests in the property.
69. As such, the Plaintiffs aver that retention of the Property by the Defendant would be unjust without the Defendant having to repay the Decedents estate or, in the alternative, the Plaintiffs accordingly.

FOR A ELEVENTH CAUSE OF ACTION
(Quiet Title/Reformation of Deed)

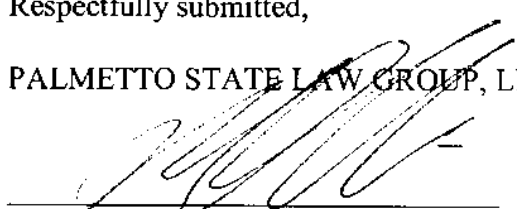
70. The Plaintiffs reallege each and every allegation contained above as if fully repeated herein verbatim.
71. The Plaintiffs would aver they are each entitled to quiet title for 1/3 interest in the Property through the Probate Court, and in accordance with Decedent's will, as well as attorney's fees and costs associated with bringing this action, as well as cancellation of the deed.

WHEREFORE, based upon the foregoing reasons, the Plaintiffs request an Order of this Court granting the following *pendente lite* and permanent relief:

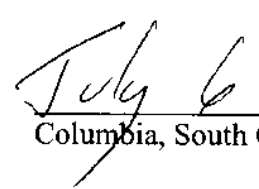
- A. Cancelling the Deed from Decedent to Defendant relating to the subject property herein;
- B. Requiring the real property to be added to the Estate of Descendent, wherein the Plaintiffs and Defendant should receive equal 1/3 interest in the property, in Fee Simple, and Tenants in Common, for the Property at 126 Dick Orangeburg, SC 29115;
- C. Granting Plaintiffs an award of all incidental, consequential, punitive and special damages as this Court deems appropriate;
- D. Granting Plaintiff's an award of costs, suit money, and attorney's fees pursuant to all applicable statutory provisions; and
- E. Granting such other and further relief as this Court deems appropriate.

Respectfully submitted,

PALMETTO STATE LAW GROUP, LLC



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F. 803.753.9352
meg@pslawsc.com
Attorney for Plaintiffs



, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
PLAINTIFFS,	)	
	)	ANSWER AND COUNTERCLAIM
v.	)	
	)	
Cyndy Reed Stewart,	)	
	)	
DEFENDANT.	)	
_____	)	

Defendant hereby reserves her right to be heard on a multiple motions, pursuant to SCRCP, Rule 12(b)(6), for dismissal for failure to state a claim for which relief can be granted; and, SCRCP, Rule 12(f), to have the pleadings stricken, both of which are filed simultaneously herewith. Defendant, Cyndy Reed Stewart, by and through her attorneys, hereby answers Plaintiffs' Complaint as follows and makes the following allegations by way of counterclaim:

FOR A FIRST DEFENSE

(Responding specifically to the allegations of the Complaint – Each Paragraph not hereafter admitted, denied, or explained is denied.)

1. Defendant admits Paragraph 1.
2. Defendant admits the first sentence of Paragraph 2. The second sentence of Paragraph 2 requires a legal conclusion, for which there is no answer required at this time.
3. Defendant admits Paragraph 3 to the extent that she was a fiduciary of decedent.

Defendant denies the remainder of Paragraph 3. Defendant qualifies this answer by asserting that she signed the deed while acting as decedent's agent under her durable power of attorney.
4. Defendant admits Paragraph 4.

5. Defendant denies Paragraph 5.
6. Defendant admits Paragraph 6 to the extent that a lis pendens was concurrently filed with this Complaint but denies that Plaintiff has a legal basis for filing said lis pendens.
7. Defendant admits Paragraph 7.
8. Defendant admits Paragraph 8.
9. Defendant admits Paragraph 9.
10. Defendant admits Paragraph 10.
11. Defendant is without sufficient information to admit or deny Paragraph 11; therefore, it is denied.
12. Defendant is without sufficient information to admit or deny Paragraph 12; therefore, it is denied.
13. Defendant admits Paragraph 13 only to the extent that Defendant prepared the deed and was serving as decedent's agent under her durable power of attorney. Defendant denies the remainder of Paragraph 13.
14. Defendant admits Paragraph 14.
15. Defendant is without sufficient information to admit or deny Paragraph 15; therefore, it is denied.
16. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 16.
17. Defendant denies Paragraph 17.
18. Defendant denies Paragraph 18 to the extent that decedent signed the deed on August 4, 2015, in Richmond County; and, Defendant qualifies this answer by asserting that she signed the deed while acting as decedent's agent under her durable power of attorney.

19. Defendant is without sufficient information to admit or deny Paragraph 19; therefore, it is denied.
20. Defendant is without sufficient information to admit or deny Paragraph 20; therefore, it is denied.
21. Defendant is without sufficient information to admit or deny Paragraph 21; therefore, it is denied.
22. Defendant denies Paragraph 22.
23. Defendant denies Paragraph 23.
24. Defendant is without sufficient information to admit or deny Paragraph 24; therefore, it is denied.
25. Defendant denies Paragraph 25 and requests the Court to deny the relief requested in this paragraph.
26. Defendant denies Paragraph 26 and requests the Court to deny the relief requested in this paragraph.
27. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 27.
28. Defendant is without sufficient information to admit or deny Paragraph 28; therefore, it is denied.
29. Defendant denies Paragraph 29.
30. Defendant admits Paragraph 30 to the extent this language is stated in a court order; however, Defendant qualifies this answer by asserting that she signed the deed while acting as decedent's agent under her durable power of attorney.

31. Defendant admits Paragraph 31 to the extent this language is stated in a court order; however, Defendant qualifies this answer by asserting that she signed the deed while acting as decedent's agent under her durable power of attorney.
32. Defendant denies Paragraph 32.
33. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 33.
34. Defendant admits Paragraph 34 only to the extent that she owed a fiduciary duty to decedent; however, it is denied that Defendant owed any fiduciary duty to Plaintiffs. Therefore, the remainder of this Paragraph is denied.
35. Defendant is without sufficient information to admit or deny Paragraph 35; therefore, it is denied.
36. Defendant denies Paragraph 36.
37. Defendant denies Paragraph 37.
38. Defendant is without sufficient information to admit or deny Paragraph 38; therefore, it is denied.
39. Defendant denies Paragraph 39.
40. Defendant denies Paragraph 40.
41. Defendant denies Paragraph 41.
42. Defendant denies Paragraph 42.
43. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 43.

44. Defendant admits Paragraph 44 only to the extent that she owed a fiduciary duty to decedent; however, it is denied that Defendant owed any fiduciary duty to Plaintiffs. Therefore, the remainder of this Paragraph is denied.
45. Defendant denies Paragraph 45.
46. Defendant denies Paragraph 46.
47. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 47.
48. Paragraph 48 calls for a legal conclusion of which no answer is required at this time.
49. Defendant denies Paragraph 49.
50. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 50.
51. Defendant denies Paragraph 51.
52. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 52.
53. Defendant denies Paragraph 53.
54. Defendant denies Paragraph 54.
55. Defendant denies Paragraph 55.
56. Defendant denies Paragraph 56.
57. Defendant denies Paragraph 57 and requests the Court to deny the relief requested in this paragraph.
58. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 58.
59. Defendant denies Paragraph 59.

60. Defendant denies Paragraph 60.
61. Defendant denies Paragraph 61 and requests the Court to deny the relief requested in this paragraph.
62. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 62.
63. Defendant admits Paragraph 63.
64. Defendant denies Paragraph 64 to the extent that she violated the doctrines of good faith and fair dealing. Defendant is without sufficient information to admit or deny sub-paragraph “a”; therefore, it is denied. Defendant denies sub-paragraphs “b” and “c.”
65. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 65.
66. Defendant denies Paragraph 66.
67. Defendant denies Paragraph 67.
68. Defendant denies Paragraph 68.
69. Defendant denies Paragraph 69 and requests the Court to deny the relief requested in this paragraph.
70. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim, in responding to Paragraph 70.
71. Defendant denies Paragraph 71 and requests the Court to deny the relief requested in this paragraph.
72. Defendant denies that Plaintiff is entitled to any of the relief sought in paragraphs “a” through “e” of the prayer for relief.

FOR A SECOND DEFENSE**(SCRCP, Rule 12(b)(6) – Failure to State Facts Sufficient to Constitute a Cause of Action)**

73. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim.
74. Defendant asserts that Plaintiffs' Complaint has failed to state facts sufficient to constitute a cause of action against Defendant, and the Plaintiff's Complaint should be dismissed, in whole or in part, against Defendant pursuant to SCRCP, Rule 12(b)(6).

FOR A THIRD DEFENSE**(SCRCP, Rule 12(f) – Motion to Strike)**

75. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim.
76. Defendant asserts that Plaintiffs' Complaint contains allegations and requests for relief that are insufficient and immaterial and should be stricken from the pleadings.

FOR A FOURTH DEFENSE**(Lack of Standing)**

77. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim.
78. Defendant asserts that Plaintiffs lack standing to bring this action, in whole or in part.

FOR A FIFTH DEFENSE**AND BY WAY OF COUNTERCLAIM**
(Quiet Title)

79. Defendant repeat(s) and reassert(s) the matters set forth above as fully as if repeated verbatim.
80. Defendant has legal title and is the sole owner in possession of the real property that is the subject of this action as evidenced by a Quitclaim Deed that is on record in Orangeburg County, South Carolina.

81. Defendant has an interest in the subject real property adverse to the interest(s) claimed by Plaintiffs in this action.
82. Defendant requests a Court declaration that she is the sole owner of the subject property and to quiet title in her name.
83. Defendant is also entitled to recover costs for this cause of action.

WHEREFORE, having fully responded to the Complaint, Defendant prays for an Order:

- a) Dismissing Plaintiffs' action, in whole or in part, with prejudice;
- b) Denying the relief requested by Plaintiffs in their Complaint;
- c) Denying *pendente lite* relief;
- d) Granting the relief requested by Defendant;
- e) Granting Defendant's Counterclaim that she is the sole owner of the land in question and to quiet title in her name and for her recovery of costs for this cause of action; and
- f) For other and such further relief as the Court may deem just and proper.

Respectfully submitted,

NESS & JETT, LLC

September 6, 2018

Bamberg, South Carolina

By: /s/ R. Aaron Ness
 R. Aaron Ness, #102331
 Richard B. Ness, #4191
 PO Box 909
 Bamberg, SC 29003
 T (803) 245-5178
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 ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
PLAINTIFFS,	)	
	)	NOTICE OF MOTION AND
v.	)	MOTION TO DISMISS
	)	SCRCP, RULE 12(b)(6)
Cyndy Reed Stewart,	)	
	)	
DEFENDANT.	)	
	)	

TO: MARGARET A. COLLINS, ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE, that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, the defendant, Cyndy Reed Stewart, will move this Court pursuant to SCRCP, Rule 12(b)(6), and any other legal authority hereafter cited, for an Order dismissing this action, with prejudice, on the following matters:

1. Plaintiffs' First Cause of Action alleging "Forgery/Fraud and Misrepresentation" as Plaintiffs lack standing to bring this cause of action;
2. Plaintiffs' Third Cause of Action alleging "Breach of Fiduciary Duty/Breach of Trust/Self-Dealing" as Plaintiffs lack standing to bring this cause of action;
3. Plaintiffs' Seventh Cause of Action alleging "Intentional Interference with Expected Inheritance" as this is not a recognized cause of action under South Carolina law;
4. Plaintiffs' Eighth Cause of Action alleging "Unjust Enrichment" as Plaintiffs have failed to plead sufficient facts to constitute a cause of action and lack standing to bring this cause of action;

5. Plaintiffs' Tenth Cause of Action alleging "Quantum Meruit" as Plaintiffs have failed to plead sufficient facts to constitute a cause of action and lack standing to bring this cause of action; and
6. Plaintiffs' Eleventh Cause of Action alleging "Quiet Title/Reformation of Deed" as Plaintiffs have failed to plead sufficient facts to constitute a cause of action and lack standing to bring this cause of action.

Respectfully submitted,

NESS & JETT, LLC

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ATTORNEYS FOR DEFENDANT

September 6, 2018

Bamberg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
	)	Case No.: 2018-CP-38-00874
Jacquelyn Gladden and Patricia Reed,	)	
	)	
PLAINTIFFS,	)	
	)	NOTICE OF MOTION AND
v.	)	MOTION TO STRIKE
	)	SCRPC, RULE 12(f)
Cyndy Reed Stewart,	)	
	)	
DEFENDANT.	)	
_____	)	

TO: MARGARET A. COLLINS, ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE, that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, the defendant, Cyndy Reed Stewart, will move this Court pursuant to SCRPC, Rule 12(f), for an Order striking from the Complaint the following matters:

1. All references in the Complaint to attorney's fees; and
2. All references in the Complaint to *pendente lite* relief.

In accordance with the SCRPC, Rule 11, the undersigned attorney hereby affirms that prior to filing this motion he has, in good faith, attempted to communicate with opposing counsel to resolve the matter contained in this motion, and, believes as a result of consultation with opposing counsel, the matter has been resolved, but an order has not yet been proposed, negotiated, and consented, due to time limitations for filing this motion. Out of an abundance of caution, Plaintiff does not want to waive any right to file this motion in the event the resolution of a consent order fails after the time limitation to file this motion has passed.

Respectfully submitted,

NESS & JETT, LLC

September 6, 2018

Bamberg, South Carolina

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ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Jacquelyn Gladden and Patricia Reed,)

PLAINTIFFS,)

v.)

Cyndy Reed Stewart,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

Case No.: 2018-CP-38-00874

**NOTICE OF MOTION AND
MOTION FOR PROTECTIVE ORDER**

YOU WILL PLEASE TAKE NOTICE, that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, the undersigned attorneys, R. Aaron Ness, Esq., and Richard B. Ness, Esq., will move, pursuant to SCRCF, Rule 26, 33, 34, and 35, before the presiding judge of the Orangeburg County Court of Common Pleas, for a protective order allowing Plaintiff, Cyndy Reed Stewart, additional time to serve her responses for the Interrogatories, Requests for Production, and Requests for Admission, sent by Plaintiff's counsel, that are now due on January 4, 2019.

Plaintiff's counsel, Margaret A. Collins, Esq., graciously extended the time for responses on discovery by an additional 30 days, as the responses were originally due on December 5, 2018. However, before and during the time these responses were due, R. Aaron Ness, Esq., and Richard B. Ness, Esq., had difficulty communicating with their client to satisfactorily answer this discovery, including the Requests for Admission; and, additionally, since that time, have filed a Motion to be Relieved as Counsel, for reasons under Rule 1.16(b)(5) of the Rules of Professional Conduct.

Because R. Aaron Ness, Esq. and Richard B. Ness, Esq. are asking the Court to relieve them as counsel for the defendant in a separate motion, and because the discovery, including the Requests for Admission are due on January 4, 2019, they are respectfully requesting the Court grant the defendant, Cyndy Reed Stewart, additional time to serve her responses.

R. Aaron Ness, Esq. and Richard B. Ness, Esq. do not want their expected relief as counsel in this case to adversely affect the defendant, Cyndy Reed Stewart, as her case proceeds in their absence, should their motion to be relieved as counsel be granted.

WHEREFORE, the undersigned assert they are entitled to a protective order granting the defendant, Cyndy Reed Stewart, additional time to serve her responses for the discovery, including the Requests for Admission, beyond the due date of January 4, 2019, as counsel is asking to be relieved in a separate motion.

This timely motion is based on the South Carolina Rules of Civil Procedure and case law of South Carolina.

Respectfully submitted,

NESS & JETT, LLC

December 10, 2018

Bamberg, South Carolina

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ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,)

Case No.: 2018-CP-38-00874

Plaintiffs,

vs.

**NOTICE OF MOTION AND MOTION TO
DEEM REQUEST FOR ADMISSIONS ADMITTED**

Cyndy Reed Stewart,

Defendant.

**TO: DEFENDANT, CYNDY REED STEWART, AND HER ATTORNEY, R. AARON
NESS, ESQUIRE:**

The undersigned attorney, will move before the Lexington Family Court, 1406
Amerlia Street, Orangeburg, South Carolina on _____ at _____ o'clock
_____.m., on the tenth day after service hereof or at such other time and place as the Court may
set, for an Order Deeming Requests for Admission served on Defendant admitted in the above-
captioned case. This Motion will be based on the Requests for Admissions served on Defendant
and on Rule 36 of the South Carolina Rules of Civil Procedure.

Plaintiffs served Requests for Admissions on Defendant on November 5, 2018, as
evidenced by **Exhibit A**. Pursuant to Plaintiff's counsel's request, copies of the discovery
requests, as well as the Requests for Admissions were sent in Word format as well on November
13, 2018 (**Exhibit B**). Further, a thirty (30) day extension was given on November 26, 2018.
Concurrently, Defendant's Counsel requested Plaintiff to consent to his withdrawal as counsel
and a stay of discovery. The undersigned agreed to the counsel being relieved. However, the
subject matter is real property that continues to waste and decline. Further, the request for stay

of discovery was made only after Plaintiff fully responded to Defendant's discovery request. Therefore, Plaintiff highly objects to the stay in discovery.

Two (2) weeks later, Defendant's counsel filed a Motion to Be Relieved and a Motion for Protective Order. Responses were due on January 4, 2019 and have not been received to date. Although empathetic with Defendant's counsel's plight, Defendant herself should not receive protection from this Court for failing to cooperate with the litigation process.

For these reasons, and pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff avers that the Requests for Admission should be deemed admitted, notwithstanding the Motion for Protective Order filed by Defendant on behalf of his client.

Respectfully submitted,

//s//Margaret A. Collins
Margaret A. Collins, Bar No. 13290
PALMETTO STATE LAW GROUP
2241 Bush River Rd.
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January 6, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
Plaintiff,	)	
	)	
vs.	)	RETURN TO MOTION TO DISMISS
	)	AND NOTICE OF MOTION AND
Cyndy Reed Stewart,	)	MOTION ON THE PLEADINGS
	)	OR IN ALTERNATIVE MOTION
Defendant.	)	FOR SUMMARY JUDGMENT
	)	

TO: DEFENDANT, CYNDY REED STEWART AND HER ATTORNEY, R. AARON NESS, ESQUIRE:

You will please take notice that within ten (10) days from the date of filing or as soon after as they may be heard, Plaintiffs, Jacquelyn Gladden and Patricia Reed, by and through their undersigned counsel Margaret A. Collins, Esquire, shall move before the Court for a Motion for Summary Judgment.

RETURN TO MOTION TO DISMISS

The Plaintiffs, responding to the Defendant's Motion to Dismiss would state the following:

1. In her Answer, the Defendant admitted to executing the Deed purporting to use her Power of Attorney. But, the deed signed by Defendant failed to denote on the Deed that it was being signed as an agent for the decedent by the Power of Attorney. As a direct result, the Defendant caused and used a false signature that claimed to be the Decedent's to be placed on the Deed, while the Decedent was hundreds of miles away in a hospital or in hospice. Further, as a direct result of the Defendant's actions, the Plaintiffs respective interests that would have now vested

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Page 1 of 4

in the subject property in the Probate has been lost. For these reasons, the Plaintiffs have standing to bring a Forgery/Fraud and Misrepresentation claim.

2. The Defendant admits to using her Power of Attorney to sign the Deed that divested the Plaintiffs of their interest in the property. The Defendant did this in direct contradiction to a Richland County Probate Court Order and despite the Decedent wishes as contained in the Decedent's Last Will and Testament. Further, the Defendant conveyed the Deed as Power of Attorney to herself, which Plaintiff avers is *de facto* self-dealing by a fiduciary. For these reasons, the Plaintiffs have standing to bring a Breach of Fiduciary Duty/Breach of Trust/Self-Dealing claim.
3. The Defendant's contention that Intentional Interference with Inheritance is not a valid cause of action is not accurate. The South Carolina Supreme Court has not had an opportunity to directly rule on this action. However, no South Carolina case has declined to adopt the cause of action. Further, in Wellin v. Wellin, 135 F. Supp. 3d 502 (2015), the South Carolina District Court upheld the allegations of intentional interference with inheritance, anticipating that the South Carolina state courts would adopt the cause of action. This means it has been recognized in federal district court as an anticipated viable action in South Carolina Courts.
4. As intentional interference with inheritance is a legitimate cause of action in South Carolina, or is an reasonable extension of South Carolina common law, the Plaintiffs aver that they had a valid expectation that they would inherit one-third (1/3) of the property interest; the Defendant intentionally interfered with that expectation by executing a fraudulent Deed and abusing her Power of Attorney; and but for the Defendant's conduct, the Plaintiffs would have realized their one-third (1/3) interest in the property at Decedent's death.

5. The Defendant admits to conveying the property to herself, using the Power of Attorney. As a result, the Plaintiffs had their one-third (1/3) interests divested from them without any compensation or consideration from the Defendant. For these reasons, the Plaintiffs have plead sufficient facts and have standing to bring an unjust enrichment claim.

MOTION ON THE PLEADINGS OR FOR SUMMARY JUDGMENT

6. In the Defendant's *Answer and Counterclaim* ("Answer"), the Defendant admits to signing the disputed Deed using the Power of Attorney. However, the Deed fails to denote that she is signing as Power of Attorney and therefore contains the forged signature of the Decedent, Theodocia Reed.
7. Further, pursuant to a previous Richland County Probate Court in the *Order Regarding Hearing* ("Order") the Defendant was expressly prohibited from selling any property owned by the Decedent. In a subsequent *Order Regarding Rule to Show Cause Hearing* ("Rule Order") the Decedent was found to be an incapacitated person by the Richland County Probate Court. The effect of these two Orders is that the Defendant has admitted to conveying property in direct violation of one of the Orders, and that the Decedent was in no way able to convey the property herself. This further provides that the Decedent's signature on the Deed was doing in knowing violation of a prior Order, as well as done after the Decedent had already been judicially determined to be incompetent. These acts are fraudulent at worst, and a gross misrepresentation at best.
8. As a result, the Defendant's admission to signing the Deed transferring the property establishes that she:
 - a. Violated the Order and sold property belonging to the Decedent;

- b. Abused her authority as a Power of Attorney;
- c. Took advantage of the Decedent's weakened state;
- d. Effectuated a fraudulent or misrepresented Deed; and
- e. Interfered with the Plaintiffs expected inheritance of one-third (1/3) interest each in the property.

Wherefore, the Plaintiffs respectfully request this Court:

- a. Deny Defendant's Motion to Dismiss in its entirety with prejudice;
- b. Award the Plaintiffs attorney's fees and costs for having to defend the Motion to Dismiss and prosecute this action and Motion;
- c. Grant the Plaintiffs' Motion for Summary Judgment with prejudice;
- d. For an Order requiring the Defendant to convey to each Plaintiff their respective one-third (1/3) interest in the property, or in the alternative, canceling the prior deed so that such property would be deemed part of the Decedent's Estate; and
- e. Any other relief this Court deems fair and just.

Respectfully submitted,

PALMETTO STATE LAW GROUP, LLC

//s// Margaret A. Collins

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Attorney for Plaintiffs

February 12, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,)

Case No.: 2018-CP-38-00874

Plaintiffs,

vs.

Cyndy Reed Stewart,

Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS AND
IN SUPPORT OF PLAINTIFF’S MOTION
FOR JUDGMENT ON THE PLEADINGS OR
IN THE ALTERNATIVE, SUMMARY
JUDGMENT**

RELEVANT FACTS

Theodocia Reed (“Decedent”) is the mother of Jacquelyn Gladden, Patricia Reed (“Plaintiffs”), and Cyndy Reed Stewart (“Defendant”), (collectively “siblings”). During the last years of her life, there was some back and forth between the siblings about the Decedent’s capacity and estate plan. As a result, a Conservatorship/Guardianship action, as well as a resulting *Order Regarding Hearing* (“2009 Order”) under docket numbers 2009-GC-40-00009 and 2009-GC-00010 was commenced. The Decedent was found to be competent, but the siblings were prohibited from disposing any of the Decedent’s real property, and specifically precluded from selling property with a Power of Attorney. **See Exhibit A.** Subsequently, an *Order Regarding Rule to Show Cause Hearing* (“2010 Order”) found that the Decedent was then found to have diminished capacity and to meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1) (1976) as amended. **See Exhibit B.**

The Defendant, while caring for the Decedent was named as purported Power of Attorney (“2014 POA”) on June 26, 2014 – four years after Decedent was judicially determined to be incompetent. **See Exhibit C.** The Power of Attorney was executed in Tallahassee, Florida and

attempted to name the Defendant sole POA, rather than having that power shared between the siblings as the previous Power of Attorney, signed in January 2010. This Tallahassee Power of Attorney was recorded in Bamberg County, South Carolina on August 4, 2015.

During her last illness, the Decedent was a patient at Georgetown Memorial Hospital and Tidelands Community Hospice from July 28, 2015 through August 7, 2015, eventually passing away on August 15, 2015. A probate is pending in Bamberg County, South Carolina, 2015-ES-05-00091 and Defendant is also currently the Personal Representative.

In addition to certain Bamberg property, Decedent also owned real estate in Orangeburg County, which is the subject of this action. This Orangeburg property was the subject of a Quitclaim deed purporting to transfer the property to the Defendant and was dated on August 4, 2015. **See Exhibit D.** This Quitclaim Deed was purportedly executed by Decedent herself in Georgia. However, this is the same time period when the Decedent was in hospice in Georgetown County, South Carolina, with one of the Plaintiffs assisting with her care. The signature on the Quitclaim Deed reads “Theodocia K. Reed, Grantor” despite the fact she was in hospital and hospice care over 100 miles away. In the Defendant’s *Answer and Counterclaim*, as well as in her discovery responses, the Defendant admits to signing the Deed. She claimed she signed it using the power granted in the 2014 Power of Attorney.

RELIEF REQUESTED AND STANDARD OF REVIEW

By and through her prior counsel and prior to discovery being completed, the Defendant filed a *Motion to Dismiss* that the Plaintiffs’ have failed to bring a claim for which relief can be granted. The Plaintiffs are now counter-moving for a judgment on the pleadings, or in the alternative, for summary judgment based on the Defendant’s admission that she did sign the Quitclaim Deed in violation of the prior Richland Probate Orders. Additionally, and in the

alternative, Defendant relied upon a Power of Attorney executed after the Richland Probate Court found the grantor incompetent to execute such a document.

The standard of review for a Rule 12(b)(6) Motion to Dismiss provides that the Court look at the complaint in a light most favorable to the nonmovant to determine if the “facts alleged and the interferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Williams v. Condon*, 347 S.C. 227, 233 (Ct. App. 2001). If the Court, resolving every possible doubt in favor of the plaintiff, finds that there is nothing to support a cause of action the movant should succeed in its motion. *Toussaint v. Ham*, 292 S.C. 415, 416 (1987). This does not mean that an action should be dismissed because the Court has doubts as to whether the plaintiff will prevail. *Id.*

Similarly, when considering a motion for judgment on the pleadings, the court will view “[a]ll properly pleaded factual allegations [as] deemed admitted. . . .” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122 (Ct. App. 2006). To succeed on a motion for summary judgment, the movant needs to show that there is no genuine issue as to any material facts and that they (the movant) are entitled to a judgment as a matter of law. Whereas a judgment on the pleadings is limited to the pleadings, a motion for summary judgment can at depositions, answers to interrogatories, admission, and affidavits. *SCRCP* 56.

ARGUMENT

1. The Defendant was under Court Order not to convey any of the Decedents real property.

As stated *supra*, there was a 2009 conservatorship and guardian action brought by the siblings against the Decedent. The outcome of those actions was the 2009 Order which stated, “[N]either Cynthia Stewart, Jacquelyn Gladden, nor Patricia Reed will be permitted to sell any

property owned by Mrs. Reed. . . .” There has not been another order that overruled or removed that prohibition. However, in August 2015, while the Decedent was in the hospital and hospice dying, the Defendant conveyed by Quitclaim Deed the Decedent’s property. That act, in and of itself, was in direct contradiction to the 2009 Order.

2. The Defendant purports to rely upon an invalid Power of Attorney, in that such Power was granted to her only after the Decedent was deemed incapacitated.

Pursuant so *SC Code §62-5-101 (13)*, an incapacitated person is one who is unable to either care for their essential physical requirements or manages their assets and finances on their own. Generally, a determination of incapacity is accompanied by a petition for a conservatorship. Guardianship, or both. Once a determination of incapacity is made, the Court will articulate the rights and power that the now “protected person” has. *SC Code §62-5-407(B)*. Unless the Court specifically removes a right or power, that right or power is retained by the protected person, even those rights and powers dealing with contracts. *Id.*

The siblings had initiated Conservator and Guardianship actions to have the Decedent declared an incapacitated individual. However, in 2009 as made clear by the 2009 Order, Decedent was found to have not met the definition and was able to retain all her rights. However, a year later, the siblings were once again before the Court for failing to comply with the terms of the 2009 Order. At that time, the Court determined that the Decedent was then incapacitated¹. That was in 2010, already approximately two (2) years after being diagnosed with dementia. The new Power of Attorney which Defendant purportedly relied upon was purportedly executed in 2014 – four years after she was found incompetent by the Court with a chronic and degenerative mental health issue.

¹ The Court found her incompetent but allowed the Decedent to retain her rights to the extent that her “functional capacity” allowed.

In 2014 and after the Richland Probate orders, the Defendant took the Decedent to an out of state attorney in Florida and had the Decedent execute another Power of Attorney. Decedent was incapacitated at that time, more so than she was in 2010 as dementia only worsens over time and the Decedent was found to have Parkinson's which becomes mentally incapacitating. Plaintiffs would argue that she did not have the capacity required to sign a power of attorney. This is further supported by the fact that approximately a year later, the Decedent died of end-stage Parkinson's Disease.

3. The Defendant admitted to signing the deed with the Decedent's name only and conveying the property to herself, and therefore the Defendant has admitted to self-dealing and breach of fiduciary duty.

It is common and well-established, that an agent signing on behalf of a principal must designate the signature as such. It is standard practice in both South Carolina and Florida to instruct agents in the proper method to sign as agent. Further, it is well established agents hold a power of attorney are prohibited from self-dealing. "An agent acting for a principal pursuant to a power of attorney may not make a substantially gratuitous conveyance of the property of the principal to himself unless the power to do so is expressly granted by the instrument itself." *Loftis v. Eck*, 288S.C. 154, 157(Ct. App. 1986).

The Defendant admits to signing the Quitclaim Deed as "Theodocia Reed" only. There is no indication that the deed was signed by an agent- which means at the very least, Defendant misrepresented information on the deed, though Plaintiffs would aver that the signature is a forgery. The problematic signature altered and damages Plaintiffs interest in the property, which under the Decedent's Last Will and Testament was 1/3 each. Further, Defendant's admission to

signing the deed that conveyed the Decedent's property to herself is *de facto* self-dealing. It was a gratuitous conveyance that was not contemplated within the 2014 POA.²

CONCLUSION

Despite being under a court order prohibiting the conveyance of Decedent's property, the Defendant signed a deed using the Decedent's name. The deed was transferring the Decedent's property to the Defendant, while the Decedent was dying in a hospital, miles away. The Defendant admits to signing the deed that conveyed the property. This admission not only provides that Plaintiffs with the causes of action plead in their Complaint but entitles the Plaintiffs to either a summary judgment or a judgment on the pleadings. Plaintiffs would request an Order overturning the deed and setting the matter for a damages hearing for the remaining relief requested.

Respectfully submitted,

PALMETTO STATE LAW GROUP, LLC

//s// Margaret A. Collins

Margaret A. Collins, Bar#:13290

Elizabeth D. Moore, Bar #103671

2241 Bush River Road

Columbia, SC 29210

P: (803)708-7442 F: (803)753-9352

meg@pslawsc.com

Attorney for Plaintiffs

May 6, 2019

² As a note, under Florida law if a claim of self-dealing arises, it is the fiduciary's burden to show that the questionable transaction was in the best interest of the principal by clear and convincing evidence. *Fl. Statute 709.2116(4)*.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Docket No.: 2018-CP-38-00874
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	TO COMPEL DISCOVERY RESPONSES
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

TO: DEFENDANT, CYNDY REED STEWART:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10) day after service hereof or at such other time and place as the Court may set, before the Court pursuant to Rules 33, 34, and 37 of the South Carolina Rules of Civil Procedure for an Order compelling the Defendant, Cyndy Reed Stewart to respond to the *Plaintiff's Requests for Production, Interrogatories, and Requests for Admissions*. Counsel for the Plaintiff reserves the right to request the appropriate sanctions, including but not limited to attorney's fees, allowable under Rule 37.

This motion is based upon the following grounds:

1. *Plaintiff's Requests for Production and Interrogatories* were served on the attorney for Defendant, Aaron Ness, Esquire, on November 5, 2018. These documents are attached as ***Exhibit A***, collectively.
2. Responses were originally due December 5, 2019; however, an extension was requested and granted, making responses due January 4, 2019. Defendant's attorney then filed a *Notice of Motion and Motion for Protective Order* and a *Notice of Motion*

and Motion to be Relieved as Counsel on December 10, 2019. Defendant's attorney was relieved as counsel by Court Order on February 25, 2019 and the Defendant was given sixty (60) days to seek other counsel.

3. The Defendants responses to Plaintiffs discovery requests are 110+ days overdue, using the extended January 4, 2019 due date. The Plaintiffs are informed and believe that Defendant has had more than ample time to respond to the discovery requests. Plaintiff further aver that the 60 days granted to Defendant to seek new counsel have since expired.
4. Plaintiffs also aver that they filed a *Notice of Motion and Motion to Deem Request for Admissions Admitted* on January 7, 2010 that is currently pending before the Court. Also pending before the Court is a *Notice of Motion and Motion to Dismiss; Return to Motion of Dismiss and Notice of Motion and Motion for Judgment on the Pleadings, or in the alternative, Motion for Summary Judgement; and Notice of Motion and Motion for Protective Order*. Plaintiffs would request that all the above motions be heard concurrently with this Motion.
5. Plaintiff would further request an award of attorney's fees and costs for having to bring this motion.

PALMETTO STATE LAW GROUP, LLC

//s// Margaret A. Collins

Margaret A. Collins, Bar No.: 13290
 Elizabeth D. Moore, Bar No.: 103671
 2241 Bush River Road
 Columbia, SC 29210
 P. 803.708.7442 | F. 803.753.9352
meg@pslawsc.com
lizzy@pslawsc.com
Attorneys for Defendant

May 6, 2019
 Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Docket No.: 2018-CP-38-00874
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	TO REINSTATE ATTORNEY'S FEE
Cyndy Reed Stewart,	)	CLAIM IN COMPLAINT
	)	
Defendant.	)	
	)	

TO: DEFENDANT, CYNDY REED STEWART:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10) day after service hereof or at such other time and place as the Court may set, before the Court pursuant to SC Code §62-8-117.

This motion is based upon the following grounds:

1. Plaintiff's *Complaint* included a request for "an award of costs, suit money, and attorney's fees pursuant to all applicable statutory provisions." Defendant's ex-counsel moved to strike the provision, citing that no provisions existed that would grant attorney's fees.
2. In lieu of a contested hearing, Plaintiffs agreed to strike the request for attorney's fees with the caveat and understanding between the counsels that, if fees became appropriate, then the Plaintiff may amend to seek fees and costs. Specifically, the Consent Order was without prejudice as to any causes of action that arose later.

3. Since the entry of the Consent Order, the factual development of the case, as well as Defendant's failure to resolve the dispute in an efficient manner has caused the Plaintiffs to again need to request attorney's fees and costs.
4. Plaintiffs' have incurred substantial fees and costs due to Defendant's unreasonable delay and all allegations at this point should be deemed admitted as a result of Defendant's failure to answer discovery. Plaintiffs are informed and believe that Defendant's unreasonable delay and admissions constitute a new cause of action in this case.
5. Further, attorney's fees and costs for a power of attorney's breach of duty that has been developed during the discovery phase of this case indicates that S.C. Code §62-8-117 clearly contemplates attorney's fees and costs as a result of Defendant's actions. As a result, Plaintiffs are informed and believe that they are entitled to an award of fees and costs.

WHEREFORE, the Plaintiffs respectfully request that this Court allow them to reinstate their request for attorneys' fees and costs, as well as any other such relief the Court deems equitable and appropriate.

PALMETTO STATE LAW GROUP, LLC

//s// Elizabeth D. Moore
 Margaret A. Collins, Bar No.: 13290
 Elizabeth D. Moore, Bar No.: 103671
 2241 Bush River Road
 Columbia, SC 29210
 P. 803.708.7442 | F. 803.753.9352
meg@pslawsc.com
lizzy@pslawsc.com
Attorneys for Plaintiffs

June __, 2019
 Columbia, South Carolina

Certificate of Electronic Notification

Recipients

Margaret Collins - Notification transmitted on 08-02-2019 10:34:02 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP3800874

Official File Stamp: 08-02-2019 10:33:44 AM

Court: CIRCUIT COURT

Common Pleas

Orangeburg

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy
Reed Stewart

Event(s):

Notice/Notice of Appearance

Filed by or on behalf of:

David W. Melnyk

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Margaret A. Collins for Jacquelyn Gladden et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Cyndy Reed Stewart for Cyndy Reed Stewart

Cyndy Reed Stewart for Cyndy Reed Stewart

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Docket No.: 2018-CP-38-00874
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	FOR SANCTIONS
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
	)	

TO: DEFENDANT, CYNDY REED STEWART, BY AND THROUGH HER COUNSEL, DAVID MELNYK:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10) day after service hereof or at such other time and place as the Court may set, before the Court pursuant to SC Code §62-8-117.

This motion is based upon the following grounds:

1. Defendant's Counsel appeared in this case August 2, 2019 for the non-jury trial roster.

This case was set for Trial for the week of September 23, 2019 and was the only non-jury case on the roster.

2. Notice was provided via electronic communication (email) to the parties on August 23,

2019. Defendant's Counsel was fully aware of the trial date as he communicated via email with the undersigned on or about September 18, 2019. Plaintiff advised

Defendant's counsel that he needed to be prepared to proceed, as this matter was already carried over a prior term and Plaintiff were ready for trial.

3. At the trial roster on September 23, 2019, Defendant appeared without counsel and represented that she did not have counsel. She indicated that, due to text communications with Defendant's counsel of record, she was appearing unrepresented at the trial. She again asked for a continuance to obtain counsel for the second straight term of court. As of the trial date, Defendant's counsel had not proffered any proposed Order Relieving Counsel or Substitution and is still the attorney of record.
4. As a result of Defendant's appearing without counsel and her request for a second continuance, this Court stated it was hesitant to proceed and continued the matter for a date certain. The case was continued, and the Defendant given until November 4, 2019 to find and retain counsel.
5. Both of Plaintiff's counsels and both Plaintiffs travelled to Orangeburg after full court preparation for the trial. There was substantial time and financial expenditures made to appear for this second trial date.
6. After the trial roster meeting, Plaintiff's counsel called Defendant's counsel of record. Plaintiff's counsel also made a demand of Defendant's counsel to reimburse the fees and costs associated with the trial roster attendance. At approximately 1:39 pm, Defendant's Counsel, David Melnyk responded to Plaintiff's Counsel regarding the demand letter sent in response to his failure to appear.
7. Based on the emails from Defendant's Counsel, he represented that had texted prior to the hearing. However, he had texted the office phone number, which is not a cellular number, so no message was received. Ultimately, Defendant's Counsel disclosed that he still represented Defendant, however, he was unable to appear in Court due to "stomach issues." He did not indicate that they were severe or required any medical attention.

8. Plaintiff's Counsel requested and Defendant's Counsel agreed to immediately inform the Court that he was still Defendant's counsel, he was absent from the hearing and failed to properly notify Plaintiff's Counsel and the Court of his absence due to "stomach issues." These communications all occurred September 23, 2019 and can be provided upon request.
9. As of the date this Motion, Defendant's Counsel has failed to communicate anything with the Court as Plaintiff's Counsel has not seen any such communication.
10. Due to this egregious conduct, Plaintiff's are informed and believe that sanctions should be imposed against Defendant's Counsel for failure to appear.
11. Further, based on the communications with Defendant's Counsel, Plaintiff's are informed and believes that Defendant was fully aware of the cause of Mr. Melnyk's absence, however, misrepresented the situation to the Court. As such, Plaintiff's are informed and believe that they are entitled to sanctions against the Defendant as well.

WHEREFORE, the Plaintiffs respectfully request that this Court grant this Motion for Sanctions for the fees and expenses, as well as lost wages of one of the Plaintiff for having to attend the hearing and as may be shown at a hearing, as well as any other such relief the Court deems equitable and appropriate.

PALMETTO STATE LAW GROUP, LLC
//s// Margaret A. Collins
 Margaret A. Collins, Bar No.: 13290
 Elizabeth D. Moore, Bar No.: 103671
 2241 Bush River Road
 Columbia, SC 29210
 P. 803.708.7442 | F. 803.753.9352
meg@pslawsc.com
lizzy@pslawsc.com
Attorneys for Plaintiffs

October 8, 2019
 Columbia, South Carolina

Certificate of Electronic Notification

Recipients

Margaret Collins - Notification transmitted on 11-04-2019 12:50:06 AM.

David Melnyk - Notification transmitted on 11-04-2019 12:50:06 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP3800874

Official File Stamp: 11-04-2019 12:49:56 AM

Court: CIRCUIT COURT

Common Pleas

Orangeburg

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy
Reed Stewart

Event(s):

Notice/Notice of Appearance

Filed by or on behalf of:

Evert Comer, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Margaret A. Collins for Jacquelyn Gladden et al

David W. Melnyk for Cyndy Reed Stewart

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Cyndy Reed Stewart for Cyndy Reed Stewart

Cyndy Reed Stewart for Cyndy Reed Stewart

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
Plaintiffs,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	MOTION TO BE RELIEVED
	)	AS COUNSEL
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
	)	

TO: ELIZABETH D. MOORE, ESQUIRE, ATTORNEY FOR PLAINTIFFS

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as counsel may be heard, the undersigned attorney will move and hereby does move before the Presiding Judge of the Orangeburg County Court of Common Pleas, 1406 Amelia Street, Orangeburg, South Carolina, or as soon thereafter as counsel may be heard, for an Order relieving him as counsel for the Defendant, due to being discharged at the request of the Defendant that counsel discontinue services to her and payment of fees as stated and agreed. Counsel for the Defendant has advised the Defendant as early as December 12, 2019, to engage services of other counsel in adequate time for the next term of court set for January 13, 2020. This motion is based on Rule 1 (a) (3) and Rule 6 of the Rules of Professional Conduct as enacted by the South Carolina Supreme Court.

Though counsel for for the Plaintiffs, Elizabeth D. Moore, Esq., has advised there will be no consent to the dismissal from the Plaintiffs though the same may not oppose the motion in a hearing on said motion.

WHEREFORE, the undersigned asserts that he is entitled to an Order, relieving him counsel for the Defendant.

Respectfully submitted,

LAW OFFICE OF EVERT COMER, JR.

By: /s/ Evert Comer, Jr.

Evert Comer, Jr., Esquire, #1347

PO Box 386

Denmark, SC 29042

(803) 793-3403 (Ph.); (803) 793-3550 (Fax)

ecomerjrattorney@aol.com

ATTORNEY FOR DEFENDANT

January 2, 2020

Denmark, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
Plaintiffs,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	BY EMAIL & U.S. MAIL
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

THIS IS TO CERTIFY that I, the undersigned, Evert Comer, Jr., Esquire, did on the 2nd day of January, 2020, by EMAIL (drcrstewy@gmail.com), and place in the United States Mail, Denmark, South Carolina, with postage prepaid and return address clearly indicated on an envelope, a copy of the foregoing NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL with cover letter in connection with the above entitled action, addressed as follows:

Dr. Cyndy Reed Stewart
 3029 Banks Drive
 Tallahassee, FL 32309
 VIA EMAIL: drcrstewy@gmail.com

/s/Evert Comer, Jr., #1347
 Evert Comer, Jr., Esquire, #1347
 PO Box 386
 Denmark, SC 29042
 (803) 793-3403 (Ph.); (803) 793-3550 (Fax)
ecomerjrattorney@aol.com

Dated: January 2, 2020

Denmark, South Carolina

Certificate of Electronic Notification

Recipients

Margaret Collins - Notification transmitted on 04-15-2021 12:29:13 PM.

David Melnyk - Notification transmitted on 04-15-2021 12:29:14 PM.

Evert Comer - Notification transmitted on 04-15-2021 12:29:13 PM.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Jacquelyn Gladden and Patricia Reed,	)	Docket No.: 2018-CP-38-00874
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	TO RECONSIDER, OR IN THE ALTER-
Cyndy Reed Stewart,	)	NATIVE SEEK DAMAGES IN PROBATE
	)	COURT
Defendant.	)	
	)	

TO: THE HONORABLE DIANE S. GOODSTEIN, AND DEFENDANT, CYNDY REED STEWART, BY AND THROUGH HER COUNSEL, DAVID MELNYK AND EVERT COMER, JR.:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10) day after service hereof or at such other time and place as the Court may set, before the Court pursuant to SC Code §62-8-117.

This motion is based upon the following grounds:

1. The parties appeared at a Motions hearing on November 4, 2019, of the six (6) Motions to be heard, the Motion for Summary Judgement was granted, as Defendant conceded to reformation of the Deed. The other Motions were denied pursuant to this concession.
2. The Order dated January 10, 2020 granted the Summary Judgment on behalf of Plaintiff as a result of this concession. However, the original Complaint contained eleven causes of action, which included, *inter alia* forgery, fraud and misrepresentation, breach of fiduciary duty, breach of trust, self-dealing, intentional interference with expected inheritance, lack of good faith and fair dealing, as well as Quiet Title and Deed reformation. Plaintiff avers that, although the Summary Judgment resolved the deed reformation/quiet title, the

remaining causes of action, were not addressed. Due to the dilatory tactics of Defendant, as well as retaining and filing multiple attorneys, as well as the pending case, this property, as well as the other \$200,000 plus in Estate assets have been wasted and deteriorated since the Decedent's death for over five (5) years. The Complaint specifically asks for all "incidental, consequential, punitive and special damages" resulting from Defendant's actions, including the loss of profits, deterioration of the property during this litigation, and the waste that has occurred, as well. The granting of the Summary Judgment is appreciated. However, it did not resolve these remaining issues.

3. The case remained on the trial docket after the Summary Judgment and Plaintiff took the position that, based upon the Order of January 10, 2020, as well as its remaining causes of action and issues being unresolved, the case would move forward for what, in essence, would be a damages hearing. However, after the roster meeting on January 13, 2020, they were informed that the case was resolved by this Order that failed to address the remaining issues.
4. Also denied by the Court's January 10, 2020 order were the Motions to Deem the issues admitted, which is needed for removal of the Defendant as Personal Representative of the Estate. Otherwise, the issues will need to be relitigated, as there is no judicial determination of the remaining issues. Specifically, the Order indicates that these were merely allegations, and not the findings of the Court.
5. Further denied by the January 10 Order was the Motion to Reinstate Attorney's Fees, as well as a Motion for Sanctions when the trial was required to be delayed when Attorney Melnyk failed to appear or otherwise notify the Court of the reason for his absence for one

trial date. Although verbally ordered to resolve his appearance, Attorney Melnyk still has failed to file a Motion or Order Relieving him.

6. Plaintiffs filed this action in July 2018. In December, Defendant's previous counsel moved to be relieved after an extension for discovery was granted. Defendant's previous counsel was relieved by order of the Court filed February 25, 2019. In that order, Defendant was given sixty (60) days to find counsel. The parties appeared before the Court for trial on July 8th. At this time, Defendant represented in Chambers that she was not represented, and she was not ordered to find counsel within sixty (60) days. In an abundance of caution, the Judge continued the trial.
7. A Notice of Appearance was filed on behalf Defendant on August 2, 2019. Trial was subsequently set for September 23rd. However, Defendant appeared and again requested a continuance due to lack of counsel. The attorney of record still has not provided an explanation or motion to be relieved, despite being ordered to do so. The fees and costs associated with the September hearing alone total \$1,558.94.
8. This Consent Order was filed October 31, 2018. This is well over fifteen months before the ultimate trial date. The Consent Order specifically indicated that the striking of fees was without prejudice as to "any causes of action or relief that may arise hereafter." This Consent Order was entered three attorneys and numerous Motions ago, including Plaintiff's Motion to Compel, Motion to Deem Admitted, Plaintiff's Summary Judgment Motion (that was ultimately granted), and even a Motion for Sanctions. Further Motions filed in this action included Defendant's Motion to Dismiss, multiple Motions to Be Relieved and Motion for Protective Order. Further, the Defendant requested continuance after continuances of the trial and Motions. Each Motion and each trial date required

preparation, or renewal of preparations of arguments, documents and witnesses, as well as multiple Memoranda and appearances for no hearing. These additional hearings and delays caused Plaintiffs to incur substantial and unnecessary fees.

9. Each of these Motions, or their respective Returns had attorney's fees requests requested in specific requests that were filed after the entry of the Consent Order and therefore, was relief that arose after the Consent Order's entry.
10. Plaintiffs are informed and believe that despite Defendant's concession at the November 4, 2019 Motions hearing, there are still several causes of action that need to be resolved, to wit: Forgery, fraud, misrepresentation, breach of fiduciary duty, self-dealing, and intentional interference of inheritances, and the damages Plaintiffs have incurred due to these causes of actions. Further, the Order granting the Summary Judgment motion was silent on all these causes of actions and the issue of damages.
11. Plaintiffs would aver that these Motions, and defense of Motions, as well as dilatory delays by the Defendant all constituted additional relief requested that was specifically contemplated for attorney fees by the Consent Order.
12. As such, Plaintiffs respectfully request that the Court reconsider the ending of the case as there are a substantial number of causes of action as well as the issues of damages remaining to be resolved, as well as the issue of attorney fees and costs for the multiple Motions
13. In the alternative and as a matter of judicial economy so that the Bamberg property and Probate matters could be combined with this request, Plaintiffs would request that these matters were resolved or dismissed without prejudice, with leave from the Court to pursue these actions through the Bamberg Probate Court. Otherwise, Plaintiffs attempts to have

these matters resolved in the Bamberg Probate Court may be deemed barred by *res judicata* and collateral estoppel. Specifically, Plaintiff would aver that there has not been a ruling on these additional causes of action.

14. Further, Plaintiffs would request an Order of this Court allowing pursuit of the attorney's fees and costs accruing after October 31, 2018 in the Bamberg County Probate action, as well.

WHEREFORE, the Plaintiffs respectfully request that this Court grant this Motion for Sanctions for the fees and expenses, as well as lost wages of one of the Plaintiff for having to attend the hearing and as may be shown at a hearing, as well as any other such relief the Court deems equitable and appropriate.

PALMETTO STATE LAW GROUP, LLC

//s// Margaret A. Collins

Margaret A. Collins, Bar No.: 13290

Elizabeth D. Moore, Bar No.: 103671

2241 Bush River Road

Columbia, SC 29210

P. 803.708.7442 | F. 803.753.9352

meg@pslawsc.com

lizzy@pslawsc.com

Attorneys for Plaintiffs

January 16, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)
IN THE MATTER OF THE)
ESTATE OF CARRIE THEODOCIA)
K. REED)

IN THE PROBATE COURT
CASE NO: 2015-ES-05-0091

FILED FOR RECORD
2020 JUL -6 AM 9:44
BAMBERG COUNTY PROBATE COURT

JACQUELYN GLADDEN &)
PATRICIA REED,)
Petitioner(s),)
)
vs.)
)
CYNDY REED STEWART,)
Respondent(s).)
)

SUMMONS

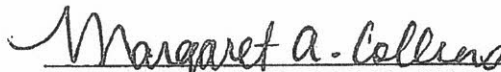
TO THE RESPONDENT LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you , and to serve a copy of your Answer upon the Petitioner(s) listed above at the following address(es):

PALMETTO STATE LAW GROUP, LLC
2441 BUSH RIVER ROAD
COLUMBIA, SC 29210

(City, State, and zip code, PRINT)

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to Answer the Petition within that time, the Petitioner(s) will ask the Court for a judgment by default for the relief demand in the Petition.


MARGARET A. COLLINS, ESQ.

July 2, 2020, 2020

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE MATTER OF:
CARRIE THEODOCIA K. REED,
(Decedent)

IN THE PROBATE COURT

CASE NUMBER: 2015-ES-05-0091

Jacquelyn Gladden & Patricia Reed,

Petitioner(s)

***PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE**

vs.

Cyndy Reed Stewart

Respondent(s)

We request an Order for the removal of Cyndy Reed Stewart, Personal Representative in the Estate, because (check all that apply):

☐ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment. Additional Information:

☒ The Personal Representative disregarded a Court order. Additional information: In 2009 the Richland County Probate Court issued an Order restraining all of Decedent's children from disposing of her real property. In August 2015 Respondent disposed of Decedent's Orangeburg property to herself. Further, the Personal Representative has also failed to comply with a Court Order of the Circuit Court of Orangeburg County by re-conveying certain property back to the Estate. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.

☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional information:

☒ The Personal Representative has mismanaged the Estate. Additional information: This Estate has been pending since 2015 and Petitioner's have not received any information despite being equal beneficiaries under the will and having filed a Demand for Notice. Upon information and belief, she has also failed to account for Estate Income by way of farm leases. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117..

☒ The Personal Representative failed to perform a required duty. Additional information: See above.

☒ Removal is in the best interests of the Estate because: Respondent interfered with the Petitioners' expected inheritance and breach duties of loyalty, trust, and her fiduciary duty to Decedent during Decedent's last illness. See Complaint and Order filed in Orangeburg County Circuit Court attached hereto and incorporated herein by reference as Exhibits A and B. (Attach additional sheets if necessary.) Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.

Executed this 1 day of JULY, 20 20.

FILED FOR RECORD

2020 JUL -6 AM 9:44

BAMBERG COUNTY PROBATE COURT

Signature: Jacquelyn Gladden
Print Name: Jacquelyn Gladden
Address: 402 Koonstore Road
Columbia, SC 29203
Telephone: 803-754-4739
Email: ygadden@assistedservicesidc.com
Relationship to Decedent/Estate: Daughter/Devisee
Signature: Patricia Reed
Print Name: Patricia Reed
Address: P.O. Box 105
Georgetown, SC 29203
Telephone: 843-527-3068
Email: redbirdreed@gmail.com
Relationship to Decedent/Estate: Daughter/Devisee

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE PROBATE COURT

In the matter of:
Carrie Theodocia K. Reed
(Decedent)

Jacquelyn Gladden & Patricia Reed
Petitioners,

vs.

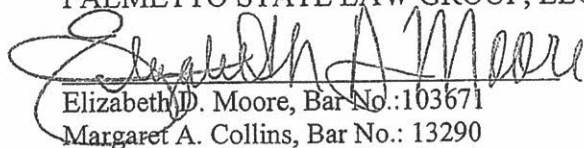
Cyndy Reed Stewart,
Respondent.

Case No.: 2015-ES-05-0091

**EXHIBIT A & B FOR PETITION
FOR REMOVAL OF PERSONAL
REPRESENTATIVE**

1. The Summons & Petition for Removal of Representative was filed in the Probate for Bamberg County on July 6, 2020.
2. The "Exhibit A & B" referenced in the Petition for Removal of Representative was inadvertently omitted and is now being submitted to correct the omission. The exhibits being submitted are as follows: Complaint and Order filed in Orangeburg County Circuit Court

PALMETTO STATE LAW GROUP, LLC



Elizabeth D. Moore, Bar No.: 103671

Margaret A. Collins, Bar No.: 13290

2241 Bush River Road

Columbia, SC 29210

P. 803.708.7442 | F. 803.753.9352

lizzy@pslawsc.com

meg@pslawsc.com

Attorneys for the Estate

July 17, 2020
Columbia, South Carolina

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP3800874

Official File Stamp: 04-15-2021 12:29:01 PM

Court: CIRCUIT COURT

Common Pleas

Orangeburg

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy
Reed Stewart

Event(s):

Notice/Notice of Appearance

Robert Sam Phillips

Filed by or on behalf of:

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Margaret A. Collins for Jacquelyn Gladden et al

Evert Comer, Jr. for Cyndy Reed Stewart

David W. Melnyk for Cyndy Reed Stewart

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Cyndy Reed Stewart for Cyndy Reed Stewart

Cyndy Reed Stewart for Cyndy Reed Stewart

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2018-CP-38-00874

Jacquelyn Gladden and Patricia Reed,	)

Plaintiffs,	)

v.	)

Cyndy Reed Stewart,	)

Defendant.	)

**Motion to Dismiss
for Lack of Jurisdiction**

TO: THE HONORABLE DIANE S. GOODSTEIN AND PLAINTIFFS JACQUELYN GLADDEN AND PARTICIA REED, BY AND THROUGH THEIR COUNSEL PALMETTO STATE LAW GROUP, LLC.

YOU WILL PLEASE TAKE NOTICE that Defendant Cyndy Reed Steward, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10th) day after service hereof or at such other time and place as the Court may set, for an Order dismissing this action pursuant to Rule 12(h)(3), SCRCF for a lack of jurisdiction over the subject matter of this action and Rule 19, SCRCF due to the pendency of an action involving an essential party that is currently pending before the Bamberg County Probate Court (In re Carrie Theodocia K. Reed, Case No. 2015-ES-05-0091).

Background

The parties to this action have been engaged in prolonged litigation over the care and finances of their mother, control of her real property and ultimately the disposition of her estate since 2009. Plaintiffs, Jacquelyn Gladden and Patricia Reed (hereinafter singularly and collectively "Plaintiffs") filed two actions in the Richland County Probate Court (In the Matter of Theodocia Reed, Case No.s: 2009-GC-40-00009 & -00010) seeking, *inter alia*, to have the court declare their mother, Theodocia Reed (hereinafter "Mother"), to be incompetent and have

Mother's affairs placed under the control of someone other than their sister Dr. Cynthia Reed Stewart ("Dr. Stewart") with whom Mother had been residing with at Dr. Stewart's home in Florida. In that action, Plaintiffs specifically challenged their mother's decisions to, *inter alia*, live with Dr. Stewart's family in Florida, allow Dr. Stewart to assist Mother with her financial decision, and allow Dr. Stewart to hold a Power of Attorney for Mother. During a hearing on 19 October 2009, Probate Court Judge Jacqueline D. Belton examined Mother *in camera* and determined she had sufficient capacity to make her own financial and healthcare decisions. Accordingly, Judge Belton denied Plaintiffs' request to appoint a conservator or guardian. Order Regarding Hearing (dated 29 Dec 2009) at pp. 4 & 7 attached hereto as **Exhibit A**. The Court noted Mother's decision to permanently reside in Florida with the Defendant and her family and that Mother capacity to delegate additional authority over her affairs as she saw fit. **Exhibit A** at p. 8. The Court found that Plaintiffs had wrongfully used \$8,000.00 of Mother's funds to pay their lawyer to bring the actions and had wrongfully transferred additional funds belonging to Mother into a trust account that was under the Plaintiff's control. The Court ordered the return of all the funds wrongfully taken by the Plaintiffs. **Exhibit A** at p.11.

The parties were back in court before Judge Belton on 28 June 2010 to address several allegations that the parties had not fully complied with the Court's 2009 order. Based on her limited observation of Mother during the 2010 hearing, Judge Belton found that Mother "appears" to meet the definition of an incapacitated person and indicated that any "springing" powers of attorney executed by the Mother should be followed by the holders of those powers. Order Regarding Rule to Show Cause (dated 30 December 2010) at p.3 attached hereto as **Exhibit B**. The Court ordered the parties to fulfill the individual requirements of the 2009 Order and recognized the authority of Mother's existing Powers of Attorney. **Exhibit B** at pp. 4-5.

Theodocia K. Reed passed away several years later on 15 August 2015 at the age of 90. Although her will appointed all three of her daughters as joint personal representatives, such a relationship proved unworkable thereby prompting a contest over who would serve as the Estate's personal representative. Dr. Stewart was appointed personal representative by an order of Probate Judge Sarah G. Noel in an order that was upheld on appeal on by Circuit Court Judge Perry M. Buckner, III filed 2 October 2017, attached hereto as **Exhibit C**.

When the instant action was filed 9 July 2018, Dr. Stewart had been serving as the Personal Representative of Mother's Estate overseeing its assets as she worked with an attorney to settle the Estate in the Bamberg County Probate Court (In re Carrie Theodocia K. Reed, Case No. 2015-ES-05-0091). Unfortunately, the Estate that Dr. Stewart represents is without any funds to maintain the Estate's real property or to pay its expenses, such as that of its legal counsel. To cover these deficiencies, Dr. Stewart has been advancing her personal funds to the Estate to cover the cost of upkeep of the Estate's real property. This action pertains to a residential property located at 126 Dickson Street, Orangeburg (TMS#0173-15-17-009.000) (hereinafter "Property") that Plaintiffs contend Dr. Stewart wrongfully transferred prior to Mother's death using a Florida power of attorney provided by Mother. It is undisputed that if that transfer is set aside, the Property will become an asset of Mother's Estate. On 6 July 2020, Plaintiffs filed a petition with the Bamberg County Probate Court further challenging the transfer of the Property on many of the same grounds at issue in this action. Petition is attached hereto as **Exhibit D**. Based on an earlier hearing in this matter, Dr. Stewart executed a deed transferring the Property back to Mother's Estate that was filed with the Orangeburg County ROD on 31 March 2021. See **Exhibit E**.

Argument

The transfer of the Property back to Mother's Estate renders Plaintiffs' claims in this matter moot. The centrality of the Property to this action was discussed with Circuit Judge Diane S. Goodstein during a hearing in this matter held on 4 November 2019. Attorney Evert Comer, Jr. appeared at that hearing on behalf of Dr. Stewart and explained both the centrality of the Property to this dispute and informed the court of the pendency of the same issues before the Bamberg Probate Court. Relevant portions of the transcript are attached hereto as Exhibit F.

Generally, the "threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." Lennon v. S.C. Coastal Council, 498 S.E.2d 906, 906 (S.C. Ct. App. 1998). "The concept of justiciability encompasses the doctrines of ... mootness." Jackson v. State, 489 S.E.2d 915, 917 n.2 (S.C. 1997). "A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy." Seabrook v. City of Folly Beach, 523 S.E.2d 462, 463 (S.C. 1999). More importantly, the rendering of a judgment is improper where that judgment would affect the jurisdiction of another court over a pending matter. The retitling of the Property in the name of Mother's Estate effectively removed the Property from the jurisdiction of this Court by placing it under the exclusive jurisdiction of the Bamberg Probate Court. See S.C. Code Section 62-1-302(a)(1) ("To the full extent permitted by the Constitution ... the probate court has exclusive original jurisdiction over all subject matter related to ... estates of decedents."); see also Venture Engineering v. Tishman Const. Corp., 600 S.E.2d 547 (S.C. Ct. App. 2004) (sale of property that was part of a bankruptcy estate rendered claims against that property moot).

In this matter, Plaintiffs have deliberately and simultaneously pursued claims of impropriety against Dr. Stewart in two pending lawsuits: the instant action and the probate matter of In re

Carrie Theodocia K. Reed, Case No. 2015-ES-05-0091. Now that the Property is an Estate asset, the Probate Court will have to consider the distribution of the Property amongst the sisters and determine whether Dr. Stewart is entitled to reimbursement of the funds she personally advanced to the Estate as well as whether she is entitled as a beneficiary under Mother's will. Naturally, any ruling by this Court in this Action will be prejudicial to the ability of the Bamberg Probate Court to fully adjudicate Mother's pending estate.

WHEREFORE, Defendant Cyndy Reed Stewart respectfully requests an order from this Honorable Court dismissing this action due to a lack of jurisdiction over the subject matter of the action and the failure to join a necessary party in the proceeding, as well as any other such relief the Court deems appropriate and equitable.

The Phillips Firm, LLC
Attorney & Counselor at Law

/s Robert B. Phillips
by Robert B. (Sam) Phillips, Esq.
2001 Assembly Street, Suite 101
Columbia, SC 29201
(803) 726-4268
Sam@PhillipsFirm.Net

Attorney for Defendant

Columbia, South Carolina
18 April 2021

2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF:
THEODOCIA REED

Jacquelyn Gladden and Patricia Reed,
Petitioners,

vs.

Cynthia Stewart,
Respondent,
and
Theodocia Reed,
An Allegedly Incapacitated Person.)

IN THE PROBATE COURT
Case Numbers: 2009-GC-40-00009
2009-GC-40-00010

ORDER REGARDING HEARING

2009 DEC 29 PM 5:50
AMY L. COLLINS
PROBATE JUDGE
SOUTH CAROLINA

FILED

THIS MATTER IS BEFORE THE COURT upon the filing of a Summons and Petition for Appointment of Guardian and Conservator on January 16, 2009, by Jacquelyn Gladden and Patricia Reed; both of whom are represented by Charles Black, Jr., Esq. The Petitioners are the daughters of Theodocia Reed (hereinafter, "Mrs. Reed"). In their Petition, Jacquelyn Gladden and Patricia Reed allege that Mrs. Reed's remaining daughter, Cynthia Stewart, who is designated as Mrs. Reed's attorney-in-fact under a General Power of Attorney executed December 12, 2008, is not capable of properly caring for and supervising Mrs. Reed. Petitioners further allege that Cynthia Stewart used this document to make several changes to bank accounts held jointly by all three daughters with Mrs. Reed, and made an improper disbursement of \$7,000.00, subsequent to the execution of the December 12, 2008 General Power of Attorney.

On January 27, 2009, Cynthia Stewart responded to the Petition, contending that she is capable of, and has been, providing adequate care for Mrs. Reed. She further asserts in her answer that the alleged bank account designations have not been altered and that the Petitioners



are still listed as joint owners. Cynthia Stewart also alleges that any disbursements made from this account, were done for the benefit and care of Theodocia Reed.

Subsequent to that, a status hearing was held on March 23, 2009, and the parties were given until April 24, 2009, to resolve all outstanding issues by their own agreement. As the parties did not reach a full resolution of the disputed issues between them, they were directed to mediation, pursuant to the Probate Court Pilot Mediation Program. The parties, including Mrs. Reed and her court-appointed Guardian ad Litem, N. Bruce Holland, Esq., met with mediator Tim Harbeson, Esq., on June 22, 2009. The parties attempted to resolve their differences through mediation, and all parties signed a mediation agreement at the conclusion of the mediation conference, but the agreement was repudiated the following day by Cynthia Stewart. Mrs. Stewart then retained Stephen Fitzer, Esq., to represent her in these proceedings.

After Mr. Fitzer was retained, he, Mr. Holland, and Mr. Black discussed the case further in an attempt to come to some agreement, but were unable to resolve all issues. Mr. Fitzer's client's position is that Mrs. Reed was not incapacitated and, therefore, she had the capacity to revoke her prior power of attorney, and to execute a new power of attorney on December 12, 2008, which designated her as her mother's attorney-in-fact. Mr. Black's clients' position is that Mrs. Reed was incapacitated and, therefore, unable to revoke the power of attorney that was in effect prior to December 12, 2008, which would then give all three daughters joint decision-making authority, under the power of attorney in effect prior to December 12, 2008. Finally, Mr. Holland's position, on behalf of Mrs. Reed, is that she has capacity, that she is capable of making all of her own decisions about health care and her finances, and that she desires that all three of her daughters get along and make decisions together.

A hearing was held in this matter on October 19, 2009. Present were: Theodocia Reed; N. Bruce Holland, Esq., the court-appointed GAL for Mrs. Reed; Jacquelyn Gladden and Patricia Reed, the Petitioners; Charles Black, Jr., Esq., attorney for the Petitioners; Cynthia Stewart, the Respondent; Stephen Fitzer, Esq., attorney for the Respondent, Elizabeth Stubbs, sister of Mrs. Reed, Jesse Stewart, son-in-law of Mrs. Reed, Earline Williams, and Hayward Garvin. The purpose of the hearing was to discuss and resolve the capacity of Mrs. Reed; payment of allocation of attorneys' fees and mediator's fees by the parties; the Motion for Transfer of Venue filed by Cynthia Stewart; and the continuation of these actions in Richland County.

The Court gave Counsel and the Guardian ad Litem the opportunity to make statements regarding the issues to be discussed, and the Court asked several questions in response to the information presented by the attorneys, including seeking clarification as to why a mediation agreement had been signed and later repudiated by Mrs. Stewart. Mr. Holland informed the Court that it continued to be his position on behalf of his client that she had capacity and, therefore, the ability to make her own decisions about her health care and her financial affairs. He encouraged the Court to meet privately, in chambers, with Mrs. Reed to make its own assessment as to her capacity. As the ability to make or revoke a power of attorney is based on contractual capacity, the Court agreed to speak with Mrs. Reed privately to determine whether she appeared to have the necessary capacity to make her own decisions, including the ability to designate who would handle her financial affairs. The parties agreed that if the Court could determine from its questions of Mrs. Reed that she possessed such capacity, that she should be allowed to make her own decisions and that neither a Physician's Affidavit or an Examiner's Report would be necessary.

The Court went into recess to meet privately with Mrs. Reed in chambers for approximately twenty-five minutes. Also present was the Court's judicial law clerk, Jesse Near. The conversation with Mrs. Reed included questions from the Court about Mrs. Reed and her family, including her age, where she lived, with whom she lived, the status of her health, what conditions she was seeing a doctor for, her medications, and how often she sees the doctor. The Court also asked about current events, such as who the President of the United States is, and the year, date and month of the year.

Throughout this meeting, Mrs. Reed was oriented as to date, time, and place. When asked if she understood the dispute that was going on between her daughters, she answered affirmatively and indicated that they were disagreeing about who should make decisions for her and where she should live. The Court also inquired as to her understanding of a health care power of attorney and a power of attorney for her business affairs. Mrs. Reed answered that the health care power of attorney lets someone make decisions for her about her medical treatment, who her doctor will be, and where she will live. However, Mrs. Reed firmly indicated that she wanted to choose her own doctor and make decisions about her health care, and that she would want her daughters to make decisions together about her health care if she could not make the decisions herself. In addition, she indicated that the power of attorney would let someone handle her money and pay her bills. Mrs. Reed said that she needed assistance with paying her bills, but wanted to make her own decisions about her finances. If she needs someone to make decisions about her finances in the future, Mrs. Reed indicated that she would want Cynthia Stewart to take care of her finances, because it would be more convenient, but she would want Jacquelyn Gladden and Patricia Reed to know about everything going on with her finances.

When asked where she wanted to live, Mrs. Reed indicated that she wanted to live in Florida with Mrs. Stewart and her family, because she likes it there. However, she wants to be able to visit with her other daughters in South Carolina whenever she desires, and for as long as she desires. Mrs. Reed was aware that she owns property in Bamberg County, South Carolina, and indicated that she did not want that house to be sold, but wanted it to be kept for her to go visit whenever she wished to do so.

Mrs. Reed clearly had an understanding of what it meant to give authority to someone under a health care power of attorney and a power of attorney for business affairs. She also had very definite ideas about the fact that she could make her own decisions, but may not be able to do so in the future. She acknowledged some health issues, stating that she is 84 years old, but those conditions do not seem to have affected her ability to be aware of the type of decisions she would need to make for herself, or to actually make those decisions for herself.

Finally, as Mrs. Reed has the ability to make her own decisions, the Court asked her if she would want to have new powers of attorney done that reflect exactly what she stated regarding her wishes, or if she wanted the Court to do an order. She firmly stated that she wanted the Court to do an order, because she was tired of the disagreements and wanted everyone to try to work together. The Court explained to Mrs. Reed that an order could be issued stating that she had the ability to make her own decisions and that she did not need a guardian or conservator at this time. Mrs. Reed stated her desire that the Court make a ruling on her capacity and enter an order addressing the specific things she previously indicated.

The Court reconvened to advise the other parties of its assessment of Mrs. Reed's capacity, giving a summary of the aforementioned information. At that point, Mr. Holland added that he had met with Mrs. Reed on three separate occasions, the latest being prior to the hearing

on October 19, 2009, and that he found her understanding and answers to be the same. He reasserted his statement that his client is not incapacitated.

The other issues to be addressed at the hearing were those regarding whether venue should be transferred to Bamberg County, and who should pay attorneys' fees in this action. As the Court did not have any indication that Mrs. Reed was incapacitated, the petitions should be dismissed. This eliminates the need for a transfer of these actions to Bamberg County. With regard to attorneys' fees, the Court expressed its opinion, but also sought input from Mrs. Reed. Mrs. Reed conferred with Mr. Holland, and then stated that she wanted each of her daughters to be responsible for the fees and costs for their own attorneys. The cost of mediation is to be split between Mrs. Reed and her daughters, with each of them paying one-fourth of the cost of the mediation. The bills of Mr. Holland and of Mrs. Clingman will be paid from Mrs. Reed's funds.

After reviewing the entire record, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jurisdiction. That this Court has subject matter jurisdiction of these proceedings, pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. Venue. That Theodocia Reed currently resides with her daughter Cynthia Stewart in Florida. Mrs. Reed also owns property in Bamberg County, South Carolina, where she resided prior to moving to Florida. Therefore, pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended, venue for these proceedings would properly be laid in either Florida or Bamberg County. However, Mrs. Reed, with advice of counsel, has requested that this Court make findings and enter an order in this matter, since these are before it at this time. Mrs. Reed indicated that she wants the issue concluded now, and desires that her daughters follow her wishes.

- 2 3. Incapacity. That the Court hereby finds that Theodocia Reed does not meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1), 1976, as amended, due to any mental condition or physical condition. Ms. Reed has sufficient capacity to make her own health care and financial decisions. Ms. Reed is further entitled to choose her own doctors.
-
4. No Guardian or Conservator. That based on Mrs. Reed's capacity, the Court concludes that does not need a Guardian or Conservator appointed for her at this time.
-
5. Dismissal of Petitions. That based on the above finding of capacity, the Petitions for Appointment of Guardian and Conservators, both filed January 16, 2009, are dismissed.
6. Status of Powers of Attorney. That Mrs. Reed indicated that she did not wish to have a durable power of attorney or health care power of attorney in place unless she is not able to make decisions for herself. However, the Court strongly encourages Mrs. Reed to execute those documents now, but to include provisions which trigger the use of the document only at the time in which Mrs. Reed becomes incapacitated or unable to make decisions for herself. The Court also encourages the attorney preparing those documents to incorporate the terms of this Order because they reflect the wishes and desires of Mrs. Reed.
7. Assistance with Financial Matters. That at the request of Theodocia Reed, Cynthia Stewart will provide her with assistance with financial matters, such as paying bills; however Mrs. Reed will have the ultimate decision making authority and will be consulted with respect to all matters affecting her finances. At the request and direction of Mrs. Reed, Cynthia Stewart will keep Jacquelyn Gladden and Patricia Reed promptly and adequately informed of all of Mrs. Reed's financial matters, including providing full

copies of all bank statements for accounts held in Mrs. Reed's name or held for her benefit, and keeping them informed of other matters affecting Mrs. Reed's finances (such as lease arrangements for the Orangeburg County property and the management and any renovations of Mrs. Reed's real property in Bamberg County, etc.).

8. Delegation of Additional Authority. Mrs. Reed may delegate additional authority as she deems appropriate. In the interim between the filing of this Order and the execution by Mrs. Reed of new planning documents, Cynthia Stewart, Patricia Reed, and Jacquelyn

Gladden shall take direction from their mother as to who she wants to handle specific tasks, including those related to the management of any and all farmland lease arrangements.

9. Bamberg County Residence. That neither Cynthia Stewart, Jacquelyn Gladden, nor Patricia Reed will be permitted sell any property owned by Mrs. Reed, which includes the former residence in Bamberg County. This house will be retained by Mrs. Reed for future visits of open duration. All of Mrs. Reed's daughters shall have equal access to the Bamberg County residence, but other family members may only visit that property when accompanied by one of the daughters. None of these individuals, as well as any other individuals at their direction, shall sell, disturb, or remove the contents of this house, unless specifically authorized to do so by Theodocia Reed.

10. Living Arrangements and Visits. That Theodocia Reed will decide when and where she wishes to reside, for any length of time, whether it is in Florida, or South Carolina. As detailed above, Mrs. Reed indicated at the hearing that she wishes to reside permanently in Florida, but wishes to visit her daughters in South Carolina for as long as she desires.

Given the above finding of capacity, Ms. Reed will be permitted to change her current place of residence in the future, if she so desires.

11. Expenses During Visits. That Mrs. Reed may incur expenses during visits to her home in Bamberg County, or with her daughters, and should have a means for meeting such expenses even when absent from her primary place of residence. Therefore, Mrs. Reed's daughters shall cooperate in providing a meaningful process for Mrs. Reed to pay such expenses herself (e.g., by cash, check, credit card, debit card, prepaid debit card, etc.).

Should any expenses be personally incurred on Mrs. Reed's behalf by any individual, Mrs. Reed shall have the sole discretion to determine whether those expenses should be reimbursed. No one shall have the authority to reimburse themselves from Mrs. Reed's funds for any expenses unless specifically authorized to do so by Mrs. Reed.

12. Healthcare Matters. That Mrs. Reed indicated her desire for all three of her daughters to be involved in her healthcare decisions, if she cannot make those decisions for herself. To that end, the daughters shall keep each other reasonably informed of Mrs. Reed's healthcare status and any issues that arise in connection therewith. In addition, they shall provide full and complete information to each other concerning Mrs. Reed's medications and any other health-related requirements as may be necessary and appropriate to maintain Mrs. Reed's health and well-being at all times. Absent emergency or exigent circumstances, all three daughters shall be informed of, and allowed to participate in, any major health-related decisions for Mrs. Reed, if she cannot make those decisions for herself. If any emergency or other exigent circumstances preclude such information and participation, then every reasonable effort shall be made to provide full and complete information to all of the daughters as soon as possible.

13. Payment of Attorneys' Fees. That based on the requests of Theodocia Reed, as well as this Court's equitable considerations, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart will each bear the cost of their own attorneys' fees. The attorneys' fees of Bruce Holland and Sarah Clingman will be paid from the funds of Mrs. Reed.

14. Payment of Guardian ad Litem's Fees. That Bruce Holland, Esq., the Court-appointed attorney and Guardian ad Litem for Theodocia Reed is entitled to payment for his extensive services in this matter, in the amount of \$190.00 per hour.

15. Payment of Mediation Fees and Costs. That total fees and costs of \$1,560.00 were incurred by Mediator at the June 22, 2009 mediation conference (7.8 hours at \$200.00 per hour = \$1,560.00). Of this total, \$1,365.00 in fees and costs are approved by the Court (7.8 hours @ \$175.00 = \$1,365.00) and will be split equally among Mrs. Reed, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart. Each one-fourth share of this \$1,365.00 in Court-approved fees and costs equals \$341.25. The additional \$195.00 in fees and costs were incurred due to the fact that the Mediator's rate of \$200.00 per hour as actually charged exceeds the Court-approved rate of \$175.00 per hour. This additional \$195.00 will be split equally among Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart, with each one-third share of this amount being \$65.00. The Mediator's total charges of \$1,560.00 have been paid out of the funds of Mrs. Reed that were paid to Warner, Payne & Black, L.L.P. by Patricia Reed and Jacquelyn Gladden at the commencement of these actions.

16. Reimbursement to Mrs. Reed. At the commencement of these actions, a net sum of \$8,000.00 was paid by Patricia Reed and Jacquelyn Gladden to Warner, Payne & Black, and L.L.P... The source of these funds was a bank account whose funds belong to Mrs.

Reed. Because the Court finds that each party should bear its own fees and costs, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed for the \$8,000.00 that was transferred from her account for the purpose of paying Patricia Reed's and Jacquelyn Gladden's legal fees and costs. As noted above, \$1,560.00 of these funds were paid to the mediator for fees and expenses that are to be born by the four parties as specified in paragraph 15. Therefore, Cynthia Stewart's shares of the mediator fees (\$341.25 + \$65.00 = \$406.25) should be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden, and Cynthia Reed should pay her share of such fees (\$406.25) directly to Mrs. Reed. Likewise, Mrs. Reed's share of the mediator fees (\$341.25) should also be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden. As a result, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed a total of \$7,252.50 and Cynthia Stewart shall reimburse Mrs. Reed a total of \$406.25. These payments shall be made within sixty (60) days of the issuance of this Order, and will result in total reimbursement to Mrs. Reed of \$7,658.75 of the \$8,000.00 (\$7,252.50 from Reed and Gladden plus \$406.25 from Stewart), with the remaining \$341.25 representing Mrs. Reed's contribution to the mediator fees.

17. Restoration of Bank Accounts. In addition to the \$8,000.00 transfer of Mrs. Reed's funds as discussed above, additional monies from Mrs. Reed's accounts were transferred by Patricia Reed and Jacquelyn Gladden into a newly-created account at NBSC entitled "Theodocia K. Reed, by Patricia Reed & Jacquelyn Gladden, Trustees" (Account # XXX-XXX-140-9). The transfers of Mrs. Reed's certificates of deposit were previously reversed by the banks, but some funds do remain in this account. Within ten (10) days of the issuance of this Order, this account shall be closed and the proceeds of the account

paid to Mrs. Reed. Mrs. Reed shall also be furnished with copies of all statements for this account. In addition, all other accounts containing Mrs. Reed's monies shall be restored to the "original" ownership status as established by Mrs. Reed prior to any actions by any agent under a Power of Attorney or other person with access to any such account. No person other than Mrs. Reed acting individually shall take any action to alter any account from this "original" ownership status.

18. Safe Deposit Box. All three of Mrs. Reed's daughters shall be made aware of the location of any safe deposit box to which Mrs. Reed is a party or which contains any items belonging to her. No one shall remove any items from any such safe deposit box without the express consent of Mrs. Reed, and the notification of all three daughters.
19. Timber Contracts. That any information or documentation that any of Mrs. Reed's daughters have with respect to any timber contracts concerning Mrs. Reed or her property shall be provided to Mrs. Reed within ten (10) days of the issuance of this Order, with copies to all of her daughters.
20. Farming Leases. That any information or documentation that any of Mrs. Reed's daughters have with respect to any farming leases concerning Mrs. Reed or her property shall be provided to Mrs. Reed within thirty (30) days of the issuance of this Order, with copies to all of her daughters.
21. Cooperation. That in order to meet Mrs. Reed's expectations, all three daughters will need to cooperate with each other. In order to facilitate the same, each daughter shall keep her sisters apprised of current contact information, including home address, home telephone number(s), work telephone number(s), cellular telephone number(s), and any other information materially impacting their ability to contact and communication with

one another (e.g., extended travel plans, etc.). No party shall unduly interfere with or restrict access to Mrs. Reed by any other party hereto, or access by any other family member except as set forth herein. The parties shall make reasonable efforts to contact and communicate with each other on a regular basis concerning Mrs. Reed and her affairs. ~~The parties shall only involve law enforcement, social services agencies or like~~ entities in an emergency and as a last resort after having first made reasonable efforts to resolve any issues or questions among themselves.

22. Enforcement. That all provisions of this Order are subject to enforcement by way of agreement reached by all parties at the October 19, 2009 hearing.

23. Further Consultation. That it would be of benefit to Mrs. Reed for her to confer with Mr. Holland, and, as mentioned previously, to have an attorney draft a durable power of attorney and a health care power of attorney for her that addresses the desires and concerns she expressed to the Court, including any type of "triggering clause" that the attorney and Mrs. Reed might find acceptable. Any attorney preparing any such documents on behalf of Mrs. Reed shall be provided with a copy of this Order prior to drafting the documents.

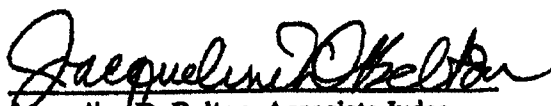
THEREFORE, IT IS HEREBY ORDERED that:

A. The Petition for Appointment of Guardian for Theodocia Reed, filed June 16, 2009, and the Petition for Appointment of Conservator for Theodocia Reed, filed June 16, 2009, shall be dismissed. Based on the findings of this Court, Theodocia Reed shall be deemed to have capacity with the authority to make her own healthcare and financial decisions.

B. Cynthia Stewart, Patricia Reed, and Jacquelyn Gladden shall each bear the cost of their own attorneys' fees litigating this matter, as set forth above. The costs and attorneys fees of Bruce Holland, Esq., and Sarah Clingman, Esq., shall be paid immediately from the funds of Theodocia Reed.

C. The requests and desires of Theodocia Reed, as detailed in the provisions of this order, shall govern her healthcare and financial matters, unless and until Mrs. Reed consults an attorney and has new planning documents prepared that reflect her desires and concerns regarding the circumstances under which someone else will make decisions for her regarding her business affairs, her living arrangements, and her healthcare.

IT IS SO ORDERED.


Jacqueline D. Belton, Associate Judge
Richland County Probate Court

December 29, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE MATTER OF:)
THEODOCIA REED)

IN THE PROBATE COURT

Case Nos: 2009-GC-40-00009

2009-GC-40-00010

ORDER REGARDING
RULE TO SHOW CAUSE
HEARING

THIS MATTER IS BEFORE THE COURT regarding the Rule to Show Cause executed by this Court on May 25, 2010, regarding Patricia Reed (hereinafter P. Reed), Jacquelyn Gladden, and Cynthia Stewart. The aforementioned individuals are the adult daughters of Theodocia Reed. On December 29, 2009 this Court entered an Order in which Ms. P. Reed, Ms. Gladden, and Ms. Stewart were ordered to do certain things, and deadlines were set for the directives they were given. As the Court received reports from various individuals that only part or none of the directives were completed by Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart, a hearing regarding the Rule to Show Cause was set for June 28, 2010.

In addition to providing notice to Ms. P. Reed, Ms. Gladden, and Ms. Stewart, notice of the hearing was also given to Stephen Fitzner, attorney for Ms. Stewart, Charles Black, Jr., attorney for Ms. P. Reed and Ms. Gladden, and N. Bruce Holland, who prepared Mrs. Theodocia Reed's powers of attorney and was formerly her Guardian ad Litem.

The Rule to Show Cause was held as scheduled, on June 28, 2010. Present were Theodocia Reed; Cynthia Stewart, daughter of Mrs. Reed; Stephen Fitzner, Esq., attorney for Ms. Stewart; Jacquelyn Gladden and Patricia Reed, daughters of Mrs. Reed; Charles Black, Jr., Esq., attorney for Ms. Gladden and Ms. P. Reed; Jesse Stewart, spouse of Cynthia Stewart; and Earline Williams, a friend of Theodocia Reed's. Mr. Holland was excused from attending the hearing.



All parties acknowledged that for various reasons the amounts ordered returned to Mrs. Reed's accounts pursuant to this Court's Order of December 29, 2010 had not been completed. Ms. P. Reed and Ms. Gladden felt that they were entitled to additional explanations from Ms. Stewart prior to depositing funds into Mrs. Reed's accounts, and Ms. Stewart felt that because she had spent some of her own funds for the benefit of Mrs. Reed that she was entitled to an offset that "cancelled out" the amount that she was ordered to put back in Mrs. Reed's accounts. Given the lack of trust that exists between these sisters, the Court understands the perspectives of Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart; however, the Court does not agree with and does not condone the actions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart in ignoring the specific directives of this Court to repay funds to Mrs. Reed's accounts. The discord that exists between these sisters apparently prevented them from understanding that the directives of the Order were to be followed and that addressing the Court with their individual concerns was the proper way to handle the matter. Accordingly, all three are in contempt of this Court's December 29, 2009 Order, but sanctions will not be imposed as long as Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart abide by the directives given from the bench on June 28, 2010 and any additional directives stated in this Order.

It should also be noted that the Court conducted a brief examination of Theodocia Reed to determine how she was functioning on the day of the hearing. Based on Mrs. Reed's responses to the Court's questions, she did not appear to be fully oriented as to time, but she did seem to know other facts, such as who she was. Ms. Gladden and Ms. P. Reed indicated that Mrs. Reed is more alert on some days than on others, and that she sees a geriatrician in Columbia, S.C. for health care treatment. All three daughters agreed that Mrs. Reed's capacity has diminished since the last hearing in October 2009, and that at present they believe she is

incapacitated.

After reviewing the entire record, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of these proceedings pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. That Theodocia Reed has been residing with her daughter, Jacquelyn Gladden, in Columbia, South Carolina since the previous hearing, held in October 2009. In addition, the purpose of this hearing is to address the directives of the Order executed on December 29, 2009, which makes Richland County the proper venue for these proceedings. Furthermore, Mrs. Reed, with advice of counsel, previously elected to have this Court make findings and enter an order in this matter.
3. That the Court hereby finds that Theodocia Reed appears to currently meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1), 1976, as amended, though no designated examinations have been conducted to confirm the suspicions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart that their mother is presently incapacitated. Mrs. Reed has valid powers of attorney; if they contain a springing clause the agent is to follow the directives of the power of attorney in establishing her powers to act under the document(s).
4. That this Court has the power to punish for contempt, "which is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, order, and writs of the courts, and consequently to the due administration of justice." Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) (citing Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)).

5. That Ms. P. Reed, Ms. Gladden, and Ms. Stewart all owe funds back to Mrs. Reed's accounts, which should be paid pursuant to this Court's Order of December 29, 2009, minus the offset of any funds paid from their own funds, for which appropriate documentation has been submitted to this Court.
6. That an accounting would be appropriate from all individuals who have spent funds belonging to Mrs. Reed, either at her direction or for her benefit.
7. That an appropriate visitation schedule should be set for Mrs. Reed, which her daughters have proposed be six (6) months in South Carolina and six (6) months in Florida. The terms of the visitation, including who will provide transportation and how Mrs. Reed's expenses will be handled while she is in each location is to be worked out between Ms. P. Reed, Ms. Gladden, and Ms. Stewart and their attorneys. This is not the family court, and this Court will not micro-manage those details, though the final agreement should be committed to writing as an agreement between Ms. P. Reed, Ms. Gladden, and Ms. Stewart, for the benefit of Mrs. Reed.
8. Based on the copies of the powers of attorney provided to this Court by Mr. Fitzer after the hearing, Ms. Stewart has the authority as Mrs. Reed's agent to accept funds for deposit into Mrs. Reed's accounts, and to make payment from the accounts for any expenses owed by Mrs. Reed to any party who presents a legitimate claim for payment.
9. Mrs. Reed should continue to be as involved as possible in her affairs, as dictated by her functional capacity and the directives of her powers of attorney.

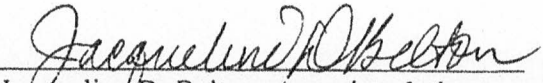
THEREFORE, IT IS HEREBY ORDERED that:

- A. Patricia Reed, Jacquelyn Gladden, and Cynthia Stewart shall pay all funds ordered by this Court's order of December 29, 2009 to Mrs. Reed's accounts,

G. All directives of this Court's Order of December 29, 2009 shall remain in full force and effect, except as modified by this Order or by the powers of attorney executed by Mrs. Reed in January 2010.

IT IS SO ORDERED.

December 30, 2010
Columbia, South Carolina


Jacqueline D. Belton, Associate Judge
Richland County Probate Court

AT THE COPY
FILED

Amy W. McCulloch

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)
)
 IN THE MATTER OF: THE ESTATE)
 OF THEODOCIA K. REED)
)
 Jacquelyn Gladden,)
)
 Appellant,)
)
 v.)
)
 Cyndy R. Stewart,)
)
 Respondent.)

IN THE CIRCUIT COURT
 Appeal from the Probate Court
 for Bamberg County

Case No.: 2017-CP-05-00024

ORDER

This matter came before the Court on August 28, 2017, in Bamberg County, upon an appeal from the Bamberg County Probate Court. Jacquelyn Gladden (Appellant) appeals the findings of the Honorable Sarah G. Noel dated January 26, 2017, in the Probate Court for Bamberg County. Bakari Sellers, Esquire, appeared on behalf of the Appellant, Jacquelyn Gladden. Richard B. Ness, Esquire, and R. Aaron Ness, Esquire, appeared on behalf of the Respondent, Cyndy Stewart. For the reasons stated herein, the appeal is denied and the Order of January 26, 2017, is affirmed.

FACTS

This matter is before the Circuit Court for an appeal of a case that has been pending in Bamberg County Probate Court for the Estate of Theodocia K. Reed since 2016. Theodocia K. Reed passed away on August 15, 2015, at the age of 90. The Last Will and Testament of Theodocia K. Reed, dated June 10, 2008, appointed all three daughters, Patricia Reed, Jacquelyn



Gladden, and Cyndy Stewart, to serve as joint personal representatives.¹ On September 13, 2016, Council for the Respondent sent a letter to Ms. Jacquelyn Gladden and her sister requesting that they renounce their right under the Last Will and Testament to serve as joint personal representatives. The Honorable Sarah G. Noel sent a letter to Jacquelyn Gladden and Patricia Reed, asking if they were in agreement to renounce their right to serve as Personal Representative. Jacquelyn would not consent, and declined to renounce her right to serve as joint Personal Representatives.

Richard B. Ness, attorney for the Respondent, sent official mail enclosing a Renunciation which renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Mrs. Gladden failed to claim this official mail sent to her known address. On November 8, 2017, a petition was filed with the Probate Court of Bamberg County to have Cyndy Stewart appointed as sole Personal Representative for the Estate of Theodocia K. Reed. Patricia Reed failed to answer or otherwise respond, evidenced by the return receipt of the Summons and Petition, to Cyndy Stewart's petition to be appointed as sole Personal Representative. Furthermore, Jacquelyn Gladden never formally petitioned the Probate Court to be appointed personal representative.

DISCUSSION

Appeals taken from the probate court are governed by the provisions of the Probate Code. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993). Pursuant to S.C. Code Ann. § 62-1-308(a) (Supp. 1994), an order or decree of the probate court shall be appealed to the circuit court. The circuit court must hear and determine the appeal "according to the rules of law." S.C. Code Ann. § 62-1-308(d) (1987). The phrase "according to the rules of law" means according to the

¹ The Probate Court admitted a copy of the will into probate, however, the original will has not been located to date. No party disagrees or objects to a copy of the will being an accurate document.

rules governing appeals. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993).

The standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993); *see also* Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below. Id.

"When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them." Byrd v. McDonald, 417 S.C. 474, 478, 790 S.E.2d 200 (S.C. Ct. App. 2016), *citing* Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (S.C. 2005).

If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). A request to remove a personal representative seeks affirmative relief that lies in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993).

Under S.C. Code § 62-3-203(d)(3), the appointment of the personal representative who has equal or lower priority is within the discretion of the Probate Court, in formal proceedings. S.C. Code § 62-3-203(e)(2), explains that "[n]o person is qualified to serve as a personal representative who is... a person whom the Court finds unsuitable in formal proceedings." The

Bamberg County Probate Court has the discretion to find that a person is not qualified to serve as a personal representative. *see* S.C. Code § 62-3-203(e)(2).

"[T]he Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified for the position, and among other things the court calls attention to the fact that the granting of letters of administration is not automatic...." Parkman v. Hanna, 311 S.C. 20, 21, 426 S.E.2d 743 at 744 (S.C. 1992), *citing* In re McClam's Estate, 245 S.C. 315, 319, 140 S.E.2d 478 at 478 (1965) (omitting italics).

Probate Court Judge Noel found Jacquelyn Gladden unsuitable to act as personal representative for a number of reasons. First, Judge Noel found that Jacquelyn Gladden acted irresponsibly by failing to claim Richard B. Ness', attorney for the Respondent, official mail, which enclosed a Renunciation to renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Secondly, Judge Noel found Jacquelyn Gladden unsuitable by her failing to Answer Cyndy Stewart's petition to be appointed as sole Personal Representative. Finally, Jacquelyn Gladden was found unsuitable when she failed to file her own petition requesting to be appointed as the personal representative or counter request her own appointment. Regardless of whether the underlying cause of action is legal or equitable, there is ample evidence to support Probate Court Judge Noel's final Order.

CONCLUSION

The Court has considered the arguments of all attorneys, the submitted memoranda of law, the case law and statutes of South Carolina, and the prior Order of the Bamberg County

Probate Court. The Court finds that the Order of the Probate Court is AFFIRMED. AND IT IS
SO ORDERED!

The Honorable Perry M. Buckner, III
Presiding Circuit Court Judge

_____, South Carolina

_____, 2017



Bamberg Common Pleas

Case Caption: Jacquelyn Gladden VS Cyndy R Stewart

Case Number: 2017CP0500024

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2017-09-30 10:37:13 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE MATTER OF:
CARRIE THEODOCIA K. REED,
(Decedent)

IN THE PROBATE COURT

CASE NUMBER: 2015-ES-05-0091

Jacquelyn Gladden & Patricia Reed,

Petitioner(s)

***PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE**

vs.

Cyndy Reed Stewart

Respondent(s)

We request an Order for the removal of Cyndy Reed Stewart, Personal Representative in the Estate, because (check all that apply):

- ☐ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment. Additional Information:
- ☒ The Personal Representative disregarded a Court order. Additional information: In 2009 the Richland County Probate Court issued an Order restraining all of Decedent's children from disposing of her real property. In August 2015 Respondent disposed of Decedent's Orangeburg property to herself. Further, the Personal Representative has also failed to comply with a Court Order of the Circuit Court of Orangeburg County by re-conveying certain property back to the Estate. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.
- ☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional information:
- ☒ The Personal Representative has mismanaged the Estate. Additional information: This Estate has been pending since 2015 and Petitioner's have not received any information despite being equal beneficiaries under the will and having filed a Demand for Notice. Upon information and belief, she has also failed to account for Estate income by way of farm leases. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117..
- ☒ The Personal Representative failed to perform a required duty. Additional information: See above.
- ☒ Removal is in the best interests of the Estate because: Respondent interfered with the Petitioners' expected inheritance and breach duties of loyalty, trust, and her fiduciary duty to Decedent during Decedent's last illness. See Complaint and Order filed in Orangeburg County Circuit Court attached hereto and incorporated herein by reference as Exhibits A and B. (Attach additional sheets if necessary.) Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.

Executed this 1 day of July, 20 20.Signature: Jacquelyn GladdenPrint Name: Jacquelyn GladdenAddress: 402 Koonstore RoadColumbia, SC 29203Telephone: 803-754-4739Email: ygadden@assistedservicesinc.comRelationship to Decedent/Estate: Daughter/DeviseeSignature: Patricia ReedPrint Name: Patricia ReedAddress: P.O. Box 105Georgetown, SC 29203Telephone: 843-527-3068Email: redbirdreed@gmail.comRelationship to Decedent/Estate: Daughter/Devisee

FILED FOR RECORD

2020 JUL -6 AM 9:44

BAMBERG COUNTY PROBATE COURT

Summons_Estate.dot



Prepared By and Return To:
Palmetto State Law Group, LLC
Margaret A. Collins, Attorney
2241 Bush River Road
Columbia, SC 29210

FILED Mar 31, 2021
AT 10:05:00 AM
BOOK 01997
PAGE 0058 - 0061
INSTRUMENT #2021001278

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ORANGEBURG
COUNTY
DEMETRICE WILLIAMS
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENT, That **CYNDY REED STEWART** (hereinafter referred to as the "GRANTOR"), in the State of South Carolina, pursuant to a Court Order in C/A # 2018-CP-38-00874 in the Orangeburg County Court of Common Pleas, at and before the sealing of these Presents, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain and release unto **THE ESTATE OF THEODOCIA K. REED** (hereinafter referred to as "GRANTEE"), its heirs, successors and assigns Forever, all of our right, title and interest in and to the following described property to-wit:

ALL the certain, piece, parcel or lot of land, with improvements thereon, situate, lying and being in the City of Orangeburg, County of Orangeburg, State of South Carolina, fronting and measuring on Dickson Street sixty-five (65) feet and measuring on the rear line sixty-five (65) feet and on the respective side lines one hundred and sixty-five (165) feet and bounded formerly or now as follows: On the North by lot of H.L. Smoak; On the East by Dickson Street; On the South by lot of Sinclair Sweat; On the West by lot of Jennie Geddings.

Being the same property conveyed to Cyndy Reed Stewart by Cyndy Reed Stewart as Power of Attorney for Theodocia K. Reed and signed as if by the Grantor individually, by Deed recorded in the office of the Clerk of Court for Orangeburg County in Deed Book 01634 at Page 0323.

TMS No.: 0173-15-009.000

Property & Grantee's Address: 126 Dickson Street, Orangeburg, SC

This conveyance is made subject to all existing reservations, easements, rights-of-way, zoning ordinances, setback lines, restrictions and conditions appearing of record affecting subject property. Hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of South Carolina.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said Grantee, her Heirs, Successors and Assigns forever.

AND the said Grantor does hereby bind herself, her heirs, successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee from any and all liens



or encumbrances on the property during her ownership of same.

WITNESS my Hand and Seal this 4 day of February, 2021.

Signed, Sealed and Delivered
In the presence of:

[Signature]
[Signature]

Cyndy Reed Stewart (SEAL)
CYNDY REED STEWART

STATE OF Florida)
COUNTY OF Leon) **PROBATE**

I, William Chadwick Spires, a Notary Public for the State of
FL do hereby certify that **CYNDY REED STEWART**, personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 4 day of February, 2021.

[Signature]
Notary Public for the State of FL
My Commission Expires: July 27, 2024

 William Chadwick Spires
State of Florida
My Commission Expires 07/22/2024
Commission No. HH 22169

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

**AFFIDAVIT FOR TAXABLE OR
EXEMPT TRANSFERS**

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at **126 Dickson Street, Orangeburg, SC**, bearing 0173-15-009.000 Orangeburg County Tax Map Number, was transferred by **Cyndy Reed Stewart** on the 4th day of February, 2021.

3. Check one of the following: The deed is

- (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☒ exempt from the deed recording fee because (see information section of affidavit):

(If exempt, please skip items 4 – 7 and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
- (b) ☐ The fee is computed on the fair market value of the realty, which is \$.
- (c) ☐ The fee is computed on the fair market value of the realty, as established for property tax purposes, which is \$.

5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement

between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$

(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here) \$0.00

(c) Subtract line 6(b) from line 6(a) and place result here: \$

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is : \$0.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this

4 day of February, 20 21

[Signature] (sign)

William Chadwick Spires (print)

Notary Public for FL

MY COMM. EXPIRES: July 22, 2024

Responsible Person Connected with the Transaction

[Signature]
Cyndy Reed Stewart (Typed Name)



William Chadwick Spires
State of Florida
My Commission Expires 07/22/2024
Commission No. HH 22169

1 THE COURT: Can you let me see your hard copy? I'll
2 give it right back.

3 (WHEREUPON, the Court reviews the document.)

4 THE COURT: All right. Let me hand that back to you.

5 (WHEREUPON, the document is returned to Mr.
6 Comer.)

7 THE COURT: Now talk to me about your position
8 regarding the request to admit and the summary judgement.

9 MR. COMER: Your Honor, Ms. Stewart is willing to
10 grant the reformation or striking of the deed, which is
11 new. So, Your Honor, if she's willing to do that, I don't
12 think we need to take hours and hours and hours trying this
13 case. And I guess it would be up to the Court whether you
14 want to set the deed aside or reform it or add the other
15 two on it, and that would take Orangeburg County out of the
16 probate case in Bamberg. I mean if you strike it or set it
17 aside, it will put it in Bamberg. If you reform it and add
18 the sisters, ancillary over here, then you don't have to
19 take the property over here to Bamberg -- I mean you
20 wouldn't take it over there, we would have an ancillary
21 here.

22 Well, Your Honor, with all these motions, if she's
23 willing to have the deed set aside, whatever you decide, or
24 be reformed, that ends the main prayer for relief; and I
25 think that goes to summary judgement as well and then they

THIS TRANSCRIPT WAS PREPARED FOR EVERT COMER, JR., ESQ.



1 win the case, so to speak, on the main issue. And I think
2 that order on the attorney's fees earlier ---

3 THE COURT: Is the law of the case.

4 MR. COMER: --- is the law of the case.

5 THE COURT: I understand.

6 MR. COMER: Okay.

7 THE COURT: I've got it.

8 Yes, ma'am.

9 MS. MOORE: The appeal of the probate court, briefly.

10 THE COURT: Yes, ma'am.

11 MS. MOORE: That was prior to discovery of this bad
12 act, so I'm not sure what -- and again, I would have to do
13 the research on that, but I'm not sure what that would do
14 but I would posit that that order instating her as PR, at
15 this point there's a new cause of action to have her
16 removed. We're just asking that she voluntarily step down
17 so that we don't have to pursue that action and cost more
18 money at this point for either party.

19 The consent order for the case-in-chief, it was not
20 before the Court. We did it together and we submitted it
21 to the Court and it was -- and I believe there was a
22 savings clause that says if we found a new cause of action.
23 We're willing to walk away from that. We understand that
24 we may have missed our chance on that part; however, that
25 doesn't cover the attorney's fees that we have requested in

THIS TRANSCRIPT WAS PREPARED FOR EVERT COMER, JR., ESQ.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2018-CP-38-00874
Jacquelyn Gladden and Patricia Reed,	)	
	)	Motion to Reconsider
Plaintiffs,	)	
	)	
v.	)	
	)	
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

Defendant Cyndy Reed Stewart (“Dr. Stewart”), by and through her undersigned counsel, hereby files this Motion to Reconsider pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and respectfully requests that this Court reconsider its Final Order and Judgment entered on 7 September 2021 finding that Dr. Stewart willfully and wantonly forged a deed for a particular house in Orangeburg, breached her duty as the Personal Representative (“PR”) to her mother’s estate, and attempted to defraud the Plaintiffs pursuant to South Carolina Code Sections 62-8-117(2) (Uniform Power of Attorney Act) and 16-13-10 (criminal offense of forgery).

I. Background

This action was initiated by Plaintiffs, Jacquelyn Gladden and Patricia Reed (hereinafter singularly and collectively “Plaintiffs, with the filings of a summons and complaint on July 9, 2018 wherein Plaintiffs brought eleven (11) causes of action against Defendant Cyndy Reed Stewart regarding her transfer of title to a house located at 126 Dickson Street, Orangeburg, South Carolina (TMS#0173-15-009.000) to herself on or about July 4, 2015 (hereinafter “Dickson Street Property”). Theodocia K. Reed (“Mrs. Reed”) is the mother of Plaintiffs Jacquelyn Gladden and Patricia Reed as well as Defendant Cyndy Reed Stewart (collectively “Siblings”). Mrs. Reed

passed away on August 15, 2015. Prior to the transfer at issue in this case, the Dickson Street Property was part of Mrs. Reed's Estate.

The non-jury trial of this matter was conducted by the Court on April 19 and 20, 2021. During that proceeding, Dr. Stewart testified Mrs. Reed lived with her at her Tallahassee, Florida home for many years and received medical care for dementia in the State prior to her death on 15 August 2015. She further testified that her mother asked Dr. Stewart to preserve the Dickson Street Property due to her long association with in. The uncontroverted testimony at trial established that Mrs. Reed executed a Florida General Durable Power of Attorney¹ at a medical facility on 26 June 2014, although Plaintiffs argue Mrs. Reed lacked capacity to do so at that time. Relying on the Florida Power of Attorney, Dr. Stewart caused a Quitclaim Deed to be executed by a Georgia Notary thereby transferring the Dickson Street Property to herself. Mrs. Reed passed away on August 15, 2015 after being treated for her final illness by the Georgetown Memorial Hospital in Georgetown, South Carolina.

II. Argument

In its September 7th Order, this Court finds that Dr. Stewart acted “willfully and wantonly” in procuring and utilizing the Florida Power of Attorney and the services of a Georgia notary to transfer title to the Dickson Street Property from her mother to herself. Willful and wanton² conduct under South Carolina law characterizes, *inter alia*, “a conscious failure to exercise due care”. *Berberich v. Jack*, 709 S.E.607, 612 (S.C. 2011), *see also Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) (“The test by which a tort is to be characterized as

¹ The text of the Florida Power of Attorney reads “Real property transactions. To lease, sell, mortgage, ... any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper ... and in any way or manner deal with all or any part of **any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of Florida.**” (emphasis added).

² Recklessness is a synonymous term to Willful and Wanton under South Carolina law. *Berberich v. Jack*, 709 S.E.607, 612 (S.C. 2011).

reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights.”). Ordinarily, a fiduciary who reasonably relies on an expert will not found to have acted recklessly if that reliance was merely negligent and not intentional. For example, in *Moskiewicz v. US Dept of Agriculture*, plaintiffs alleged the Department violated their statutory privacy rights through, *inter alia*, the willful and reckless use, verification, and construction of the Plaintiff's farming data associated with an application for emergency agricultural aid. 791 F.2d 561 (7th Cir. 1986). After a survey of federal cases deciding what type of conduct is “intentional and willful” in a variety of different kinds of actions, the Court concluded that the Department's “reasonable reliance” on facts and opinions about the Plaintiff's data in an area that is “open to debate amounted to **(at worst)** negligence. In no way does it constitute reckless or knowing conduct which could be deemed equivalent to [reckless conduct.]” 791 F.2d at 565 (emphasis in original).

In this case, as with *Moskiewicz*, the extent of Mrs. Reed's capacity was an “open” question from 2010 until her death in 2015. While Judge Belton of the Richland County Probate Court found Mrs. Reed incapacitated in a 2010 Order, the Judge noted she arrived at her conclusion without the benefit of a medical examination and after “a brief examination” of Mrs. Reed. Judge Belton concluded that Mrs. Reed “did not appear to be fully oriented as to time, but she did seem to know other facts, such as who she was.” 12/30/2010 Order at p.2. The Plaintiffs conceded to Judge Belton that their mother “was more alert on some days than others” and needed medical care for her condition. *Id.* After this Order was issued, Mrs. Reed primarily lived with Dr. Stewart in Florida where she received medical care for this condition. It was those care providers who executed the Florida Power of Attorney that is at issue in this case. While Dr. Stewart's reliance

on that Power of Attorney and her mother's stated wishes about the Dickson Street Property, without any reference to Judge Belton's Order or her mother's earlier testamentary instruments, was certainly negligent, her reliance on medical and other professionals in deciding on that conduct removes her culpability from the realm of willfulness.

While no South Carolina court has addressed the issue as directly as *Moskiewicz*, our Court of Appeals recognized the defense of reasonable reliance in a lease dispute in *Frewil, LLC v. Price*, 769 S.E.2d 250 (S.C. Ct. App. 2015). The *Frewil* defendants misrepresented the features and accoutrements of an occupied apartment to two prospective renters. The parties executed a prospective lease agreement before the apartment was available, but the renters broke the agreement when they were finally given access to the apartment and learned of the landlord's misrepresentations. 769 S.E.2d at 252. The renters justified the breach on their reliance on the landlord when they could not fully examine because it themselves because it was occupied. The *Frewil* Court noted that

What constitutes reasonable prudence and diligence with respect to reliance upon a representation in a particular case and the degree of fault attributable to such reliance will depend upon the various circumstances involved.

769 S.E.2d at 253. Ultimately, the *Frewil* Court found for the landlords based on other evidence that the Court believed gave the renters the ability to verify the landlord's representations. 769 S.E.2d at 254. Unlike *Frewil*, Dr. Stewart had no way of definitively separating her mother's good days from her bad ones, and therefore had to rely on the Florida medical providers who treated Mrs. Reed for more than five (5) years prior to her death. Those providers approved of her executing the form Power of Attorney provided for by Florida state law for the elderly who have capacity to manage their own affairs and actually executed it for Mrs. Reed. Dr. Stewart, who is an educator and not a medical doctor, asks the court to either find her reliance on her mother's

medical providers and the Florida Power of Attorney they arranged, to be reasonable, or, alternatively simply negligent under the circumstances she experienced while serving as the primary care giver for Mrs. Reed.

The jurisdiction of South Carolina's circuit courts has long been recognized to be "dependent upon the discretion of the Legislature" within the boundaries set by the State's Constitution. *Rhodes v. R.R.Co.* 6 S.C. 385, 386 (S.C. 1875). Article 5, section 1 of the South Carolina Constitution distinguishes between the civil jurisdiction of the State's courts of common pleas and the specific "criminal jurisdiction only" of the courts of general sessions. *See also State v. Quattlebaum*, 45 S.E. 162, 162 (S.C. 1903). Accordingly, the Court's reliance on criminal law to find willfulness in a civil proceeding is not proper.

With regard to the Court's award of attorneys fees to the Plaintiffs, Plaintiffs specifically entered into a consent order on 31 October 2018 that struck "all references in the Complaint to attorneys fees and *pendente lite* relief." Plaintiffs specifically agreed to an order establishing the specific prohibition that "no award for attorney's fees or *pendent lite* relief shall be granted in this action." Hereinafter "Consent Order." In the September 7th Order, the Court orders Dr. Stewart to pay Plaintiffs' attorney fees as a sanction for Dr. Stewart's conduct even though that conduct was central to the Plaintiffs' initial allegations, were the gravamen of this action from the start, and well known to the Plaintiffs when they entered into the Consent Order. Ordinarily, a consent order is binding and conclusive such that it cannot be "set aside in part so that one party is absolved from the duty imposed by it, while the same party retains the benefit if confer[ed]." *Johnson v. Johnson*, 310 S.C. 44, 48 (S.C. Ct. App. 1992) *citing Jones & Parker v. Webb*, 8 S.C. 202 (1876). Because consent agreements of the type at issue in this matter are essentially agreements between the parties, the *Johnson* Court recognized that consent orders should be interpreted as agreements

therefore allowing them to be set aside by the mutual agreement of the parties. *Id.* Other courts have also treated consent orders like agreements between the parties and allowed them to be set aside on the same grounds applicable to agreements such as fraud, fraudulent inducement, or lack of mental capacity. *See Frank v. Soulsby*, 311 S.E.2d 740, 741 (S.C. Ct. App. 1984); *Anderson v. Anderson*, 327 S.E.2d 355, 355 (S.C. Ct. App. 1984). In this matter, there are no recognized grounds for setting aside the Consent Agreement other than the Plaintiffs' desire to be compensated for retaining counsel. Dr. Stewart agreed to the relief sought in this action, the return of the Dickson Street Property to Mrs. Reed's Estate, at a hearing on 4 November 2019, in part upon her belief that the Consent Order was valid. All litigation occurring after the relinquishment sought pecuniary relief associated with the transfer of the Property. Dr. Stewart fully contested that pecuniary relief and did so under the belief that Plaintiffs had given up their claims for attorneys fees and litigation costs. Accordingly, it would be inequitable to allow Plaintiffs to essentially withdraw from the agreement they made with Dr. Stewart after she successfully defended their claims for pecuniary relief.

WHEREFORE, Plaintiff respectfully moves the Court to rehear, reconsider, alter, or amend its Order of 7 September 2021.

The Phillips Firm, LLC
Attorney & Counselor at Law

/s Robert B. Phillips
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Attorney for Defendant

Columbia, South Carolina
 17 September 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
Jacquelyn Gladden and Patricia Reed,	)	Case No.: 2018-CP-38-00874
	)	
Plaintiffs,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	TO DISMISS MOTION TO RECONSIDER
Cyndy Reed Stewart,	)	FOR FAILURE TO COMPLY WITH RULE
	)	59 SERVICE REQUIREMENTS
Defendant.	)	
	)	

TO: DEFENDANT, CYNDY REED STEWART, BY AND THROUGH HER ATTORNEY, ROBERT B. PHILLIPS:

Plaintiffs, Jacquelyn Gladden and Patricia Reed, by and through the undersigned, move to dismiss Defendant, Cyndy Reed Stewart's Motion to Reconsider for the following reasons:

1. Defendant's motion was filed pursuant to Rule 59 of the South Carolina Civil Rules of Procedure, which states, "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after filing the motion." 59(g).
2. Defendant Motion was filed September 17, 2021, meaning that the Judge had to be served with a copy on or about September 28/29, 2021. As of October 4, 2021, no correspondence to the Judge with the Plaintiffs cc'd has been received. Additionally, no communication from the Judge indicating that such motion was served has been received by the Plaintiffs.

WHEREFORE, the Plaintiffs respectfully request that the Defendant's Motion to Reconsider be dismissed for failure to comply with the requirements of Rule 59 of the South Carolina Rule of Civil Procedures.

[SIGNATURE TO APPEAR ON NEXT PAGE]

PALMETTO STATE LAW GROUP, LLC

//s// Elizabeth D. Moore
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Attorneys for Plaintiffs

October 4, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO.: 2018-CP-38-00874
Jacquelyn Gladden and Patricia Reed,	)	
	)	
Plaintiffs,	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFFS' MOTION TO DISMISS
v.	)	
	)	
Cyndy Reed Stewart,	)	
	)	
Defendant.	)	
_____	)	

TO: THE HONORABLE DIANE S. GOODSTEIN AND PLAINTIFFS JACQUELYN GLADDEN AND PARTICIA REED, BY AND THROUGH THEIR COUNSEL PALMETTO STATE LAW GROUP, LLC.

YOU WILL PLEASE TAKE NOTICE that Defendant Cyndy Reed Steward, by and through her undersigned counsel, hereby responds to the MOTION TO DISMISS filed by the Plaintiffs on 04 October 2021 in the aforementioned matter.

Procedural Background

The parties to this action have engaged in prolonged litigation since 2009. In addition to this action, the parties are currently involved in estate litigation before the Bamberg County Probate Court (Case No. 2015-ES-05-00091). This action was tried before the Honorable Diane Schafer Goodstein on 19-20 April 2021 in the First Judicial Circuit, County of Orangeburg. After a period of time to allow the parties to mediate both cases, Judge Goodstein issued her order on 07 September 2021. Defendant filed a timely Motion to Reconsider that Order on 17 September 2021. Plaintiffs' filed a Motion to Dismiss the September 17th Motion on 04 October 2021.

Argument

Plaintiffs argue that Defendant's Motion to Reconsider should be dismissed as it fails to comply with Rule 59(g) of the South Carolina Rules of Civil Procedure because the Defendant's

motion was not “served” to Judge Goodstein. It has long been recognized that Rule 59(g) “requires service of the motion on the trial judge who may have moved to another circuit.” James F. Flanagan, *South Carolina Civil Procedure* 499 (3rd ed. 2010). Judge Goodstein has been the resident judge for the First Judicial Circuit and a mainstay of the Orangeburg judiciary since 1998 casting doubt on the utility of providing her with additional notice of a filing in the First Circuit. In rejecting a similar claim involving Rule 59(g), Chief Judge Hearn held that failure to comply with Rule 59(g) does not negate the tolling effects of a Rule 59(e) motion or make it improper for the trial court to hear said motion. *Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217 (Ct. App. 2002). In a subsequent decision, Chief Judge Lockemy continued the practice of recognizing the trial court’s discretion regarding Rule 59(g) that was first articulated in *Gallagher*. *Smith v. Fedor*, 809 S.E.2d 612, 616 (S.C. Ct. App. 2017).

WHEREFORE, Defendant Cyndy Reed Stewart respectfully requests an Order from this Honorable Court dismissing Plaintiff’s Motion to Dismiss and prays this Court consider its Motion to Reconsider pursuant to Rule 59(e) on its merits.

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Attorney & Counselor at Law

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Attorney for Defendant

Columbia, South Carolina
 07 October 2021

RECEIVED

Dec 06 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2018-CP-38-00874

Jacquelyn Gladden and
Patricia Reed,

Respondents,

v.

Cyndy Reed Stewart,

Appellant.

NOTICE OF APPEAL

Cyndy Reed Stewart appeals the Final Order and Judgement of the Honorable Diane S. Goodstein dated 07 September 2021. Appellant filed Motion to Reconsider on 17 September 2021. Appellant received written notice of the entry of an Order dismissing her Motion to Reconsider on 8 November 2021.

5 December 2021

s/ Robert B. Phillips
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Other Counsel of Record:

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Attorneys for Respondents.

RECEIVED
Dec 06 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2018-CP-38-00874

Jacquelyn Gladden and
Patricia Reed,

Respondents,

v.

Cyndy Reed Stewart,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jacquelyn Gladden and Patricia Reed by depositing a copy of it in the United States Mail, postage prepaid, on 05 December 2021, addressed to their attorneys of record, Elizabeth D. Moore and Margaret A. Collins, 2241 Bush River Road, Columbia, SC 29210.

5 December 2021

s/ Robert B. Phillips
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Attorney & Counselor at Law
by Robert B. (Sam) Phillips
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(803) 726-4268

Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Jacquelyn Gladden and Patricia Reed,)

Case No.: 2018-CP-38-00874

Plaintiffs,

FINAL ORDER AND JUDGEMENT

vs.

Cyndy Reed Stewart,

Defendant.

RECEIVED

Dec 06 2021

SC Court of Appeals

Date of Hearing: April 18-20, 2021
Judge: The Honorable Diane Shafer Goodstein
Plaintiff's Counsel: Elizabeth D. Moore
Defendant's Counsel: Robert Phillips
Court Reporter: Katherine A. Spires

PROCEDURAL HISTORY

This matter came before me pursuant to the Plaintiffs filing a *Summons, Complaint*, and *Lis Pendens* on July 9, 2018. Defendant, initially represented by Aaron Ness, Esquire filed a *Motion to Strike, Motion to Dismiss*, and *Answer and Counterclaim* on September 6, 2018. A *Consent Order* was entered into and filed October 31, 2018, striking claims for attorney's fees, without prejudice to any actions that may arise after the Order. Defendant's counsel sought to be relieved, filing the appropriate motion on December 10, 2018, along with a *Motion for Protective Order* as discovery had been issued to the Defendant. Plaintiffs responded to the December motions in their *Return to Motion to be Relieved as Counsel and Motion for Protective Order* on December 26, 2018. An *Order to be Relieved as Counsel* was filed February 25, 2019, and Aaron Ness dismissed from the case after a hearing on February 14, 2019.

On January 7, 2019, Plaintiffs filed a *Notice of Motion and Motion to Deem Request*

for Admissions Admitted in addition to their already pending Motion to Compel. Plaintiffs filed a *Return to Motion to Dismiss and Notice of Motion and Motion on the Pleadings or in the Alternative Motion for Summary Judgment* on February 13, 2019. Thereafter on May 6, 2019, Plaintiffs filed a *Notice of Motion and Motion to Compel Discovery Responses*. Discovery had been issued to Defendant's previous counsel, Aaron Ness, on November 5, 2018. Also on May 6, 2019, Plaintiff's filed a *Memorandum in Opposition to Defendant's Motion to Dismiss and In Support of Plaintiff's Motion for Judgment on the Pleadings or in the alternative, Summary Judgment*. The parties were to next appear before the Court the week of July 8, 2019.

At the hearing, Defendant represented to the Court that she could not move forward without representation and was struggling to find representation. In an abundance of caution, the Court continued the matter in a Form 4 Order filed July 29, 2019. The Order also required the parties to schedule mediation. Plaintiffs filed a *Motion to be Exempt from ADR* with a proposed Order, and emailed the same to the Chief Administrative Judge, explaining that a conflict existed that could cause issues with mediation. While filed, the Motion did not make it on to the docket and no filing date is available. The *Order for Exemption from ADR Requirements* was filed August 5, 2019.

This trial was then scheduled on the trial roster to come before the Court the week of September 23, 2019. Prior to this trial, David Melnyk filed a *Notice of Appearance* on behalf of Defendant on August 2, 2019. However, Defendant appeared alone and indicated she was unrepresented. Plaintiffs filed a *Notice of Motion and Motion for Sanctions* on October 8, 2019. The trial was continued once more. The parties then were called for motions roster the week of November 4, 2019. Midnight November 4, 2019, Evert Comer, Jr. filed a *Notice of Appearance* on behalf of the Defendant. At the hearing, the Defendant attempted to have the matter continued, however the motions hearing went forward. Thereafter, the parties came up on the trial roster for

the week of November 18, 2019, however both parties had conflicts and agreed to a continuance via *Consent Order of Continuance* on November 15, 2019.

On January 3, 2020, Mr. Comer filed a *Notice of Motion and Motion to be Relieved as Counsel*. The Court issued and filed an *Order* on January 10, 2020, granting summary judgment and denying all other motions. Plaintiffs filed a *Notice of Motion and Motion to Reconsider, or in the alternative Seek Damages in Probate Court* on January 16, 2020. Plaintiffs' motion was granted, see *Order Granting Motion for Reconsideration* filed on January 29, 2020. The parties were again on the trial roster for the week of March 30, 2020, however, due to a trial that took priority pursuant to SCRAC 601, the Plaintiffs filed a *Notice of Motion and Motion for Continuance* on March 2, 2020. On April 28, 2020, Mr. Comer's request to be relieved as counsel was denied by the Court.

On February 16, 2021, Plaintiffs filed a *Notice of Motion and Motion for Continuance and Leave to Contact a Represented Party* as the parties were once again on the trial roster for the week of February 22, 2021. The case was rescheduled and placed on the trial roster for the week of April 18, 2021. On April 15, 2021, Robert Phillip, Defendant's fourth attorney brought into this litigation and third attorney of record, filed a *Notice of Appearance*. Thereafter, Defendant filed a *Motion to Compel Mediation* and a *Motion to Dismiss for Lack of Jurisdiction* on April 18, 2021. Pursuant to *Order Relieving Counsel* filed April 22, 2021, both Evert Comer, Jr. and David Melnyk were relieved as counsel.

FACTUAL BACKGROUND

The parties to this action are sisters. The conflict goes back to 2009. The Decedent whose property is at issue was their mother. On June 10, 2008, Decedent executed a Last Will and Testament dividing all her property in equal portions among the sisters. The Will specifically

contemplated that should any of the sisters receive an advance or anything outside of probate, that amount, or value would be offset.¹ Similarly, on June 23, 2008, a letter indicating that the sisters were all granted Power of Attorneys and informing them how they should sign using that power, was issued from the drafting attorney.² The Decedent intended the sisters to share equally in both authority and inheritance based on the documents from that time period.

In approximately 2009, the Decedent was diagnosed with Parkinson's and dementia. At that time, Ms. Gladden and Ms. Reed, the Plaintiffs, brought conservatorship and guardianship actions in the Richland County Probate Court. Ms. Stewart, the Defendant, in the instant action opposed these actions along with the Decedent. An Order was filed December 29, 2009, under action numbers 2009-GC-40-00009 and 2009-GC-40-00010 holding that the Decedent did not meet the definition of an incapacitated person and further barred any of the sisters from selling or otherwise disposing of any of the Decedent's real property.³ Thereafter, Powers of Attorneys were issued. Specifically, Defendant was granted a limited power of attorney that was intended to be used in Florida, as that is where the Defendant was living.⁴ Each sister had a different Power of Attorney, with Ms. Reed having power over the Bamberg property owned by the Decedent, and with Ms. Gladden having a springing provision for incapacity.⁵

Approximately a year after the Richland County Probate Order and several months after the new Power of Attorneys were drafted, the parties returned to the Richland County Court for a contempt action. At this time, it is Ms. Reed's and Ms. Gladden's recollection that all the sisters agreed that their mother was no longer able to care for herself or deal with her affairs. At this time,

¹ Plaintiff's Exhibit 1

² Plaintiff's Exhibit 2

³ Plaintiff's Exhibit 3

⁴ Plaintiff's Exhibit 4

⁵ Plaintiff's Exhibit 14

the Richland County Probate Court found that the Decedent met the definition of an incapacitated person. This order was filed December 2010.⁶ Following the Decedent went into the care of the Defendant and resided in Florida. Approximately four (4) years later the Defendant was responsible for the Decedent executing a new Power of Attorney granting the Defendant sole power and authority over all of Decedent's assets and property.⁷ This document was prepared by Defendant and signed June 26, 2014. However, it was not recorded until August 4, 2015. Neither Ms. Reed nor Ms. Gladden were aware of this Power of Attorney until after the Decedent's death.

Eight (8) days after this undisclosed Power of Attorney was recorded, a Quit Claim Deed ("Deed") conveying Decedent's Orangeburg Property to the Defendant was also recorded. The Deed is dated July 4, 20____. The Deed was signed August 4, 2015 when the Decedent was in the hospital/hospice care due to the end-of-life illness that caused her death.⁸ Ms. Gladden and Ms. Reed were present with the Decedent in those final days and aver that the Decedent had no capacity to sign any legal document. Decedent was in the hospital from July 28, 2015, through August 7, 2015. Ms. Reed and Ms. Gladden tried to make her comfortable at home but ended up resuscitating her and having the Decedent taken to hospice after a few hours. Decedent passed away August 15, 2015.

After Decedent's death, Ms. Gladden and Ms. Reed became aware of the Power of Attorney and the Quitclaim Deed when the Defendant filed an inventory in the Probate and the Orangeburg Property was not listed.⁹ Plaintiffs then filed this action. At trial the Defendant admitted to signing the Deed for the Decedent, without designating her signature as "agent."

⁶ Plaintiff's Exhibit 5

⁷ Plaintiff's Exhibit 6

⁸ Plaintiff's Exhibit 9

⁹ Plaintiff's Exhibit 10

TRIAL AND TESTIMONY

At the call of the case, present in the courtroom were Plaintiffs, Jacquelyn Gladden and Patricia Reed, with their counsels, Elizabeth D. Moore and Margaret A. Collins. Also, present was counsel for the Defendant, Robert Phillips. Defendant, Cyndy Reed Stewart was not present. As a preliminary matter, the Court heard the Defendant's *Motion to Compel Mediation* and *Motion to Dismiss for Lack of Jurisdiction*. These Motions were denied.

The Court then inquired of the parties regarding exhibits and how long each side anticipated they needed to present their case. Plaintiffs raised the issue that they had received no discovery from Defendant, and therefore, would be objecting to any and all documents proffered, beyond the discovery that they themselves had provided to the Defendant. Defendant's counsel argued that Defendant was protected from having to answer the discovery and therefore, Plaintiff's objections would be improper. The Court ruled that Defendant had no basis for failing to comply with discovery. The Court provided Defendant 24 additional hours in which to provide discovery to Plaintiffs.

Because the Defendant failed to appear in person for the trial the Court provided that she could appear telephonically or virtually. The issue of Defendants three (3) separate counsels was raised as well. Plaintiffs explained what their understanding of the situation was, stating that Mr. Melnyk filed an appearance but failed to appear. According to Mr. Melnyk this failure to appear was because of a stomachache. However, according to Defendant, Mr. did not appear because he did not represent her. Mr. Comer sought relief, but was denied. When Plaintiff's counsel informed Mr. Comer of this denial he asked Plaintiff's counsel how the court could do that.

After these preliminary matters were discussed, including approval for Defendant to appear telephonically and virtually, the parties were dismissed for the day to resume 9:30 am the following

day.

Testimony was taken for the next two (2) days. Both Plaintiffs testified. Pursuant to their testimony, it was established that a 2009 Court Order existed that restrained the sale or disposition of any of the Decedent's property, along with the fact that a year later, the Decedent met the definition of an incapacitated person. Ms. Reed and Ms. Gladden testified that the Defendant has supported and provided testimony at the 2010 hearing in which the Decedent was found to be incompetent.

Ms. Reed and Ms. Gladden testified regarding Decedent's declining health that continued to worsen with time. With regards to execution of the August 4, 2015 deed, Plaintiff, Ms. Gladden testified that her mother, the Decedent was dying and incapable of signing anything. There was an attempt to admit doctor's notes, however, there was an objection and that objection was sustained. Through testimony, Ms. Gladden indicated that she obtained the notes in order to activate her springing power of attorney and make sure that the Decedent's affairs were attended to during her final illness.

Ms. Gladden also testified to discovering the Florida Power of Attorney created by Defendant and signed in 2014. Finally, Ms. Gladden testified to discovering the Quit Claim Deed.

Both Ms. Reed and Ms. Gladden testified as to damages, using the current tax value of the property, and stating that if the Orangeburg property had been sold, instead of conveyed to Defendant. Plaintiff's counsel rested after the sisters' concerning damages.

Defendant proceeded with her case attempting to show that Ms. Gladden and Ms. Reed had taken money. During Defendant's case, Defendant testified extensively about how the Orangeburg property was a legacy property and she was trying to protect the legacy property. On cross examination, Defendant testified that she had not sought legal counsel for the drafting or

preparation of the Florida Power of Attorney or the Deed. Rather, she claimed to have executed the Florida Power of Attorney based on advice from a health care worker and claimed to have signed the Deed as instructed by a notary.

RULING

Based on the testimony of the parties, the evidence submitted, and the arguments of counsel, this Court finds that the Defendant willfully and wantonly forged the Deed to the Orangeburg property; breached her duty as Personal Representative; and attempted to defraud Ms. Gladden and Ms. Reed. The Court finds that the Defendant intentionally executed the Florida Power of Attorney to obfuscate the South Carolina Power of Attorney and intentionally transferred the property to herself for her own benefit.

Based on this willful and wanton conduct, the continual delays and prolonging of this litigation as well as considering statutory provisions of *S.C. Code Ann. 62-8-117(2)* and *16-13-10 et. seq.* the Court hereby sanctions the Defendant and awards Ms. Gladden and Ms. Reed attorney's fees and costs. The attorney for the Plaintiffs shall prepare an Affidavit of Attorney Fees provide the Affidavit of Attorney Fees to counsel for the Defendant and the matter scheduled by the Clerk of Court to allow for the cross examination by Defendant regarding the attorney fees request. Likewise, an Affidavit for Costs will be prepared and distributed and subject to examination.

AND IT IS SO ORDERED!

Honorable Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

_____, South Carolina



Orangeburg Common Pleas

Case Caption: Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart
Case Number: 2018CP3800874
Type: Order/Judgment and Form 4

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2021-09-03 14:44:23 page 9 of 9

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF ORANGEBURG) COMMON PLEAS
4
5 JACQUELYN GLADDEN and)
6 PATRICIA REED,)
7 Plaintiffs,)
8 Vs.) CASE NO. 2018-CP-38-00874
9 CYNDY REED STEWART,)
10 Defendant.)

11 APRIL 19-20, 2021
12 ORANGEBURG, SOUTH CAROLINA
13

14 HONORABLE DIANE S. GOODSTEIN, JUDGE

15 A P P E A R A N C E S:

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1 THE COURT: The case we are about today
2 is Jacquelyn Gladden, Plaintiff verses Cyndy Reed
3 Stewart. So, all right. Counsel, you have a
4 motion?

5 MR. PHILLIPS: I do, Your Honor. I
6 appreciate it. And, again, for the record, Sam
7 Phillips appearing on behalf of the Defendant Cyndy
8 Reed Stewart.

9 Your Honor, I appreciate your staff
10 worked with us and I believe my client is appearing
11 on the -- on your virtual courtroom. The -- it's
12 nice to be back in our actual courtroom after over
13 a year.

14 THE COURT: Yeah.

15 MR. PHILLIPS: But, unfortunately, I'm
16 here to argue that we shouldn't be here. This
17 matter -- let me give you -- it's a matter that has
18 frankly gone on since 2008. So let me give you the
19 thumbnail sketch of the procedural history.

20 2008, the -- Theodocia Reed, elderly
21 lady, had three daughters. The Plaintiffs
22 Jacquelyn Gladden and Patricia Reed are two of
23 those daughters. My client Cyndy Reed is the third
24 daughter. Litigation between the sisters began in
25 2008 when the Plaintiffs filed a petition to have

1 the mother declared incompetent. Judge Belton held
2 that -- held a merits hearing and determined she
3 wasn't incompetent. And she made a series of about
4 12 rulings, one of which was finding that the
5 Plaintiffs have wrongfully transferred money,
6 \$8,000 that belonged to her mother to pay for their
7 legal fees. Also, to pay -- put money aside in a
8 trust account that only they controlled.

9 Judge Belton undid all that in 2009 by
10 Order. The Order hadn't been complied with in
11 2010, frankly, brought everybody in, my client
12 hadn't paid her portion of the mediation cost, all
13 the monies hadn't been returned, so that kind of
14 set the tone for this dispute.

15 The mother passes away in 2015. A
16 estate is filed. Her will named all three sisters
17 as joint personal representatives obviously because
18 of the conflict, that didn't occur. So my client
19 retained counsel and moved to be appointed the
20 personal representative. I believe Ms. Gladden
21 opposed that. There was litigation, probate court
22 ruled in favor and appointed my client back in 2015
23 the personal representative. That case was
24 appealed to Judge Buckner. He affirmed it and it
25 was appealed to the Court of Appeals.

1 So since then, my client has served as
2 the personal representative of an estate that has
3 essentially three pieces of real property and no
4 other assets. There's a house here in Orangeburg,
5 there's a house in Denmark, and then there's some
6 timber property.

7 So as the case went on, the -- there
8 has been challenges to my client's decisions in how
9 she conducted herself as the personal
10 representative. Up to and including an action that
11 was filed July of last year seeking to remove my
12 client as the personal representative. And as the
13 Court knows, when you challenge a personal
14 representative that stops their ability to manage
15 the estate. So this estate, my client has been
16 advancing funds to that estate since her
17 appointment. Was looking for the timber sales to
18 reimburse her and give her some other monies. The
19 action that they filed stayed that.

20 When we started this hearing,
21 Plaintiffs' counsel indicated that while all that's
22 separate from what we're here today. We're here
23 only to talk about the Orangeburg property and
24 their allegations stemming from its transfer. Yet
25 their own document belies that. And they raise as

1 | their regard -- as their reason for pulling her
2 | back as the personal representative, the fact that
3 | this dispute exists.

4 | So these cases are inextricably linked
5 | by the Plaintiffs' own pleadings. Not anything
6 | I've come up with. Although, I find plenty in the
7 | record to show that this same controversy,
8 | Plaintiffs to seek to have it adjudicated in two
9 | different spots. It's not really appropriate
10 | because my client as personal representative has
11 | some entitlement not only to her inheritance under
12 | -- or beneficiary under the will, but as the
13 | personal representative who's been advancing the
14 | funds to the estate.

15 | And so we look back, why are we here
16 | now? Well, we're here over a piece of property.
17 | This case was filed back in 2018. My client
18 | answered and she admitted what happened. So the
19 | facts of this case have never been in dispute. Per
20 | her claim and her answer is simply that mom wanted
21 | me to have it. She issued me a power of attorney
22 | to do it. She asked me to transfer it into my name
23 | and I did it. And you'll hear testimony -- if this
24 | thing goes forward, you'll hear testimony about
25 | that. That wasn't contested.

1 But there's all these allegations about
2 how well that was self-dealing and you robbed us of
3 our inheritance. And I think there's nine or ten
4 causes of action all stemming with this one piece
5 of property. Well, Judge, that property is no
6 longer in front of you. It was transferred by Deed
7 back to the estate. So it will be decided by the
8 Bamberg property court -- I mean, probate court.
9 Apologies. Okay.

10 It's almost axiomatic that subject
11 matter jurisdiction exists to prevent exactly what
12 we're trying to do today. Plaintiffs want you to
13 hear their allegations -- their specific
14 allegations against my client and maybe award
15 attorney's fees and damages because of that. Even
16 though early on in this case there was a Consent
17 Order that attorney's fees weren't on the table and
18 you yourself, you heard this case about a year ago
19 and you noted that was the law of the case. But
20 we're here to try to overturn that today and try an
21 aspect of this case and I don't think we should.

22 Because by Plaintiffs' own admissions,
23 they move to have this case exempted from ADR, from
24 Court ordered mandatory mediation. Judge Manning
25 was in Orangeburg, middle of 2019, I believe, in

1 August, and he issued a Form 4 Order continuing the
2 case and ordering the parties to mediate. That
3 Order was entered -- I apologize, Your Honor, on
4 July 29, 2019. Seven days later, Plaintiffs in a
5 motion that I didn't see was filed, my client had
6 no knowledge of, they moved to have the case exempt
7 from ADR. And their explanation, again, I don't
8 have the motion, so I don't know what the actual
9 grounds are, but here's what got into the Order.

10 The Motion For Exemption of ADR
11 requirements filed by the Plaintiff, again, no
12 consultation, the motion is not in the record. In
13 the motion, Plaintiffs' counsel indicated that she
14 was unable to proceed, counsel was unable to
15 proceed with the mediation because it could result
16 in a violation of the rules of professional
17 conduct. By either her, as Plaintiffs' counsel, or
18 the mediator having discussions about the estate
19 case. The estate case that they want you to ignore
20 today is the reason they can't go forward with the
21 mediation of this case. Now, I don't know what
22 those grounds are, again, it's not in the Order --

23 THE COURT: Are you trying to object --

24 MS. COLLINS: I am trying to object,
25 Your Honor. Very briefly. Your Honor, I do

1 understand the subject matter jurisdiction issues,
2 those need to be resolved. But insofar as the
3 mediation matter is concerned, Your Honor, first of
4 all, we don't even see where it's been filed, if
5 it's been filed, we don't have notice of it. He
6 did give me paper copy of it during the roster
7 meeting, but the chief administrative judge
8 exempted this from mediation back in 2019 and that
9 is the law of this case.

10 And I would argue that the matter
11 relating to mediation, I can explain it further if
12 necessary, Your Honor, but it's already resolved by
13 this Court and is not before this Court properly
14 today.

15 THE COURT: Okay.

16 MR. PHILLIPS: Your Honor,
17 unfortunately, I was just retained on Wednesday of
18 last week. Spoke briefly to opposing counsel
19 indicated that I saw this issue. One circuit judge
20 cannot overrule another circuit judge. I mean,
21 that's been the law of South Carolina for the 25
22 years I've practiced law. And yet we have an Order
23 here that it does. So I would say on its face, the
24 Order has some issues. But it's not the Order
25 that's the issue.

1 The issue is, we're here today to talk
2 about a dispute that the Plaintiffs have brought in
3 the probate court. They're asking you to rule on
4 issues that they raised to the probate court. And
5 I understand they've represented that they didn't,
6 but in their own filings with that court, they
7 raised it. And if you give me a second just to
8 look through, it is this issue over this piece of
9 property that is all that's before this Court and
10 now that the property has been returned to the
11 probate court, it will be an issue there too.

12 They have raised their allegations of
13 impropriety on the transfer of that property which
14 has now been undone, they have asked for attorney's
15 fees in that court, something that they waived in
16 this one through their Order that's the law of the
17 case.

18 So, we get down to what's the basis of
19 subject matter jurisdiction and that is the right
20 to be heard, have your one day in court in front of
21 one judge. My client, if you go forward and make a
22 ruling on this case where the probate matters, her
23 monies that she spent for the probate court are not
24 before you, what she's been ordered by the probate
25 court is not before you, the fact that that case

1 has been stayed since July of last year because of
2 their challenge to her as a -- none of that is
3 going to be adjudicated. And so it can't be a
4 complete adjudication of this matter.

5 Because the probate court has exclusive
6 jurisdiction over the property which they asked for
7 the Deed, my client executed it, and they filed it.
8 So that now -- that's the law. That's the reality
9 of the case. Not only that, but the law of the
10 case. That property is not an issue here.

11 Mr. Comer appeared in front of you
12 about a year ago at a hearing, this was brought up.
13 My client, my client's, you know, witnesses who
14 were there at that hearing, Mr. Comer, they all
15 believed that this thing was settled back a year
16 ago. When you just -- you ordered my client to
17 transfer the property over there. In fact,
18 Mr. Comer and I attach that part of the transcript
19 to my motion, said look, you know, are we going to
20 spend a lot of time trying these issues or we just
21 want to resolve it with the property? And we did
22 and you dismissed the motions. Well, to my client,
23 that was a settlement of that case.

24 I understand that there was a
25 subsequent Motion To Reconsider. Well, if you're

1 going to reconsider the Order, now that property,
2 the disposition of it is the issue here and yet we
3 -- you don't have jurisdiction over the property.
4 So it would be -- it's -- it -- it -- always hate
5 to tell a judge you can't do something because I
6 know that's not what judges want to hear. But in
7 this case, it is -- there's another judge who has
8 this matter. She needs to hear it and be able to
9 rule on it. She's already ruled on it.

10 The problem is, is in the probate
11 court. The Plaintiffs have been challenging my
12 client there and they've been losing since 2008. I
13 mean, this is all -- this all boils down to the
14 simple fact that these two sisters believe their
15 other sister shouldn't have controlled their
16 mother's property. Her health care decisions, all
17 that.

18 Judge Belton did an in camera
19 examination and determined that the mother was
20 competent to make those decisions and issued very
21 specific instructions. And those instructions were
22 basically my client, Cyndy Stewart, handled --
23 handle this. And not only did Judge Belton allow
24 it to move forward, but allow -- for example, there
25 was -- they were contesting that she lived in

1 Florida with my client as opposed to here in South
2 Carolina with them. The Court recognized that she
3 could make that decision. She was competent to do
4 it. She wanted to live in Florida.

5 And then she put in there and she said,
6 and because of the circumstances -- Judge Belton's
7 pretty savvy and handles a lot of probate matters
8 and a lot of feuding siblings. And she said, look,
9 if you need to make other powers of attorney, do
10 so. Ma'am, you're getting older and she gave some
11 pretty specific guidance in her Order and
12 recommended that that Order be referred to in any
13 powers of attorney.

14 So, therefore, the mother did what she
15 was instructed to do. She did some powers of
16 attorney. And my client transferred that property
17 pursuant to a power of attorney. Now, we could
18 argue over whether it's legally flawed, we could
19 argue about all these different things associated
20 with this transfer of this property, but that
21 matter is before the probate court.

22 And as a probate court looks to divide
23 up this now estate asset between three people, she
24 can assess damages, she can assess attorney's fees,
25 they can make all these arguments here, but you

1 don't have to -- you wouldn't run the risk of two
2 adjudications. And so because, you know, to me,
3 subject matter jurisdiction is so contested here
4 and so inappropriate, I filed a second motion to
5 compel mediation.

6 Mediation -- I just don't believe Judge
7 Buckner's Order, with all due respect, is valid. I
8 mean, it doesn't contain any citation of any legal
9 authority. It wasn't noticed. There was no
10 hearing and it makes claims about an attorney who
11 knew nothing about it. And has no idea what the
12 conflict is.

13 So this case has been pulled out of
14 mediation even though an earlier Order from a
15 circuit court judge sent it to mediation and even
16 though the rules of court required mediation, he
17 pulled it out for reasons that really have no
18 validity. And so -- but if that is an issue,
19 mediate this case jointly with the probate court,
20 have everybody together, see if there can be a
21 resolution, and if not, the probate judge who's
22 been dealing with this since 2014, much longer --
23 2015, much longer than this case, this court has in
24 2018, let them rule on it.

25 THE COURT: Got it. Thank you. Yes,

1 ma'am.

2 MS. COLLINS: Thank you, Your Honor.
3 May it please the Court.

4 THE COURT: Yes.

5 MS. COLLINS: Margaret Collins on
6 behalf of the Plaintiffs. Although, I do
7 appreciate Mr. Phillips trying to step in on a
8 weekend's notice, some of those facts were
9 inaccurate. What this actually relates to, yes,
10 there were some litigation in 2008, but what he
11 fails to mention is the decedent was deemed
12 incompetent in 2009. Notwithstanding that
13 incompetency, there were a number of powers of
14 attorney that were granted after that. And
15 notwithstanding her Order that those powers of
16 attorney could not allow for the transfer of real
17 property that was done. Okay.

18 So I think that factually that's a very
19 important fact. Because the power of attorney that
20 was relied upon by the Defendant was done after the
21 decedent was already found incompetent. This
22 transfer of real estate also occurs one week before
23 the decedent died. While in the hospital or on
24 hospice in Myrtle Beach area. Okay.

25 Notwithstanding, she purportedly signed

1 a Deed in Georgia. Which at the time when we filed
2 this action, we thought the decedent somehow was
3 secreted or something and signed the Deed. Well,
4 since then, we've learned that it was actually the
5 Defendant's signature on that Deed. So that was
6 notarized and she did it by way of power of
7 attorney is what she now indicates.

8 So I just wanted to clear those facts
9 up, Your Honor, before I move forward at this
10 point. So this is more of a justiciability
11 argument, at least that's what it indicates in his
12 motion, not a subject matter jurisdiction argument.
13 Your Honor, I think I'm going to make your job much
14 easier in that I do believe that a number of the
15 causes of action out of the eleven have been
16 resolved by that Deed specifically. The 2nd, 4th,
17 5th, 6th, 8th, 10th, and 11th.

18 THE COURT: 2nd, 4th --

19 MS. COLLINS: 5th, 6th, 8th, 10th, and
20 11th.

21 THE COURT: Okay.

22 MS. COLLINS: Have been deemed resolved
23 to the extent that it was demanding the property be
24 part of the estate.

25 Now, Your Honor, insofar as the

1 jurisdictional argument over Bamberg probate or
2 this court, if we had filed about a Deed matter for
3 real estate that was in Orangeburg County in
4 Bamberg County, of course we would have been told
5 we were in the wrong court. So that's why we filed
6 here, clearly.

7 A couple of other issues. This probate
8 matter has been pending. My client was ill on the
9 date of the hearing, so by default the Defendant
10 was named the personal representative. She did not
11 appear at that hearing. So, yes, the Defendant was
12 named. And the only reason that we asked for her
13 to be removed is nothing, absolutely nothing was
14 done between 2015 and last year. Nothing.

15 Now, granted we have a title issue with
16 this matter, but even before then nothing occurred.
17 The Defendant didn't do anything on the probate
18 back then either. So that being said, we also
19 filed a motion because of the allegations in this
20 matter.

21 So, Your Honor, what is remaining is
22 the first cause of action for forgery, fraud, and
23 misrepresentation.

24 The third cause of action, breach of
25 fiduciary duty. Now, we're not talking about under

1 her probate duties, but under her duties as a power
2 of attorney. And so clearly that has nothing to do
3 with probate. It has to do with during the
4 decedent's life which probate court has no
5 jurisdiction over. Because it did not resolve --
6 it didn't relate to the
7 guardianship/conservatorship action, it only
8 related to actions done with power of attorney.

9 The ninth cause of action, lack of good
10 faith and fair dealing. So what's gone is the lack
11 of capacity because we didn't know mom didn't sign
12 the Deed. The duress or undue influence. Again,
13 we thought mom signed the Deed. The lack of
14 consideration, because it's been transferred back.
15 The unconscionability, because it's been
16 transferred back. Unjust enrichment, quantum
17 meruit and Title D reformation are all resolved.
18 But what is not resolved is the forgery. Is the
19 damages from the forgery.

20 Now, just briefly on the attorney's
21 fees issue, Your Honor. Yes, prior to an Answer
22 being filed or shortly around the same period of
23 time, Aaron Ness represented the Defendant. Aaron
24 said, I don't think this is a cause of action for
25 attorney's fees. I'm going to file a motion, can

1 we resolve it by consent? I said, well, I don't
2 even know the facts of this case at this point, but
3 assuming that it's just whether or not the property
4 should be conveyed back or not, I'm fine as long as
5 nothing else comes up. Well, something else did
6 come up. We found out she forged the Deed. We
7 found out that she went through four attorneys and
8 we've been --

9 MR. PHILLIPS: Your Honor, I have to
10 object. There is no evidence of a forgery and I
11 just heard counsel say that the validity of the
12 Deed is off the table because the property has been
13 transferred. So, I mean, you can't have it both
14 ways. You can't say all these issues are off the
15 table and all we want to talk about are those
16 issues we want to talk about because the Deed has
17 been transferred. You're claiming it's a forgery.
18 You've claimed in your petition to the probate
19 court that it was improper, but yet you're not
20 going to be allowed to hear that.

21 And she also made the key distinction,
22 there's no consideration for that transfer. My
23 client has taken care of that property for more
24 than a decade. She has taken care of it as both --

25 THE COURT: I think that's --

1 MR. PHILLIPS: I'm sorry.

2 THE COURT: Yeah.

3 MR. PHILLIPS: So, anyway, I would just
4 object to that -- those statements.

5 MS. COLLINS: Your Honor, the only
6 reason I made those statements is they were in the
7 Answer that she signed the Deed to herself. So --
8 and she signed it, the decedent's name. Well, if
9 you sign somebody else's name without comma as
10 power of attorney or anything, you signed the
11 decedent's name and you're not the decedent, I'll
12 leave it to the Court's discretion on finding out
13 what that is.

14 THE COURT: Okay.

15 MS. COLLINS: So our issue is since
16 2015, this property has been stuck without anything
17 going on with it until last month. Notwithstanding
18 the hearing over a year ago, we never got a Deed.
19 Now, granted we have some issues with different
20 attorneys being involved in this case, we demanded
21 it, never got it. So, we finally prepared a Deed
22 trying to get the thing resolved. We finally got a
23 Deed, I believe in March. It might have been late
24 February, but we filed it when, you know, shortly
25 thereafter. All that being said, is we're not

1 | saying that it didn't cause damages on the delay,
2 | but reformation of the deed does not need to be
3 | resolved by this Court is all we're saying.

4 | So we do have damages in that this
5 | property could have been sold years ago. This
6 | property could have been rented for all these
7 | years. Something instead of just dissipating as an
8 | asset. And to the extent that we can tell, the
9 | taxes have finally been paid just recently, but
10 | other than that, the house has not been cared for,
11 | not been rented, nothing, it's just been falling in
12 | disrepair.

13 | So, although, I don't want to get into
14 | the facts of the case, but, Your Honor, clearly
15 | there's jurisdiction here to resolve the issue of
16 | what was done as a power of attorney. It's not
17 | what she's done as a personal representative.
18 | Granted we've had to take action relating to the
19 | estate on what she has failed to do in our
20 | allegations as personal representative, but this
21 | more relates to the powers of attorneys in
22 | violation of a Court Order that conveyed property
23 | here in Orangeburg County and it took five years
24 | and six hearing dates to resolve. So that's why
25 | we're here.

1 THE COURT: Okay. Got it.

2 MS. COLLINS: And as far as the
3 mediation is concerned, Your Honor. I'm sorry, I
4 just want to address that very briefly.

5 THE COURT: Okay. Go ahead.

6 MS. COLLINS: Aaron Ness represented
7 the Defendant. Aaron Ness represents the estate.
8 Mr. Ness moved to be removed and that was granted.
9 So he -- we were trying to do a global mediation,
10 obviously, to resolve all the issues. Mr. Ness
11 said, I'm not coming to mediation on the circuit
12 court matter and, no, you can't hold mediation with
13 my client about matters that would resolve the
14 estate and that. So, no, I don't consent.

15 And so that was the issue of the rules
16 of professional conduct. We did file the motion
17 and we provided it. And I don't know why it's not
18 showing up, but we filed the motion. We reach out
19 to the chief administrative judge and indicated
20 here's what we have, please advise what we need to
21 do. He signed the Order.

22 THE COURT: Okay. Was that prior to or
23 after judgement? They've said Judge -- I thought
24 they said Judge Manning and then Judge Buckner,
25 whoever signed the Order --

1 MS. COLLINS: Judge Manning came down
2 here and said that mediation was -- we met with
3 Judge Manning in chambers. Judge Manning indicated
4 Mr. Melnick had recently done a notice of
5 appearance, but was not here in court. Mr. Melnick
6 later took the position that he was only involved
7 for negotiation purposes or something to that
8 effect. He's still technically of counsel for the
9 Defense.

10 So out of abundance of caution, Mr.
11 Manning -- Judge Manning carried it over and said
12 y'all just need to mediate and go about your way.
13 And -- but the problem was the mediation was an
14 issue that Judge Manning didn't quite understand
15 all the issues associated with mediation.

16 THE COURT: So let me ask you this.
17 With regard to the mediation, which came first, the
18 exemption for mediation or the Order of Judge
19 Manning to mediate?

20 MS. COLLINS: Judge Manning's Order to
21 mediate and then that --

22 THE COURT: Came first?

23 MS. COLLINS: Came first. And then
24 there was an issue with it because of Mr. Ness
25 getting out.

1 THE COURT: Okay.

2 MS. COLLINS: So then we asked the
3 Court for guidance and then the Court said file a
4 Motion To Exempt and we did and it was granted.

5 THE COURT: Okay. Okay.

6 MS. COLLINS: So subsequent to Judge
7 Manning's Order to mediate was this Order exemption
8 -- of exemption for mediation.

9 THE COURT: Okay. Got it.

10 MS. COLLINS: Thank you, Your Honor. I
11 just wanted to address that as well.

12 THE COURT: Yes, thank you. Yes, sir.

13 MR. PHILLIPS: Your Honor, state law is
14 pretty clear, the probate courts have exclusive
15 jurisdiction over real property in an estate.

16 THE COURT: How about forgery?

17 MR. PHILLIPS: That too, Your Honor.
18 Because it is -- the argument that I heard was,
19 well, we had to come here because it's an
20 Orangeburg property and the Bamberg court doesn't
21 have jurisdiction over it. It's just not true.
22 They have exclusive jurisdiction over it. You can
23 argue there was a forgery. You know, listen to
24 counsel argue it's like we discovered all of this
25 about my client saying that her mother wanted her

1 to have the property, she gave her a power of
2 attorney, she executed her mother's wishes --

3 MS. COLLINS: Your Honor --

4 MR. PHILLIPS: -- with a power of
5 attorney.

6 MS. COLLINS: I'm sorry. I let it go
7 the first time, but I can't allow for a Dead Man's
8 statute waiver on all of this. I just need to make
9 sure that I'm clear on that. Thank you, Your
10 Honor.

11 THE COURT: Okay. All right.

12 MR. PHILLIPS: My point is that there
13 hasn't been a lot of issue -- there has been no
14 discovery in the case. This was all laid out --

15 MS. COLLINS: Your Honor, there has
16 been discovery in the case, it just was not
17 responded to by the Defendant.

18 MR. PHILLIPS: And so that discovery --
19 by their own admission, they didn't have any
20 discovery. But yet the facts of this case were
21 known at the filing of the Answer.

22 THE COURT: Well, let me just -- okay.
23 Okay. So I want you to focus on the issue of
24 forgery. Okay.

25 MR. PHILLIPS: Yes, ma'am.

1 THE COURT: Because the allegation at
2 this point, the allegation at this point, is that
3 there was a Deed that was improperly executed and
4 was forged.

5 MR. PHILLIPS: Correct.

6 THE COURT: And an action was brought
7 to cause the piece of property to -- it be titled
8 again in the name of the estate; right?

9 MR. PHILLIPS: Correct.

10 THE COURT: And it -- there was delay
11 in having that be performed. In the period after
12 the forgery, there's an allegation that there have
13 been things such as lost rents, failure to repair,
14 and things like that.

15 So talk to me about the cause of action
16 of forgery because the -- as I understand it, it is
17 the Plaintiffs' position that they have suffered
18 damages as a result of the Defendant's having
19 transferred title of a piece of property here in
20 Orangeburg County to herself.

21 MR. PHILLIPS: Yes, ma'am. The
22 Orangeburg property, family property; owned in the
23 family; owned by the mother, Theodocia; owned by an
24 elderly aunt. When mother was alive, after the
25 aunt passed away, wasn't living there anymore.

1 Mother didn't want to rent the property. So the
2 property has never been a rental property. It's
3 only had family living there.

4 THE COURT: Okay. And property at that
5 point was titled to --

6 MR. PHILLIPS: To Theodocia Reed.

7 THE COURT: To Theodocia?

8 MR. PHILLIPS: Theodocia.

9 THE COURT: Only?

10 MR. PHILLIPS: Only.

11 THE COURT: I thought you said it was
12 also titled to the aunt --

13 MR. PHILLIPS: And I don't have the
14 title documents in front of me, but it came down
15 through family members.

16 THE COURT: Okay.

17 MR. PHILLIPS: Okay.

18 THE COURT: Got it.

19 MR. PHILLIPS: At the time of her death
20 it was titled in her name. And my understanding
21 was it was titled in her name for sometime after
22 that. When my client went to school here in
23 Orangeburg, she would, you know, frequently visit
24 with her aunt. Her aunt passes away, her mother
25 didn't want to rent the property. She wanted it to

1 stay in the family. So at that time, my client was
2 taking care of the property on behalf of her
3 mother. Her mother's alive. Her mother has
4 capacity. She did it.

5 As her capacity waned and in
6 conformance with Judge Belton's 2009 Order, they
7 issued a power -- durable power of attorney in the
8 State of Florida. The mother was saying, I want
9 you to have that property because you take care of
10 it and I want to keep it in the family. Okay. So
11 she has power of attorney --

12 THE COURT: And there's an objection to
13 that testimony before because of the Dead Man's
14 statute; right?

15 MR. PHILLIPS: Correct.

16 THE COURT: Okay.

17 MR. PHILLIPS: But it is relevant to
18 the idea of a forgery. When this hearing was held
19 a year ago, witnesses were there that would testify
20 to what her intent was. When she executed that
21 Deed, she went to a notary public in Georgia where
22 she was -- had friends that she stayed with and she
23 wrote her name where the notary indicated at the
24 top of the page she put her capacity. Up at the
25 top in the filing section of the Deed. Cyndy Reed

1 Stewart as POA for Theodocia.

2 Is it a technical violation of the law?
3 Certainly. But my client who is not a lawyer, who
4 wasn't dealing with a lawyer, who didn't have to in
5 Georgia, just was executing her grandmother's
6 intent. So you're asking about damages. She did
7 that as Plaintiffs' counsel indicated, a few days
8 before the mother died. After that it's now an
9 estate asset. Okay.

10 THE COURT: Okay.

11 MR. PHILLIPS: So my client -- and I
12 apologize, Your Honor, this mask is making me a
13 little dry.

14 THE COURT: It's okay.

15 MR. PHILLIPS: So now we have a
16 Complaint that because of the transfer from the
17 estate, no rents were paid. Well --

18 THE COURT: Not from the estate, from
19 the mother?

20 MR. PHILLIPS: From the mother.
21 Pursuant to the power of attorney. But then the
22 mother died.

23 THE COURT: Right.

24 MR. PHILLIPS: At death, her interest
25 in that property became an estate asset. All

1 right. I mean, that's -- probate law allows --

2 THE COURT: Well, it would have --

3 well, no. Was there -- if there was a will --

4 MR. PHILLIPS: There was a will.

5 THE COURT: -- then it would, you know,

6 real property doesn't go into the estate. When

7 there -- it's been willed, it passed -- the title

8 passes immediately upon death, if I'm remembering

9 my law school --

10 MR. PHILLIPS: It does.

11 THE COURT: -- probate properly.

12 MR. PHILLIPS: The title to this

13 property passed right before Theodocia passed away.

14 THE COURT: But it passed by virtue of

15 a signature on a Deed I gather by your client?

16 MR. PHILLIPS: Correct.

17 THE COURT: Okay.

18 MR. PHILLIPS: And she will argue that

19 was as authority as power of attorney. So the

20 personal representative, the estate has any claims.

21 So if that was improper, that's an estate claim.

22 Could have filed with the estate and the estate

23 could -- the estate could have -- it could have

24 been worked out in probate court. That's what

25 probate courts do. They could say this is an

1 | improper transfer right before death, we want to
2 | challenging it, you can do that. And the
3 | representation was is that, well, you know, just
4 | because Jacquelyn Gladden wasn't in court that day,
5 | she wasn't made the PR.

6 | If you look at the Order affirming the
7 | ruling, it was noted that not only was she not in
8 | court, she didn't file a petition, she didn't
9 | respond to registered mail that was sent to her,
10 | she didn't pick it up. So there's a little more to
11 | it than just, well, I didn't show up that day so I
12 | got passed over. And it was appealed to both the
13 | circuit judge and a Court of Appeals. So plenty of
14 | time to make that argument.

15 | So if the damages which Your Honor
16 | specifically asked about, if the damages arise from
17 | that period of time that this property which has
18 | never had a tenant, a rental tenant for money, was
19 | not in the estate because that's who would be the
20 | beneficiary of that rental. Well, that property is
21 | now in the estate. That issue is before the
22 | probate judge and the probate judge has got a
23 | balancing act to do; right? Because the whole time
24 | that there was no rental income from that property,
25 | who was bearing the expense? My client was

1 | personally just like she did before her mom passed
2 | away.

3 | So her payments to maintain the
4 | property in the manner in which her mother
5 | maintained it, unrented, family property to pass
6 | on, all of that is now firmly in front of the
7 | probate court. Who can adjudicate a forgery not
8 | inject personal, you know, a personal experience,
9 | but probate courts know how to adjudicate forgery,
10 | and that's just part of thing, for transfers for
11 | exactly these kind of allegations. But this was
12 | never filed there.

13 | It is -- in this petition, this is
14 | Exhibit D to my motion, they're claiming that they
15 | had to come here because of this forgery. In this
16 | petition, they clearly raise it. In August of
17 | 2015, responded my client disposed of decedent's
18 | Orangeburg property to herself. Further, the
19 | personal representative has also failed to comply
20 | with a Court Order from the circuit court
21 | reconveying certain property. That's the issue
22 | that they raise in July of 2020. It could have
23 | been raised after this Answer was filed. It could
24 | have been -- I mean, we could get -- Mr. Ness would
25 | not feel it's a violation of a personal or the code

1 of responsibility to come in here and say, look,
2 you don't -- you -- if you want this Court, this
3 probate court to adjudicate this matter, you have
4 to file something with the probate court. Just
5 like if you want to be the personal representative,
6 you have to file a petition with the court. You
7 just can't show up one day and say, pick me.

8 So it is -- and I'm not saying that
9 their allegations shouldn't be adjudicated. I'm
10 saying you can't pick and choose. You can't say
11 that because you conveyed the property. The Order
12 at issue that you issued said that -- well, she
13 conceded and so, therefore, we're going to transfer
14 the property to the estate. Okay. That doesn't
15 mean conceded the allegations of all the causes of
16 action that they say are now resolved because the
17 Order simply said, okay, execute the Deed and all
18 the other motions are dismissed.

19 I'm just saying where does my client
20 get her day in court. Property's held by the
21 probate court. She has financial interest that can
22 only be adjudicated by that court. You can't --
23 with all due respect, ma'am, you can't tell the
24 probate court, well, I've looked at this and I
25 believe that Ms. Stewart should get a credit of X

1 amount of dollars for the monies she paid as both
2 an individual and then later she advanced the
3 estate towards this property to offset any damages
4 that you might award the Plaintiffs. You simply
5 can't do that. And it would make for an unworkable
6 system if we tried.

7 So for that reason, this case really
8 needs to go to the probate court. They have filed
9 this, this petition. The petition is pending. The
10 estate is dead in the water now. No personal
11 representatives, so the State's not moving forward,
12 so let's get it done. And now that they're in
13 front of the Court, my representation to you was
14 after consultation with all the lawyers in this
15 case, a joint mediation makes sense to resolve this
16 case and this pending case which from our point of
17 view doesn't have subject matter jurisdiction, but
18 it should be -- it should be mediated.

19 There's nothing that prohibits -- if
20 we're going to ignore Judge Manning's Order and go
21 with the second Order exempting it, then we can
22 certainly have a third Order restoring it to a
23 mediation and you ordering a joint mediation.
24 Which as I understand from the estate that they
25 would agree to. And so that -- if I was king for a

1 day that's how I would resolve it.

2 THE COURT: Got it. Thank you, sir.

3 Yes, ma'am.

4 MS. COLLINS: Very briefly, Your Honor.

5 THE COURT: Yeah.

6 MS. COLLINS: Theodocia Reed died --
7 I'm sorry, Judge, August 20th -- I'm sorry. That's
8 the day of issuance. August 15, 2015 according to
9 her death certificate. The Deed in question,
10 quitclaim Deed, it says July 4, 20 blank and it's
11 notarized August 4, 2015. Now, I'm reaching back
12 to -- I do a lot of probate, Your Honor, my
13 understanding is probate court only has
14 jurisdiction over probate property.

15 So at this point in time, it was not
16 probate property. It was the Defendant's real
17 estate at that point in time. And to overturn a
18 Deed, as Your Honor knows, you have to go to that
19 court where that property resides just like a
20 wreck. You can't sue for a wreck that happened in
21 Richland County down here. We can't sue in Bamberg
22 County over Orangeburg property. So it didn't
23 become probate property until this was recorded
24 March 31, 2021.

25 Now, insofar as the Defendant's

1 advances and things like that, I advise my clients
2 all the time to file claims, proof of claim in the
3 probate court for things that we advance. Death,
4 you know, burial expenses and all that. That is
5 not before this Court. And I don't disagree that
6 if she had expenses and she timely filed a claim,
7 it can be resolved in the probate court. But this
8 could not be resolved in probate court. Bottom
9 line. Because it was real estate in Orangeburg
10 County. It was not the property of the estate
11 until March of this year.

12 So all during that period of time, it
13 was the Defendant's property and my client --
14 clients have not gotten the benefit of it being
15 sold, of it being rented, of it falling in
16 disrepair, and all those issues. So that being
17 said, the mediation in and of itself is
18 problematic. We're sitting here number four for
19 us, now, I did have two conflicts with family
20 court, so two of those were mine, four times we've
21 come down here ready to argue this case, Your
22 Honor. My clients you'll hear are sitting at
23 \$30,000 in legal fees for us preparing multiple
24 times to come down here to have this case heard.
25 And all of the issues, four different attorneys,

1 all on the eve of trial, all asking for
2 continuances.

3 So, Your Honor, I would just ask the
4 Court to consider that and uphold the prior Order
5 dissipating of the mediation. Because at this
6 point in time, we're here, we're ready to argue and
7 the issues -- and these people can't agree on
8 anything and I don't know why anyone would think
9 they would be successful at mediation, but that's a
10 different story, different day. But that's what
11 I'd request, Your Honor, to deny both motions.

12 THE COURT: All right. Got it.
13 Anything further? Yes, sir.

14 MR. PHILLIPS: Just briefly, Your
15 Honor.

16 THE COURT: Okay.

17 MR. PHILLIPS: I appreciate your
18 indulgence. The jurisdiction of the probate court
19 is pretty simple. It is the whole reason that even
20 with a valid will you must give notice to heirs and
21 devisees so they can come to court to challenge
22 things. They can challenge transfers of property
23 that they think were fraudulent. They can transfer
24 will -- they can contest wills that they think were
25 fraudulent. They can assert a claim for a missing

1 will. It is -- it's simply not correct to say that
2 as devisees under this will they could not have
3 gone to the probate court to resolve this. If they
4 believe the property was fraudulently transferred
5 and should be an estate asset, they can do that.

6 And the attachment, I believe it's D to
7 my motion, Mr. Comer argued to you probably just
8 wanted it resolved. And if means passing it back
9 into the estate and having the estate take care of
10 it, that was her understanding of what she was
11 doing by executing this Deed.

12 So I believe this Court has already
13 attempted to pass this case back to the probate
14 court once and I'd ask for an Order to do it again.

15 THE COURT: So your position is that
16 the probate court could order damages for certain
17 family members -- for the other family members for
18 the period between August -- no, July of 2015 and
19 March of 2021, damages, now not the distribution of
20 probate assets or a change within the estate, for
21 example, put money back into the estate because you
22 shouldn't have taken it out or you need to pay
23 money because this person loaned the estate certain
24 monies?

25 But the -- your position is that the

1 probate court could award damages for the period of
2 2015 to 2021 prior to the time where the Deed was
3 actually transferred into the probate court?

4 MR. PHILLIPS: Yes, ma'am. Because the
5 -- not only could the Court have the general power
6 to do that; right? But it has the specific power
7 to hold a personal representative personally liable
8 for their misconduct. So if it's found that my
9 client on the eve of their mother's death,
10 transferred this to herself and then didn't advance
11 that claim as part of the estate and essentially
12 tried to get the Court to recognize this forgery,
13 she can be held personally liable for that.

14 So because of her status as the
15 personal representative, you know, Your Honor's
16 question is right on point. There is a whole
17 aspect of duties that she owes to her sisters that
18 are not part of the civil case. Because they're
19 beneficiaries under the will. And her conduct, she
20 became personally liable for what she does on
21 behalf of the estate. So, it is --

22 THE COURT: But she didn't do this on
23 behalf of the estate.

24 MR. PHILLIPS: But the estate has
25 claims, Your Honor.

1 THE COURT: I get it.

2 MR. PHILLIPS: And the PR is
3 specifically empowered to make claims, defend
4 claims, compromise claims, and, if in fact, if it's
5 a personal --

6 THE COURT: Can I ask you for a cite
7 just to where you believe, you know, because I know
8 the powers of probate court are enumerated, tell me
9 where you believe that authority is enumerated for
10 the -- in favor of the probate court?

11 MR. PHILLIPS: It's in statute, Your
12 Honor.

13 THE COURT: I know.

14 MR. PHILLIPS: I wish I had a better
15 memory of numbers, but I could provide you with a
16 memo on that tomorrow morning. But it is as sure
17 as I'm standing, I will represent to the Court as
18 sure as I'm standing here because I have this
19 conversation with all personal representatives,
20 you're liable. You have to run this estate for the
21 benefit, you have to give notice to everybody and
22 you have to run it for the benefit of those people
23 who are either heirs or devisees. You have to or
24 else you can be personally liable for it.

25 My client is in that unique position.

1 She has that duty that she didn't have before her
2 mother passed away, but that she did. And so if
3 this is really contested estate property, she's
4 returned it to that court so the Court can look at
5 these allegations. If you rule on that and make
6 findings of fact like, well, this was a forgery,
7 now all of a sudden that is gone, but yet the
8 probate judge has the property and has to decide
9 how to do it. And would have to say, well, sorry,
10 although you're either personal representative and
11 a devisee, you can't speak on that, it's already
12 been decided by Judge Goodstein. It's an
13 unworkable solution for this.

14 I understand everybody wants this case
15 over. I apologize I'm here at the last minute, but
16 I'm -- it needs to be resolved by the proper court
17 or else, you know, this case has already drug on
18 for a long time. It's already gone to the Court of
19 Appeals once, I'd hate to see it go again when it
20 does not need to be.

21 THE COURT: Okay. All right.

22 MS. COLLINS: Your Honor, I would like
23 to know what statute that that is as well if there
24 is such a statute. I've heard a will contest.
25 I've heard of everything. And just as a matter of

1 cleanup. Your Honor, it was conveyed back by
2 general warranty Deed from the Defendant back to
3 the estate because we were not aware of any
4 judgements or anything like that.

5 So it was not a cancellation that was,
6 you know, retroactive or anything. Just to be
7 clear, it was deeded back by general warranty Deed
8 from the Defendant back to the estate on March
9 31st, Your Honor. Just to be clear. I just want
10 to make sure -- and it didn't even say her as
11 personal representative of the estate. It just
12 said the estate of the Deed. And I'll be happy to
13 pass any of this up if Your Honor needs it.

14 MR. PHILLIPS: And the Deed is attached
15 to my motion, Your Honor. It was proposed by
16 opposing counsel and my client signed it. So can't
17 complain now about what it does or doesn't say.
18 But if you look at that Deed, the property is
19 conveyed to the estate of Theodocia Reed. That's
20 where it is.

21 MS. COLLINS: And, Your Honor, there
22 was a pending petition to remove the Defendant as
23 the personal representative. So the titling issue
24 was up in the air at that point. And, Your Honor,
25 she was not appointed as a personal representative

1 | until January of 2017 is when the Defendant was
2 | appointed as the personal representative. So this
3 | happens in 2015, she's appointed in 2017, just to
4 | give the Court the full timeline. Thank you, your
5 | Honor.

6 | MR. PHILLIPS: That appointment was
7 | delayed by the legal challenges. So, I mean, so --
8 | but yet while those challenges were going on, who
9 | was taking care of the property? My client. And I
10 | apologize, Your Honor, only with regard to
11 | authority over the property, Section 62-1-302, "To
12 | the full extent prevented by the Constitution the
13 | probate court shall have exclusive original
14 | jurisdiction of all subject matter related to the
15 | estates of the decedents." The transfer --

16 | THE COURT: What is that cite?

17 | MR. PHILLIPS: 62-1-302 and it's in
18 | specifically Subsection A(1). And, again, Your
19 | Honor, there wasn't -- there wasn't a ruling on any
20 | of these causes of action. The transfer of the
21 | property back to the estate. So it is to say that,
22 | well, these causes of action have been resolved by
23 | the transfer of the -- there's no admission of any
24 | of that. That's why a trial needs to be had some
25 | place.

1 Again, my strong argument is it should
2 be held in front of the judge with exclusive
3 original jurisdiction over this estate asset and
4 the conduct of the personal representative.

5 MS. COLLINS: And, in summary, Your
6 Honor, it wasn't the estate asset and that's where
7 we argue it here.

8 THE COURT: Right. At the time it was
9 not an estate asset.

10 MS. COLLINS: Done by power of attorney
11 not by her as personal representative.

12 THE COURT: Right. And the filing date
13 of this action, I've got the filing, was that
14 7/9/2018; is that right?

15 MS. COLLINS: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. COLLINS: A les pendens was filed
18 July 3rd and the Summons and Complaint -- I'm
19 sorry. It was signed July 3rd, the Summons and
20 Complaint was signed July 6th and they're shown as
21 recorded as July 9th.

22 THE COURT: All right. We're going to
23 take a little break and I'm going to go take a
24 little -- I may come back with some additional
25 questions, but I'm going to -- we're going to take

1 a little break while I contemplate and look at the
2 probate code. We'll take about 15. Thank you.

3 (There was a short break taken)

4 THE COURT: All right. I think that
5 the cite is a correct citation; however, the cited
6 language that I think is on point is the language
7 that says, "Except that the circuit court also has
8 jurisdiction to determine heirs and successors as
9 necessary to resolve real estate matters, including
10 petition, quiet title," and here's the applicable
11 language, "and other actions pending in the circuit
12 court." This was an action pending in the circuit
13 court, firstly.

14 Secondly, the issue that is remaining
15 that I believe is relevant is that touching and
16 concerning the forgery and the forgery as it
17 relates to the alleged violation of the POA and the
18 damages that I understand that the Plaintiffs are
19 alleging occurred as a result of A, the alleged
20 forgery; and then B, the duration of the period of
21 time that it took to get the property titled in the
22 estate.

23 Now, insofar as what happened to that
24 piece of property, vis-à-vis the estate, I'm not
25 going to hear that. That's for the probate court.

1 I think the issue that I am prepared to hear would
2 be the issue regarding damages for the alleged
3 forgery.

4 MR. PHILLIPS: Your Honor --

5 THE COURT: So I guess it would be A,
6 was it forged; and B, if it was forged, what would
7 the damages be.

8 MR. PHILLIPS: Yes, ma'am.

9 THE COURT: Okay. Got it? Got it?

10 MR. PHILLIPS: Yes, ma'am.

11 MS. COLLINS: Yes, Your Honor.

12 THE COURT: All right. Okay. Now, I
13 just want to be sure that the Defendant, Ms.
14 Stewart, is able to -- oh, there she is. She's a
15 participant. Okay. Very well. Yes, ma'am, call
16 your first -- or ma'ams, call your first witness.

17 MS. COLLINS: We're switching, Your
18 Honor, so --

19 THE COURT: Look at that, musical
20 chairs. No problem.

21 MS. MOORE: The Plaintiff calls Ms.
22 Jacquelyn Gladden. And I have the exhibits all put
23 together as a packet so that the Court can follow
24 along. Would you like me to hand them up as I go
25 or do you want the packet all at once? Oh, is

1 | there any objection? I'm sorry.

2 | MR. PHILLIPS: Yes, Your Honor. The
3 | documents were provided to me on Friday. They
4 | appear to be different than the ones that my client
5 | had received. So, there is an objection. We need
6 | to have all the documents approved.

7 | THE COURT: Sure. You're just going to
8 | have to authenticate each and every one.

9 | MS. MOORE: Yes, ma'am. Okay.

10 | THE COURT: Because I gather you didn't
11 | send them with the request to admit or send them --

12 | MS. MOORE: We fully answered her
13 | discovery. Insofar as discovery, these are --
14 | they're even Bates stamped. So we're not sure why
15 | they're different from what she's saying she
16 | received. I don't -- I can't --

17 | THE COURT: That wasn't my question.
18 | I'm sorry. Did you serve the documents and ask for
19 | the authenticity to be admitted in request to
20 | admit?

21 | MS. MOORE: Yes, Your Honor. That's
22 | actually Exhibit 13 because she never responded and
23 | we're going to ask that it be deemed admitted.

24 | MR. PHILLIPS: And, Your Honor --

25 | MS. MOORE: The documents themselves

1 | were provide as -- or as to Ms. Stewart. She never
2 | responded. They were served according to this,
3 | October 11, 2018.

4 | THE COURT: Okay.

5 | MR. PHILLIPS: Your Honor, they've
6 | already filed a motion to deem those admitted. The
7 | -- counsel's position was that Mr. Ness had moved
8 | for Protective Order, that motion hadn't been ruled
9 | on. As Your Honor knows, until that motion is
10 | ruled on, you don't have to admit those. They
11 | filed the motion to deem them admitted and you
12 | dismissed it back a year ago. So we'd say that's
13 | the law of the case and that those admissions
14 | should not be deemed admitted.

15 | THE COURT: Was that part of the group
16 | of motions that wanted to be heard and then I
17 | believe that Ms. Stewart said, okay, I'll just sign
18 | it. I'll just sign the Deed.

19 | MS. MOORE: Right. Your Honor said
20 | that if she was just going to sign the Deed that
21 | everything we didn't need to hear and you just
22 | wanted it to move on and that's when we did the
23 | Motion to Reconsider, Your Honor.

24 | THE COURT: All right. And so in the
25 | Motion to Reconsider came back --

1 MS. MOORE: The motion to be deemed
2 admitted was reraised in that motion, yes, Your
3 Honor.

4 THE COURT: Got it. Okay. But it has
5 not been heard?

6 MS. MOORE: You issued an Order
7 granting the Motion to Reconsider and so our
8 position is you granted the motion, it's been
9 granted to be deemed admitted or --

10 THE COURT: No. Restoring is
11 restoring. Restoring is that we win everything.
12 Restoring is restoring. So, in essence, the
13 request to admit have not been ruled on. I guess
14 neither has the Protective Order been ruled on.

15 MR. PHILLIPS: Correct, Your Honor.

16 THE COURT: So just -- we have reached
17 a kerfuffle, folks.

18 MS. COLLINS: Your Honor, very briefly.
19 The Protective Order was because Mr. Ness was
20 asking to be relieved. And then there was an Order
21 issued giving the Defendant 60 days in which to
22 obtain new counsel. And she did obtain a number of
23 new counsels and that Protective Order was only for
24 Mr. Ness's departing of the case.

25 So, Your Honor, deeming a Protective

1 Order, protecting three subsequent counsels from a
2 request to admit, Your Honor, I think is a stretch
3 in all honesty and I just wanted to point that out
4 as well.

5 THE COURT: I don't know what the basis
6 for the Motion For Protective -- is that -- you're
7 telling me that the basis for the Motion For The
8 Protective Order was please don't put me on the
9 hook to answer these things because I had moved to
10 be relieved?

11 MS. COLLINS: Yes, Your Honor.

12 THE COURT: Is that accurate, sir?

13 MR. PHILLIPS: I don't believe so, Your
14 Honor. And a motion is just that --

15 THE COURT: All right. Then I'm going
16 to have to read it. Who's got it?

17 MS. MOORE: If you give me one second,
18 Your Honor, I think I can put my hands on it for
19 you.

20 MR. PHILLIPS: Your Honor, I have a
21 here in front of me and it is a Notice of Motion, A
22 Motion For A Protective Order, that motion was
23 never heard. So --

24 THE COURT: What does it say?

25 MR. PHILLIPS: It just kind of recites

1 | what's going on --

2 | MS. MOORE: May I approach, Your Honor.

3 | THE COURT: Yes. I'll get a copy of
4 | it.

5 | MR. PHILLIPS: So the request is --

6 | THE COURT: Excuse me, I'm reading.
7 | I'm sorry.

8 | MR. PHILLIPS: I'm sorry.

9 | THE COURT: Okay. Yes, sir, now you
10 | may proceed.

11 | MR. PHILLIPS: So the request of the
12 | motion is, "Wherefore, the undersigned," that's
13 | Mr. Ness, "assert that they're entitled to a
14 | Protective Order granting the Defendant, Cyndy Reed
15 | Stewart, additional time to serve her responses for
16 | discovery. Including requests to admit beyond the
17 | due date of January 4, 2019 as counsel is asking to
18 | be relieved." It doesn't ask for a 60 day time
19 | period. It doesn't ask -- it doesn't set a date.
20 | It asked for the Protective Order and the
21 | Protective Order has never been ruled on.
22 | Protective Order hasn't been ruled on one way
23 | either denied or granted. The Order would have
24 | when responses are due. Because it was never ruled
25 | on, we believe it's improper to say that they've

1 | been admitted simply because there's been a passage
2 | of time.

3 | MS. MOORE: Your Honor, I have an Order
4 | to be relieved as counsel that provides that she is
5 | to get counsel within 60 days. I will be happy to
6 | hand that up.

7 | THE COURT: Okay. Let me read that and
8 | see if it addresses anything relevant. Thank you.

9 | MS. COLLINS: Do you need the signature
10 | page as well, Your Honor? I'm sorry.

11 | THE COURT: No. Okay. It wasn't ruled
12 | on. It wasn't ruled on. So here's what I'm going
13 | to do. I will grant the Motion For Protective
14 | Order. It expires today at -- today. And these
15 | responses to request to admit must be responded to
16 | by the morning, tomorrow morning, at 9 o'clock.
17 | Okay. Very well.

18 | Why in the world would I do that? The
19 | reason that I would do that is because this motion
20 | was filed December 10th of 2018. It's clear when
21 | you look at the motion they were simply asking for
22 | the Court to please give her an opportunity to, if
23 | they were relieved, to obtain other counsel and not
24 | make these ticking of time occur, but yet give her
25 | time. The Court gave her 60 days. It is not

1 directly addressed request to admit, but I find it
2 remarkable that -- that one could wrap up something
3 as important as a request to admit in a Motion For
4 Protective Order like this and have on the basis of
5 counsel asking to be relieved and then the
6 responsibility to respond to request to admit be
7 forever removed.

8 Although, the responsibility to get
9 counsel was not removed. So I'll give a little
10 more time until in the morning at 9 o'clock.

11 MR. PHILLIPS: Your Honor, if I might
12 be heard. I hear your ruling --

13 THE COURT: Yeah, you going to argue
14 with the Court, go right ahead.

15 MR. PHILLIPS: But, Your Honor, I would
16 object to having to respond that quickly because --

17 THE COURT: I don't care.

18 MR. PHILLIPS: I --

19 THE COURT: I don't care.

20 MR. PHILLIPS: Just --

21 THE COURT: I don't care.

22 MR. PHILLIPS: Yes, ma'am.

23 THE COURT: Let me tell you why I don't
24 care, sir. You are using this system and I am
25 concerned about it. Okay. I'm concerned about

1 | what is beginning to feel a little teeny tiny bit
2 | like gamesmanship to me. You can't possibly
3 | believe that because Mr. Ness was trying to obtain
4 | for his client leave of court to obtain other
5 | counsel that it was -- it was contemplated by
6 | counsel to abrogate the necessity for counsel to
7 | ever respond to request to admit. You can't
8 | possibly think that.

9 | MR. PHILLIPS: And I'm not saying that,
10 | Your Honor. What I'm saying is, recall, there was
11 | a hearing in this matter.

12 | THE COURT: There was what?

13 | MR. PHILLIPS: There was a hearing in
14 | this matter. My client was present with her
15 | witnesses, ably represented by counsel, and she
16 | turned over the property that was at issue.

17 | THE COURT: She basically interrupted
18 | the hearing and said I'll just sign it over. Is
19 | basically the way that it happened. Okay. And I
20 | thought, well, what else do you want? And --

21 | MR. PHILLIPS: But she took that as --

22 | THE COURT: That was what they wanted
23 | was to get it transferred. And that's the way it
24 | happened. I remember it because it was quite
25 | distinctive.

1 MR. PHILLIPS: But she took that as a
2 resolution of the matter.

3 THE COURT: Well, she should have asked
4 that question, sir.

5 MR. PHILLIPS: Okay.

6 THE COURT: She should have asked that
7 question. The question that I ask is that what you
8 want and they said, yes. Yes, we -- absolutely
9 want that. And no one asked the question is that
10 all you want? Does this conclude it? Is there a
11 dismissal? Can we put a resolution of this matter
12 on the record? That didn't occur. That didn't
13 occur. You're right, she got a benefit. The whole
14 case got dismissed. It did.

15 Obviously, there was a hearing. All
16 right. And a Motion to Reconsider. And I
17 concurred that there was other relief to which the
18 Plaintiff claimed that was not dismissed. It
19 wasn't clear. And it wasn't clear based upon the
20 way that it came about. It did not come of it
21 being the resolution of that issue did not come
22 about where counsel conferred, had an agreement,
23 wrapped it up. It literally came in the form of
24 the middle of the hearing as I recall it. Counsel,
25 I don't know if you remember it, but I remember it

1 as being somewhat of an outburst. Which, you know,
2 that worked for me. It resolved an issue in this
3 case.

4 And so -- but that was -- it was what
5 it was. And what she said was, I'll just sign it
6 over. I want to be done with this. I'll just sign
7 it over. They didn't agree that they was going to
8 be done with it. They were just willing to take
9 the signing of it. It was an error to dismiss the
10 case in its entirety. Counsel appropriately
11 brought it back. And that's been over a year ago.
12 So I don't know why y'all are acting like it just
13 happened. Oh, gosh, we're shocked. We're
14 surprised. You're not. It's been over a year ago.

15 And so I know you are up here of recent
16 vintage, but, you know, you chose to be here as a
17 recent vintage. So I don't have a whole lot of
18 sympathy for you or any lawyer that comes into a
19 case with just a few days left. You know what
20 you're getting into. You knew this case was up,
21 you got into it, you're here you're beautifully
22 prepared I might add.

23 MR. PHILLIPS: I appreciate it, Your
24 Honor. And, again --

25 THE COURT: So, here's my problem. My

1 problem is, how in the world can you maintain based
2 upon the grounds for the Protective Order, how can
3 you possibly maintain it wasn't the responsibility
4 for you to forward the Answer or counsel for her to
5 have already answered. See what I'm saying?

6 MR. PHILLIPS: Again, Your Honor, just
7 for purposes of the record.

8 THE COURT: Yeah.

9 MR. PHILLIPS: It is and I put the two
10 pages in there where Mr. Comer addressed the Court.
11 It was the understanding that this would resolved
12 the matter. And that's why it is. So I just
13 wanted to expand and have my client sign on the
14 record.

15 THE COURT: Listen, it would have been
16 great, but there's this thing called, you know,
17 rule -- where it talks about the resolution of
18 cases. And it's Rule 40(k) comes to mind. And,
19 unfortunately, these damages parts of the causes of
20 action, they were not addressed. And all that was
21 addressed was that to transfer the property.

22 MR. PHILLIPS: If I could just for --

23 THE COURT: Sure.

24 MR. PHILLIPS: -- clarification.

25 THE COURT: Sure.

1 MR. PHILLIPS: So, but Your Honor is
2 not saying that the conveyance of the Deed is in
3 anyway an admission of any of the causes of action?
4 You're still going to hear proof of the cause of
5 action and damages? Not just focus on damages?

6 THE COURT: Correct.

7 MR. PHILLIPS: Okay. Just wanted to
8 clarify.

9 THE COURT: But let me be clear. I do
10 want to be clear. My understanding, and I want to
11 be clear, I'm not going to get into the probate
12 court issues. But there was an action filed here
13 for forgery in the circuit court; right? It was an
14 action for forgery with the resulting damages;
15 right?

16 MR. PHILLIPS: Yes, ma'am.

17 THE COURT: So I don't think she's
18 admitted it. I think when she said, I'm willing to
19 transfer the property back, I don't take that as
20 some sort of admission that she had forged it. I
21 take it as exactly what she said. I'm going to
22 transfer it. I've had all the fun I can stand
23 quite frankly. So, yes, they must show that it was
24 forged. And then the damages that would result
25 therefrom. Yes?

1 MR. PHILLIPS: Yes.

2 THE COURT: Yes? Everybody clear?

3 MS. COLLINS: Yes, Your Honor.

4 MR. PHILLIPS: If I could just --

5 THE COURT: Sure, go ahead.

6 MR. PHILLIPS: -- know what causes of
7 action we're moving forward on.

8 THE COURT: Thank you. Well, we're not
9 moving forward on causes of actions 2, 4, 5, 6, 8,
10 10, 11. 2, 4, 5, 6, 8, 10, 11. What remains,
11 counsel? You keep thinking you are -- you can
12 relax. And we keep getting you on your feet.

13 MS. COLLINS: Your Honor, the 1st, 3rd,
14 and 9th.

15 THE COURT: Which are and which are?

16 MS. COLLINS: Forgery, fraud,
17 misrepresentation is on the first one. The third
18 one is breach of fiduciary duty, breach of trust,
19 self-dealing, intentional interference with
20 expected inheritance.

21 THE COURT: Say the what?

22 MS. COLLINS: Intentional interference
23 with expected inheritance.

24 THE COURT: All that's -- yeah. Let me
25 just tell you, I'm not going to do that. I'm not

1 | doing anything to do with inheritance. That's
2 | going to be the probate court.

3 | MS. MOORE: Okay. So you're not doing
4 | intentional?

5 | THE COURT: Nope.

6 | MS. MOORE: What about the breach of
7 | fiduciary duty?

8 | THE COURT: With regards to the POA?

9 | MS. COLLINS: Yes, ma'am.

10 | THE COURT: Yes.

11 | MS. MOORE: Okay. So then that's just
12 | the first and the third.

13 | MS. COLLINS: And then the ninth was
14 | the lack of good faith of fair dealing, Your Honor.
15 | It was the ninth.

16 | MR. PHILLIPS: I appreciate it, Your
17 | Honor.

18 | THE COURT: Thank you for clarifying
19 | that. That was super. Wonderful. Just because
20 | I'm pushing don't mean I'm fussing. I love it.
21 | Push, push away. Push away. Push away. Yes, so,
22 | no, I do want you to respond. Now, let me ask you
23 | this question. Take a quick look at the request to
24 | admit, if you've got any -- if you think one is
25 | going to be a particular snarl, let me know about

1 | that.

2 | Now, let me tell you, I like the one
3 | about the documents, so I want y'all to take a
4 | really good look at that one. Okay.

5 | MR. PHILLIPS: Yes, ma'am.

6 | THE COURT: For obvious reasons. Do
7 | you know what I mean?

8 | MR. PHILLIPS: I appreciate your
9 | indulgence.

10 | THE COURT: Now, let me tell you
11 | because let me tell you, guys, let me tell y'all
12 | this. I want y'all to listen to me. Here's what
13 | I'm not going to do to y'all either. Okay. If you
14 | find yourself that they are going to deny that the
15 | documents are as they say that they are other than
16 | they appear to be and you find yourself in the
17 | position of, oh, my gosh, how are we going to
18 | authenticate that because we don't have the time to
19 | get people in to authenticate them, you're not
20 | going to have that be a problem. What I'm trying
21 | to do is move you beyond -- I would like to get --
22 | you guys have been at this litigation for a very
23 | long time, if we can move it along, I'd like to
24 | move it along. I don't want to walk away from real
25 | issues. But whether or not a document is what it

1 | says it is and everybody knows it is, I'd like that
2 | not to be used as a reason to create problems for
3 | this case. If that makes sense.

4 | MS. MOORE: I do have true and
5 | certified copies of the documents --

6 | MS. COLLINS: Of some of them.

7 | MS. MOORE: Yes.

8 | MS. COLLINS: And, Your Honor, to the
9 | extent --

10 | THE COURT: Well, be sure they have
11 | them. You know, and if it's a public document it's
12 | going to be self-authenticating.

13 | MS. COLLINS: To the extent that there
14 | is an objection, Your Honor, is there anyway that
15 | we can learn that before we adjourn today?

16 | THE COURT: Before y'all leave here
17 | today? Uh-huh.

18 | MS. COLLINS: In that we provided them
19 | Thursday so that there -- I think it was Thursday
20 | so that we could get through these issues without
21 | any --

22 | THE COURT: I understand, but counsel
23 | was just learning people's names, so we can't
24 | really pick at him about that.

25 | MR. PHILLIPS: I appreciate it, Your

1 Honor.

2 THE COURT: So, and he has learned a
3 tremendous amount. So, you'll do that before you
4 leave today. I love this term, I learned it from
5 all of you fantastic lawyers from Columbia. The
6 meet and confer. That's not what we say in
7 Dorchester County. We have other words for it, but
8 I love meet -- and I picked it up from Beaufort
9 County, I picked up the comfort break. So I will
10 ask you to meet and confer before you all leave
11 today on these documents.

12 MR. PHILLIPS: I apologize, my
13 cocounsel described, he -- the ninth cause of
14 action --

15 THE COURT: There's my boss. My boss
16 just walked in. Do you need me? I'm going to step
17 out.

18 (Off the record)

19 THE COURT: So tell me what you're
20 concerned about.

21 MR. PHILLIPS: We just want to make
22 sure the ninth cause of action is -- we're not
23 going forward on it?

24 THE COURT: Tell me which one that is.

25 MR. PHILLIPS: Good faith and fair

1 dealing.

2 THE COURT: No. Because I think it's
3 subsumed by the other matters truly.

4 MR. PHILLIPS: Thank you, Your Honor.

5 THE COURT: Okay.

6 MS. COLLINS: Thank you, Your Honor.

7 THE COURT: No, thank you. Thank you
8 all. Now, here's what you all have to contemplate.
9 And you're fixing to put up your witness and she's
10 right there on the witness stand ready to go. I do
11 not -- I don't want her trying to testify if she
12 needs documents that aren't going to be able to be
13 referred to because they are not in evidence. If
14 you need to hold up a minute or if you can do some
15 things without the documents, I'd like to do that
16 and then we will reconvene in the morning. Okay.
17 I've got something very briefly at 10 o'clock and
18 then we'll -- and then we're going to get right
19 back into this.

20 MS. COLLINS: And, Your Honor, if we
21 meet and confer while you're in chambers, we might
22 be able to work around whatever is the issue. If
23 you give us about ten minutes.

24 THE COURT: Yeah, that would be great.
25 That would be wonderful.

1 MR. PHILLIPS: Yes, ma'am.

2 THE COURT: Y'all are great. I'll be
3 right back. Two minutes.

4 (There was a short break taken)

5 THE COURT: All right. Everybody is
6 here. Wonderful. Fantastic. All right. So, can
7 you begin the examination understanding that you
8 wanted the documents?

9 MS. MOORE: Yes, Your Honor.

10 THE COURT: Okay. Good.

11 MS. MOORE: Do you need to swear in the
12 witness? I'm sorry.

13 THE COURT: Yes, I'll do it. If you'll
14 raise your right for me, please, ma'am, and state
15 your full name for the record.

16 MS. GLADDEN: Jacquelyn Gladden.

17 THE COURT: And would you spell your
18 first and your last name.

19 MS. GLADDEN: My first name is spelled
20 J-A-C-Q-U-E-L-Y-N. My last name is spelled
21 G-L-A-D-D-E-N.

22 THE COURT: Thank you.

23 JACQUELYN GLADDEN,
24 being first duly sworn, was examined and testified
25 as follows:

JACQUELYN GLADDEN - DIRECT EXAMINATION BY MS. MOORE

1 THE COURT: You can put your hand down.

2 Yes, ma'am.

3 MS. MOORE: May it please the Court?

4 THE COURT: Yes.

5 DIRECT EXAMINATION BY MS. MOORE:

6 Q. Ms. Gladden, can you tell us a little
7 bit about -- well, where do you work? Just
8 briefly.

9 A. I work for Community Long Term Care as
10 a case manager.

11 Q. Okay. And what do your duties
12 typically entail?

13 A. Well, what I do is put in services for
14 those that are disabled in the community.

15 Q. All right. And so you work -- you work
16 with people?

17 A. I work for the Community Long Term Care
18 under the Department of Health and Human Services.

19 Q. All right. And I believe it's been
20 established, but you're one of Ms. Theodocia Reed's
21 daughters; correct?

22 A. Yes, I am.

23 Q. And you've been engaged in litigation
24 on and off for a while?

25 A. Yes.

1 Q. Okay. So big picture, how -- what led
2 us here today? What are we here for today and how
3 did it happen?

4 A. Well, what happened -- well, we -- in
5 June of '08, we had some POA's we we're doing. And
6 those POA's, I think, in the beginning of -- the
7 beginning of December, we received notice that our
8 POA's were terminated. So the end of '08, my
9 sister and I, Patricia Reed and I decided to take
10 action.

11 The reason for that is because
12 everything was going pretty good in terms of each
13 person having the responsibility to kind of take
14 care of mom when she came to stay with us, you
15 know. We knew that there were certain things that
16 needed to happen and to be taken care of. So we
17 all agreed around June that the POA's would be
18 okay. And everything was going pretty good and out
19 of the clear blue sky, around the first of December
20 of '08, we received notice that our POA's were
21 terminated.

22 So that's when we decided, we felt that
23 we needed to do something. And at that particular
24 time around that time too, I believe that there
25 were some things that were -- some funds that were

1 moved and we became increasingly concerned because
2 this was a drastic move that was made by Cyndy
3 Stewart. So, we just felt like we needed to step
4 in to protect mom's interest at that particular
5 time.

6 Q. And that led to the 2009 action that
7 was discussed this morning during the motions?

8 A. Yes, that's correct.

9 Q. All right. What was the result of that
10 hearing? That 2009 hearing when you brought the
11 action against Ms. Stewart?

12 A. We attended that hearing, I believe,
13 sometime in October of '09. And at that particular
14 time, the judge felt that mom was not
15 incapacitated. However, she felt that some papers
16 needed to be drawn up to, I guess, protect my
17 mother's interest at that time. So she suggested
18 that the guardian ad litem at that time draw up
19 some legal documents.

20 Q. Do you recall who was at that hearing
21 that day?

22 A. Yes, I do.

23 Q. Could you list them for us? To the
24 best of your recollection, could you tell us who
25 was at that hearing that day?

1 A. Patricia Reed. I was there. Patricia,
2 my sister. Cyndy Reed Stewart. Her husband was
3 present at that hearing. And some friends from
4 Denmark. I think Hayward Garvin. Her sister was
5 present at that hearing, Ms. Stubs. And, of
6 course, the lawyers were there.

7 Q. All right. And in that Order, so we
8 know who was there, we know what was addressed,
9 what other -- what else was in that Order that is
10 significant?

11 MS. MOORE: And I can -- I have the
12 2009 Order regarding hearing. I have a true and
13 certified copy. I have prepared one for counsel.
14 I have it premarked. Is there an objection?

15 MR. PHILLIPS: No objection.

16 MS. MOORE: It is premarked as
17 Plaintiff's Exhibit 3. I'm sorry, Your Honor, I
18 should have brought you a copy. I apologize.

19 THE COURT: That's okay.

20 MS. MOORE: And you said you wanted
21 true and certified copies at this time.

22 THE COURT: No, I can use the one --
23 you can hand me a copy, that's fine.

24 MS. MOORE: All right. Here you go,
25 Your Honor. May I approach? I apologize.

1 THE COURT: No, please.

2 (WHEREUPON, Plaintiff's Exhibit 3 was
3 entered)

4 Q. Here you go, Ms. Gladden. This is a
5 copy of that 2009 Order; correct?

6 A. Yes.

7 Q. All right. If you would with me, flip
8 to page, I believe, it's 7 of the Order. Let me
9 know when you're there.

10 A. I'm ready.

11 Q. Okay. Would you please read paragraph
12 7 for me?

13 A. "Under assistance with financial
14 matters that at the request of Theodocia Reed,
15 Cynthia Stewart will provide her with assistance
16 with financial matters such as paying bills.
17 However, Ms. Reed will have the ultimate decision
18 making authority and will be consulted with respect
19 to all matters affecting her finances.

20 At the request and direction of Ms.
21 Reed, Cynthia Stewart will keep Jacquelyn Gladden
22 and Patricia Reed promptly and adequately informed
23 of all of Ms. Reed's financial matters including
24 providing full copies of bank statements for
25 accounts held in Ms. Reed's name or held for her

1 benefit and keeping them informed of other matters
2 affecting Ms. Reed's finances such as leased
3 arrangements for the Orangeburg County property and
4 the management and any renovations of Ms. Reed's
5 real property in Bamberg County."

6 Q. Would it be a fair statement to say
7 that that portion of the Order put an obligation on
8 Ms. Stewart to make sure you were, if not, making
9 decisions and knew about any financial decisions?

10 MR. PHILLIPS: Objection, Your Honor.
11 I think that statement -- the Order speaks for
12 itself.

13 THE COURT: Sustained.

14 Q. Would you be so kind then as to read
15 paragraph number 9?

16 A. Paragraph what?

17 Q. Number 9. You're on that page 8,
18 paragraph number 9, please.

19 A. "Bamberg County residence that neither
20 Cynthia Stewart, Jacquelyn Gladden, nor Patricia
21 Reed will be permitted to sell any property owned
22 by Ms. Reed which includes the former residence in
23 Bamberg County. This house will be retained by Ms.
24 Reed for future visits of open duration. All of
25 Ms. Reed's daughters shall have equal access to the

1 Bamberg County residence. But other family members
2 may only visit that property when accompanied by
3 one of the daughters. None of these individuals as
4 well as any other individuals at their direction
5 shall sell, disturb, or remove contents of this
6 house unless specifically authorized to do so by
7 Theodocia Reed."

8 Q. So a fair amount of that had to do with
9 the Bamberg property, but that is -- what do you
10 think that says?

11 A. I think that also --

12 MR. PHILLIPS: Your Honor, I object. I
13 think --

14 A. -- pertains to the Orangeburg County
15 residence --

16 THE COURT: Just one second. Hold on.

17 MR. PHILLIPS: I think the document
18 speaks for itself. And so she -- what she believes
19 about it is not really relevant, it's what it says.

20 THE COURT: That's correct.

21 MS. MOORE: I would like the Court to
22 take judicial notice of this Order.

23 THE COURT: I have it. Thank you.

24 Q. So we went to court in 2009, we have
25 this Order. And you read the portions that are

1 relevant for today. So what happened after this
2 Order?

3 A. What came out of this Order, the judge
4 placed in that Order that she -- or she directed
5 that the guardian ad litem prepare some documents
6 that would -- that she felt, I guess, would further
7 protect my mother's interest.

8 Q. All right. And were any documents
9 prepared?

10 A. Yes. POA's were prepared.

11 Q. How many of them?

12 A. Three.

13 Q. And were they all the same? Were they
14 different?

15 A. They were different.

16 Q. All right. Were -- so there were three
17 POA's, were they to each of you or different?

18 A. They were to -- each of us had
19 different, I guess, responsibilities.

20 Q. Different responsibilities.

21 A. And these were entered January 2010.

22 Q. All right. Hold on one second. So Ms.
23 Stewart had a power of attorney appointed to her?

24 A. Yes.

25 Q. All right. Do you recall the powers

1 | that she was given in that power of attorney?

2 | A. She was given --

3 | MR. PHILLIPS: Your Honor, I hate to
4 | object, but it's like if there's a document we can
5 | put it in the record rather than recalling what it
6 | may or may not have said.

7 | MS. MOORE: Very well. I do have a
8 | true certified copy of this as well, but I would
9 | like to put in the limited durable power of
10 | attorney for accepting property in Bamberg County
11 | as Plaintiff's Exhibit 4. Again, premarked, I
12 | apologize for that. Any objection?

13 | THE COURT: Any objection?

14 | MR. PHILLIPS: I apologize, Your Honor.

15 | THE COURT: That's okay.

16 | MS. MOORE: And I apologize. I'm
17 | trying to get around the documents like I was told
18 | to do.

19 | MR. PHILLIPS: No objection, Your
20 | Honor.

21 | THE COURT: Very well. Exhibit 4.

22 | (WHEREUPON, Plaintiff's Exhibit Number
23 | 4 was entered)

24 | Q. All right. Is this the power of
25 | attorney that was executed?

1 A. Yes, it is.

2 Q. All right. And would you -- is there
3 any -- I need -- I'm sorry, I'm stumbling all over
4 myself. Would you please look at -- one second.
5 Could you read out that title for me?

6 A. "Limited Durable Power of Attorney
7 Accepting Property in Bamberg County."

8 Q. All right. And then on page 5. I
9 apologize, that is the wrong page.

10 MS. MOORE: One second, Your Honor.

11 THE COURT: All right.

12 Q. I apologize, I meant page 6. I
13 apologize for that. Under Article 6, would you
14 read the restrictions of Number 1?

15 A. "Benefits to agent. My agent shall be
16 prohibited from appointing, assigning, or
17 designating any of my assets, interests, or rights
18 directly or indirectly to my agent. My agent's
19 estate, my agent's creditors, or the creditors of
20 the agent's estate. Exercising any power of
21 appointments signing whole disclaiming access to
22 which I would otherwise be entitled or using my
23 assets to discharge any of my agent's legal
24 obligations."

25 Q. I'm sorry. Paragraph 2. I apologize,

1 | that's my fault.

2 | A. Okay. "Sale or property prohibited by
3 | agent. My agent may not sell, mortgage, or dispose
4 | of any of my properties unless I give my written
5 | consent or by court order of a court of competent
6 | jurisdiction. Since I plan to retain my South
7 | Carolina residency status, a court of competent
8 | jurisdiction must be in South Carolina and not
9 | Florida where I will be visiting extensively."

10 | Q. Thank you. So she -- based on that
11 | language, she was not permitted to sell or dispose
12 | of property?

13 | MR. PHILLIPS: Object, Your Honor, that
14 | language speaks for itself.

15 | THE COURT: It does. Thank you.

16 | Q. All right. So we had some POA's issued
17 | in January. Each of you had different powers. Do
18 | you recall, and I do have documents for these, do
19 | you recall the power of attorney that was given to
20 | you?

21 | A. I had general power of attorney.

22 | Q. All right. These are Plaintiff's
23 | Exhibits 14, since I premarked them.

24 | MS. MOORE: And then may I approach,
25 | Your Honor, and give you a copy?

1 THE COURT: Uh-huh.

2 MS. MOORE: And I do have a true and
3 certified copy for the Court. I would like to move
4 that document into evidence.

5 THE COURT: Any objection?

6 MR. PHILLIPS: I take it that it's a
7 certified copy, Your Honor, and on that, I have no
8 objections.

9 (WHEREUPON, Plaintiff's Exhibit Number
10 14 was entered)

11 Q. Okay. Ms. Gladden --

12 THE COURT: If you will affirm that
13 there is a --

14 MS. MOORE: Yes, ma'am, it's right
15 here.

16 THE COURT: Thanks. Okay. Great.

17 Q. All right. Ms. Gladden, is this the
18 power of attorney that was issued to you?

19 A. Yes. What's stated on the document you
20 just gave me?

21 Q. Yes. Could you read the title for me,
22 please?

23 A. "Limited Durable Power of Attorney
24 Accepting" --

25 Q. No, the new one. Did I not hand you

1 one? I apologize. Here you go. This is the one
2 I'm talking about.

3 A. "General Power of Attorney with
4 Springing Provision for Incapacity and Without
5 Gifting Provision."

6 Q. All right. And if you would look on
7 page 2, number 9. Could you read that out for us,
8 please?

9 A. "This power of attorney shall become
10 effective only at such time as principal is deemed
11 incapacitated. Principal shall be deemed
12 incapacitated if at anytime two licensed physicians
13 certify in writing that principal has become
14 physically or mentally disabled and is unable to
15 manage her affairs in her best interest whether or
16 not a court of competent jurisdiction has declared
17 principal disabled, mentally ill, or in need of a
18 conservator/guardian."

19 Q. All right.

20 MS. MOORE: And that's it, Your Honor.
21 I just want that to be in the record.

22 THE COURT: Okay.

23 Q. All right. So we have all these power
24 of attorneys, is there anything that happened after
25 that? In 2010, specifically.

JACQUELYN GLADDEN - DIRECT EXAMINATION BY MS. MOORE

1 A. In 2010?

2 Q. Uh-huh. Didn't you go back to probate
3 court?

4 A. Yes, we did. On a rule. Yes, we did
5 on a Rule To Show Cause --

6 Q. All right.

7 A. -- hearing.

8 Q. And do you recall who was at that
9 hearing at that time?

10 A. Yes, I do.

11 Q. All right. Could you tell us while I
12 enter this into evidence.

13 A. I attended that hearing, my sister
14 Patricia Reed. My sister Cyndy Stewart, Doreen
15 Williams, my sister's husband Jessie Stewart.

16 Q. Okay. And it was a Rule To Show Cause,
17 what else happened at that hearing?

18 A. Well, at that particular hearing what
19 was significant is that the judge then ruled that
20 my mother was incapacitated.

21 Q. All right.

22 MS. MOORE: And I would like to enter
23 this into evidence. Any objection?

24 MR. PHILLIPS: I'm sorry.

25 MS. MOORE: As Plaintiff's Exhibit 5.

1 It is the 2010 Richland County Order on -- Order
2 regarding Rule To Show Cause.

3 MR. PHILLIPS: No objection.

4 (WHEREUPON, Plaintiff's Exhibit Number
5 5 was entered)

6 Q. All right. So, Ms. Stewart was present
7 and you were saying what was significant in that
8 Order.

9 A. Yes.

10 Q. Which was?

11 A. Which was that at that time the judge
12 found that my mother Ms. Reed was incapacitated.

13 Q. Was there testimony given to that fact?

14 A. Yes.

15 Q. Who testified?

16 A. Me and two of my two sisters, Patricia
17 and Cyndy Reed Stewart.

18 Q. So Ms. Stewart testified as to Ms.
19 Reed's incompetency --

20 MR. PHILLIPS: Objection, Your Honor.
21 I object. That would be hearsay as to what anyone
22 testified to in that hearing.

23 MS. MOORE: Your Honor, it's a
24 statement against interest. It's a statement
25 against interest. If she was testifying in 2010

1 | that her momma was incompetent when she executed a
2 | 2014 power of attorney, she --

3 | THE COURT: Hold on one second.

4 | MS. MOORE: Sorry.

5 | THE COURT: Unfortunately, let me hear
6 | the statement again or -- and don't -- let me hear
7 | the question again and then let me rule on it.

8 | Q. So at this 20 --

9 | MS. MOORE: And I'm going to try to ask
10 | it as close as possible as I did.

11 | THE COURT: That's fine.

12 | Q. In this 2010 hearing, Ms. Stewart
13 | testified that your mother was incompetent?

14 | A. Correct.

15 | THE COURT: Okay. All right. Go
16 | ahead.

17 | Q. Would you be so kind as to read page 3,
18 | paragraph 3?

19 | A. Paragraph what?

20 | Q. Three.

21 | A. "That the Court hereby finds that
22 | Theodocia Reed appears to currently meet the
23 | definition of an incapacitated person as defined in
24 | SC Code, I guess annotated, 62-5-101, paragraph 1
25 | -- I mean, in (1) 1976 as amended though no

1 designated examinations have been conducted to
2 confirm the suspicions of Ms. P. Reed, Ms. Gladden,
3 and Ms. Stewart, that their mother is presently
4 incapacitated. Ms. Reed has valid powers of
5 attorney if they contain a springing clause, the
6 agent is to follow the directives of the power of
7 attorney in establishing her powers to act under
8 the documents."

9 Q. Thank you.

10 MS. MOORE: And I would ask that the
11 Court take judicial notice of that Order as well,
12 please.

13 THE COURT: All right.

14 Q. So after 2010, did much happen in the
15 next couple of years?

16 A. No.

17 Q. You would say it was quite?

18 A. It was pretty quite. We -- my sister
19 and I didn't -- at times my mother was in different
20 places and we did not know sometimes where she was
21 because she was in different places. And really,
22 just prior to coming to South Carolina, we really
23 didn't know where my mother was. But there was no
24 movement or anything and she was in different
25 places.

1 Q. Okay. When was the next time that you
2 had your mother in your care for an extended amount
3 of time?

4 A. June 2015, my mother -- arrangements
5 were made with my sister, Patricia. My mother
6 returned to the State of South Carolina for a
7 wedding. My daughter was getting married on July
8 4th and my mother returned back to the State of
9 South Carolina to attend her --

10 Q. All right. Can you tell me what momma
11 was like at that wedding?

12 A. Momma was basically nonverbal. She was
13 -- at this time, she was drooling. She was -- I
14 would say her affect was flat. She was sort of
15 stoic. You know, she was there, but she wasn't
16 anything like she was. Just, you know, the last
17 time that I had seen her.

18 Q. Okay.

19 A. She was much different.

20 Q. And was that -- never mind. So after
21 this wedding, what happened?

22 A. Well, after the wedding -- just a few
23 weeks after the wedding took place, mom was
24 hospitalized.

25 Q. Okay. Do you recall those dates?

1 A. Her admission date, mom was admitted
2 into Georgetown Memorial on July 28, 2015.

3 Q. All right. And what were the issues
4 she was facing at that time?

5 A. At that time when mom returned to the
6 State of South Carolina, she was having problems
7 with breathing. And at the time of her admission
8 to the hospital, she was having some problems with
9 breathing. She had elevated blood pressure. She
10 was having some pain in different areas. In
11 particular -- particular she was having some chest
12 pains and slurred speech.

13 Q. Did she ever leave the hospital?

14 A. Yes, she did.

15 Q. Okay. What happened after -- when did
16 she leave the hospital?

17 A. She left the hospital August 7th.

18 Q. Okay. Never mind. So where did she go
19 after she left the hospital?

20 A. She went to my sister's home.

21 Q. How long was she there?

22 A. A few hours.

23 Q. What happened?

24 A. Upon discharge --

25 Q. Let's back up for a second. Which

1 sister?

2 A. Patricia. Patricia lived in
3 Georgetown.

4 Q. Okay. What happened after she came
5 home?

6 A. She began to have breathing problems
7 again. And which at that time, the hospice nurse
8 was there, but I was observing -- while Patricia
9 was in talking to the hospice nurse, I was
10 observing my mother and I noticed that she was
11 beginning to have breathing problems. And I kind
12 of rushed in, so I began to give her mouth-to-mouth
13 resuscitation. That was just natural for me to
14 kind of do that. And so very shortly thereafter,
15 the ambulance was called in.

16 Q. Where did she go?

17 A. She was taken to a hospice facility.

18 Q. And did she leave hospice?

19 A. Pardon me.

20 Q. Did she ever come home from hospice?

21 A. No.

22 Q. Okay. What did you do while she was in
23 hospice?

24 A. What did I do when she was in hospice?

25 Q. To get her care?

1 A. Well, pretty much the facility rendered
2 all of her care, you know, so there was not much
3 there to do. So we were there just to ask to be
4 competent to let her know that we were just there.
5 Okay.

6 Q. Did you try to use your power of
7 attorney?

8 A. No -- well, yes, I did. Something had
9 happened earlier wherein I felt like at this
10 particular time we were being told that mom made --
11 what prompted this, mom may return back home. But
12 we knew that she was in no condition, no physical
13 nor mental state -- mentally she could not return
14 back to the State of Florida.

15 So with that in mind, I decided to go
16 ahead and to have my power of attorney become
17 effective. Since at that particular time I had --
18 there were two statements from doctors saying that
19 she was incompetent. She was comatose and she was
20 incompetent.

21 MR. PHILLIPS: Objection, Your Honor.
22 I would object to the witness testifying to what
23 was in statements about the capacity.

24 MS. MOORE: Your Honor, I actually have
25 the original doctor's notes that I would like to

1 offer into evidence. They were written on
2 prescriptions like a prescription, so I have the
3 original --

4 THE COURT: I understand.

5 MS. MOORE: Any objection? I can
6 provide a copy. They're Plaintiff's 8.

7 MR. PHILLIPS: I do, Your Honor. I
8 mean, if she wants to go through with the witness
9 to try to authenticate them on a prescription pad,
10 that's not a hospital record produced in the normal
11 course. So, I think they need a little more
12 testimony as to the authenticity of the note.

13 THE COURT: You can try to authenticate
14 it. I don't know to whether your client can.

15 Q. Ms. Gladden, do you recognize this
16 document?

17 A. Yes, I do.

18 Q. What are they?

19 A. These are documents signed by her
20 treating physician.

21 Q. Okay. And did you request these
22 documents?

23 A. Yes.

24 Q. I'm going to actually hand you the
25 originals. Are these the original documents you

1 received from the doctors at your request?

2 A. Yes.

3 Q. And the copy in your hand, is that a
4 true copy of what you received from the doctor?

5 A. Yes.

6 MS. MOORE: Again --

7 MR. PHILLIPS: May I see them?

8 MS. MOORE: Here's the originals.

9 MR. PHILLIPS: Your Honor, again, this
10 is a -- there's no indication on these documents,
11 they're written on essentially -- it's a diagnosis
12 written on a prescription form. And it is a letter
13 that -- it appears to be an original letter written
14 in '15, but there's no indication it comes from
15 this doctor. I mean, this is -- this doesn't have
16 the indicia usually of a medical diagnosis. These
17 just look like handwritten notes on random pieces
18 of paper from a doctor's office.

19 MS. MOORE: Your Honor, she was trying
20 to -- if I may. She was trying to get her power of
21 attorney so she could take care of momma's affairs
22 and she asked the doctors for a note, that's what
23 they gave her. I don't --

24 MR. PHILLIPS: Well, okay. So it's a
25 note somebody gave. It's not a medical record, so

1 I would object to it being entered as if it were a
2 medical record.

3 THE COURT: The objection is sustained.
4 Now, you understand -- I understand this is
5 documents to be given that were a part of the
6 request to admit?

7 MS. MOORE: I believe so. I would have
8 to check. But they may not have been a part of the
9 request to admit because she was not in the state
10 at the time.

11 THE COURT: I understand.

12 MR. PHILLIPS: And they weren't -- I
13 just went through the request to admit, so they're
14 not.

15 MS. MOORE: That's fine.

16 THE COURT: Yes, sustained. Objection
17 is sustained.

18 Q. Okay. What did you find when you were
19 trying to get your springing power of attorney put
20 in place?

21 A. It was at that time I discovered that
22 there was another -- there was a POA that my sister
23 had -- that Ms. Stewart had done.

24 Q. Okay. One second. I am missing one of
25 my copies. All right.

1 MS. MOORE: So I apologize, Your Honor.
2 I am missing one of the copies. This is
3 Plaintiff's Exhibit 6. It is the Florida power of
4 attorney. I do have a true and certified copy, of
5 course, Your Honor.

6 THE COURT: Okay. Any objection to the
7 admission of what has been marked as Plaintiff's
8 Exhibit 6?

9 MR. PHILLIPS: No objection, Your
10 Honor.

11 THE COURT: All right. Very well.

12 (WHEREUPON, Plaintiff's Exhibit Number
13 6 was entered)

14 Q. All right. I apologize. All right.
15 Ms. Gladden, is this a copy of the power of
16 attorney you found?

17 A. Yes.

18 Q. All right. Could you read it? Read
19 that title, please.

20 A. "Florida General Durable Power of
21 Attorney."

22 Q. Okay. And if you would look at page 7.
23 What date was this signed? I don't believe it's
24 page 7. I apologize, it's actually page 5. What
25 date was this signed?

1 A. The 26th day of June, 2014.

2 Q. And that was approximately four years
3 after -- it was four years after the 2010 hearing;
4 correct?

5 A. Yes.

6 Q. All right. And if you look at page 7,
7 who was it prepared by?

8 MR. PHILLIPS: Your Honor, I guess I'd
9 have to object. There's been no testimony that the
10 witness has any personal knowledge of this
11 document. She's just been reading what it says.

12 THE COURT: It's in. You agreed to let
13 it come in.

14 MR. PHILLIPS: Yes, ma'am. So, I mean,
15 the question was about how it was executed and I
16 say outside of what the document says, this witness
17 has no testimony.

18 MS. MOORE: Well, I'm asking her to
19 read preparation statement on page 7.

20 MR. PHILLIPS: I guess I would just say
21 that we agree the document's in and it says what it
22 says.

23 THE COURT: Yes. I understand. You
24 want to draw the Court's attention to --

25 MS. MOORE: Page 7, please. The

1 preparation statement. And there's a logic behind
2 my questioning if you would be --

3 THE COURT: That's quite all right.
4 I'm on page 7.

5 MS. MOORE: It's preparation statement,
6 this document was prepared by the following Cyndy
7 Reed Stewart as current power of attorney in South
8 Carolina.

9 Q. Ms. Gladden, was she the sole power of
10 attorney at this time when this document was
11 executed?

12 A. No. Was Ms. Reed?

13 Q. Was Ms. Stewart the sole power of
14 attorney at the time she executed and created this
15 document?

16 A. No, there were other powers of
17 attorney.

18 Q. All right. And her power of attorney
19 at the time was limited?

20 A. Yes.

21 Q. To while she was in Florida; correct?

22 A. Yes.

23 Q. All right.

24 MS. MOORE: There's just one other
25 statement that I would like to draw the Court's

1 attention to. On page 1, section A. So the
2 important thing to note is that Ms. Reed when she
3 signed this, selected that all of these provisions
4 be binding. But on page 1, section A, it limits
5 the authority over property to the State of Florida
6 and property in the State of Florida. So I would
7 like the Court to take notice of that as well.

8 MR. PHILLIPS: Your Honor, I guess if
9 we're taking notice of the document, I'd also ask
10 the Court to take notice of the fact that that is
11 not initialed.

12 THE COURT: That what?

13 MR. PHILLIPS: That provision that
14 counsel just referenced is not initialed.

15 MS. MOORE: No, sir, it's not. But
16 provision N, all the powers listed above on page 4
17 is. So provision A would in fact be part of all of
18 those provisions.

19 MR. PHILLIPS: Again, Your Honor, the
20 document speaks for itself and we'll -- we'll
21 present our argument at about it at the appropriate
22 time.

23 THE COURT: Okay.

24 Q. What was momma's mental health at this
25 time?

1 MR. PHILLIPS: Objection, Your Honor.
2 That's a medical opinion. We're going to present
3 medical records and testimony from Florida about
4 that. If she wants to put records in, that's fine.
5 But to have a layperson talk about somebody's
6 mental capacity, I believe that's beyond the scope
7 of the witness' expertise.

8 MS. COLLINS: Now, Your Honor, before
9 we go too much down that rabbit hole, I would ask
10 the Court to deal with the issue that we have
11 discovery requests outstanding for two years at
12 this point and now we're hearing about medical
13 records that they intend to introduce. I just
14 wanted to point that out to Your Honor in that we
15 will be objecting to any records at this point.

16 MR. PHILLIPS: Well, Your Honor, then I
17 guess these records that we haven't seen in the
18 many years that this has been pending that were
19 just offered by this witness, we would object to
20 those too.

21 THE COURT: Did you request to admit --
22 I mean, request to produce or interrogatories?

23 MR. PHILLIPS: I believe there was
24 discovery request by one of my predecessors.

25 THE COURT: If you have an objection I

1 | will be happy to hear from you in regards to the
2 | failure to comply with discovery.

3 | MS. MOORE: And, Your Honor, if I may.
4 | We did respond. The documents that they have are
5 | Bates stamped. The ones that aren't Bates stamped
6 | are typically the ones that we got a true and
7 | certified copy of and were marked up, so I
8 | substituted the true and certified unmarked copy
9 | for the Bates stamped copy they received. We would
10 | be happy to re-Bates them and conform them to show
11 | that they are the same document. But we fully
12 | answered discovery. We have never had a Motion To
13 | Compel pending against us.

14 | THE COURT: Okay.

15 | MR. PHILLIPS: But, Your Honor, this is
16 | -- and, again, I apologize, the Court's commented
17 | on my new arrival to this. But here is something
18 | that wasn't shared with me when they shared their
19 | exhibits a couple of days ago. It's new. We get a
20 | chance to put in rebuttal evidence, that's all.
21 | And that's what we will do. We'll put in medical
22 | evidence that addresses the deceased competence at
23 | a time when they're alleging with their documents
24 | that she was incompetent. That's all my point was.

25 | MS. MOORE: Your Honor, the only new

1 document that was not provided to counsel last week
2 when he appeared was the springing power of
3 attorney because I wasn't entirely sure I was going
4 to use it until he took away some of my documents.
5 So, no, they were provided. As soon as he noticed,
6 I sent him our packet and then I even updated him
7 when we decided to use the RA's. So he was
8 provided prior to today these documents.

9 MR. PHILLIPS: Your Honor, did you not
10 just say --

11 THE COURT: Huh-uh. Huh-uh. Huh-uh.

12 MR. PHILLIPS: I'm sorry. I thought I
13 just heard that -- and I don't see in this packet
14 of materials where there was a prescription and a
15 letter. That's my point. That's medical evidence
16 they purport that's from a doctor that they use
17 that for a springing power of attorney. Okay,
18 that's fine. You've put in -- you've had your
19 client read Judge Belton's Order from 2010 about
20 capacity. You're now reading a document I haven't
21 seen before about capacity in 2015. Because you've
22 made that argument and produced new documents, I
23 believe I can produce some Florida documents about
24 her condition at the time as a rebuttal to the
25 evidence that was -- and testimony that's been put

1 | in here today.

2 | MS. MOORE: Your Honor, the doctor's
3 | notes that were sustained and not entered actually
4 | have Bates stamps numbers on them. They were Bates
5 | stamped, Plaintiff RFP-66 and 67. They were
6 | absolutely produced.

7 | MS. COLLINS: And they weren't
8 | admitted, Your Honor, of course.

9 | MS. MOORE: Right. They weren't
10 | admitted. So to the extent that, again, we
11 | complied with discovery, we have not received any
12 | from them. I'm sorry that he is new to the case,
13 | but we did this. We've been here.

14 | MR. PHILLIPS: So let's get into that.
15 | My client --

16 | THE COURT: Hold on.

17 | MR. PHILLIPS: I'm sorry.

18 | THE COURT: We're in the middle of this
19 | witness. It's about 20 minutes into 4 and we've
20 | been interrupted. I'm going to have you just take
21 | a breath because we're going to stop your testimony
22 | at this time because we have discovery little
23 | challenges here that I'm going to deal with. But I
24 | need to advise you, please do not discuss your
25 | testimony with anyone to include counsel because

1 | you are on the stand. Do you have any questions
2 | about that?

3 | MS. GLADDEN: No.

4 | THE COURT: Very well. All right. So
5 | if anybody asked you, did you discuss your
6 | testimony with anybody overnight, you will say, oh,
7 | no. Because that will be a true statement; right?

8 | MS. GLADDEN: Yes.

9 | THE COURT: They can talk about -- you
10 | can talk about the Yankees being in a slump and you
11 | can talk about lots of other things, you just can't
12 | talk about the trial and your testimony; okay?

13 | MS. GLADDEN: I understand.

14 | THE COURT: Perfect. You can sit
15 | there, be comfy or move, it's okay. All right.
16 | Now, let's talk about -- let's talk about where we
17 | are. So you guys are fixing to have a meeting.
18 | You're going to meet and confer. And I know you
19 | can meet and confer about discovery and what was
20 | received. You're going to talk about the documents
21 | with regards to the request to admit; right? We
22 | talked about that. You're going to see the
23 | documents. You know, if documents were provided in
24 | discovery, I'm not -- if they become relevant, I'm
25 | not about to limit counsel and the ability to offer

1 up to the Court relevant evidence to which the
2 opposing party has had notice. All right. So
3 let's everyone be clear.

4 By the same token, I am not of a mind
5 to allow the admission of documents that were not
6 provided in discovery. And if so discovery was not
7 propounded, I think that you will have met a snarl.
8 I don't know if it has or has not. But if
9 questions have been propounded to your client and
10 you have not -- you haven't responded, it's a bit
11 of a snarl.

12 If you on the other hand have not
13 requested discovery, that's a bit of a problem. My
14 concern is that this is what has occurred. Is that
15 the -- both sides propounded discovery and it was
16 provided in large part by one side and not so much
17 by the other, that's going to be a problem. So we
18 might as well get to the issue. You guys -- y'all
19 are brilliant lawyers and you can serve up for me
20 tomorrow what was provided, what wasn't provided
21 that you're going to need and then I'll deal with
22 it at that point. Does that make sense?

23 MR. PHILLIPS: Very good, Your Honor.

24 MS. COLLINS: Thank you, Your Honor.

25 MS. MOORE: Yes, Your Honor.

1 MR. PHILLIPS: Might I raise just
2 another issue in that same vein?

3 THE COURT: Sure.

4 MR. PHILLIPS: So what my client has
5 done is she's provided me with what's in her file.

6 THE COURT: Okay. Good.

7 MR. PHILLIPS: It is -- one of her
8 former counsel's is here, I spoke to Mr. Ness.
9 David Melnick has not responded to any of my
10 inquiries.

11 THE COURT: David Melnick is right here
12 on -- in virtual courtroom.

13 MR. PHILLIPS: Correct. And I received
14 an email from him during the day that I didn't
15 recognize saying that he takes it that he's been
16 relieved as counsel. I don't believe the Court has
17 ruled that he's been relieved as counsel.

18 THE COURT: And, you know, my response
19 to that is that I am unaware that there has been an
20 Order relieving him of counsel, but nobody's asked
21 me to address the issues, but I don't know that. I
22 haven't looked for it.

23 MS. MOORE: There was an email with
24 court staff --

25 MR. MELNICK: This is David Melnick, I

1 will be happy to speak to that if the Court would
2 allow it.

3 THE COURT: I'm so excited that I can
4 hear you. Hello. Welcome. Go right ahead, Mr.
5 Melnick.

6 MR. MELNICK: Thank you, Your Honor.
7 And I apologize. I was looking -- I've actually
8 been in Spartanburg and driving all the way back
9 listening to the arguments today. I was in court
10 this morning up there. And so I didn't have access
11 to my computer.

12 I seem to remember back in February
13 that I had sent in a Proposed Order to be relieved
14 as counsel simply stating that I have not had any
15 communication with the Defendant in a while and
16 decided to move on to another attorney.

17 THE COURT: Sure.

18 MR. MELNICK: And so I finally got back
19 to my office probably about 15 minutes ago and
20 immediately pulled up on the electronic filing
21 system and although I've seen email that I sent to
22 Your Honor and counsel of record at the time that I
23 had filed a Proposed Order, I don't see anything on
24 the e-file that shows that it was received. So it
25 looks like February 19th I did let everybody know

1 | that I was --

2 | THE COURT: February of what year,
3 | Mr. Melnick?

4 | MR. MELNICK: February 19th of this
5 | year.

6 | THE COURT: Oh, okay. And so you would
7 | have sent that to the chief administrative judge,
8 | you would have sent that to Judge Dickson; is that
9 | right?

10 | MR. MELNICK: Your Honor, it appears
11 | from just looking at the email that it was sent to
12 | you as well as Comer -- Ms. Collins and another
13 | name that I don't know who that is. But it was
14 | sent directly to you not to the chief
15 | administrative judge.

16 | THE COURT: And why is that? Tell me
17 | why.

18 | MR. MELNICK: Why was it was sent to
19 | you?

20 | THE COURT: Yeah, rather than to the
21 | chief administrative judge.

22 | MR. MELNICK: Your Honor, I believe
23 | that -- and I sent it in reply to -- I just didn't
24 | reply all, I think, including everyone else, but
25 | Your Honor was included.

1 THE COURT: Well, and the only reason
2 that I ask that question to be clear, Mr. Melnick,
3 is that I would not have signed it because I'm not
4 the chief administrative judge for civil court in
5 the First Circuit. You know -- listen, I feel bad.
6 I feel like it's almost like a trick. It's like
7 lawyers have so much to keep up and then they have
8 to keep up with who is the chief administrative
9 judge where. And then if that's not difficult
10 enough, we change it on you guys like once a year.
11 Do you know what I mean? So --

12 So, in other words, it was your
13 understanding that your client wished for you to be
14 relieved or you filed a motion -- was it a
15 consented to motion, Mr. Melnick?

16 MR. MELNICK: Your Honor, no. Because
17 I think that Ms. Stewart argued, indicated
18 previously to the Court and maybe Your Honor -- in
19 front of you that she did not wish me to represent
20 her in what I should have just sent in a Proposed
21 Order, a Consent Order. So I may have messed up on
22 all sorts of accounts in that regard.

23 THE COURT: You don't need to presume
24 that even for one moment. We just need to figure
25 out because, obviously, when most -- when lawyers

1 -- typically when they file a Motion To Be -- or a
2 Consent Order or an Order To Be Relieved there's
3 usually some communication with their client to
4 that end. The issue is that obviously that is an
5 Order that I can certainly sign this, you know,
6 this week because I'm here and I have jurisdiction;
7 right, over the case? The problem is, of course,
8 if it was sent in February, then -- unless it was
9 sent like as you referenced perhaps in response to
10 a hearing, which I simply don't know, you know, as
11 we sit here. But you say it was sent in February?

12 MR. MELNICK: Yes, Your Honor. Yes, it
13 was emailed to everybody on February 19th. And I
14 have this was perhaps at the same time or very
15 close time to when Mr. Comer covered, excuse me,
16 was being relieved as Ms. Stewart's counsel.

17 THE COURT: Sure. All right.

18 MR. MELNICK: In regard to a status
19 conference and I'm trying to recreate my response
20 to the email. I apologize.

21 THE COURT: Sure. Sure. Sure.

22 MR. MELNICK: There is an email that
23 Ms. Stewart had written and it looks like it was
24 sent to, again, all of these same folks including
25 Your Honor to where she says that -- asking me to

1 follow through to be relieved as counsel.

2 THE COURT: Okay. In other words --
3 and what is the date of that email, Mr. Melnick?

4 MR. MELNICK: She wrote the email and
5 this is all the same email chain that she wrote was
6 on February 15th of this year in which she
7 indicated that my representation was brought to
8 your attention and I was -- and I was not
9 representing her and, obviously, there's been an
10 Order to that. But -- and at that point, I think
11 Mr. Comer proceeded to represent her while I was
12 still also, you know, from the Court's standpoint
13 still attorney of record. So not sure. It goes on
14 to say, you know, that opposing counsel Lizzy Moore
15 was aware of this and I think it's -- and it
16 obviously pays to progressing, you know, without me
17 which was Ms. Stewart's intention. So --

18 THE COURT: Sure, without a doubt. All
19 right. All right. So it appears then if there's
20 an email that your client certainly wished for
21 Mr. Melnick to be relieved; is that correct?

22 MR. PHILLIPS: I don't know, Your
23 Honor. And I appreciate the Court's comment and
24 I'm trying to stay on the fast train with you. I
25 guess what -- I'm coming into an area where there's

1 | dispute over what happened earlier in the case.
2 | What -- all I know is, I spoke with Mr. Cromer --
3 | Comer, Mr. Ness got their files. Got my client's
4 | files. Looked at what's online. But there's big
5 | chunks of things that are missing. And that I
6 | don't know in February of this year, my client has
7 | some thoughts about prior representation. But I
8 | guess what I'm saying is, is that first I don't --
9 | Mr. Comer filed a Motion To Be Relieved as counsel
10 | in the proper course, it was denied by the judge.
11 | So he's here today.

12 | And so I would ask that -- I understand
13 | we need to move things along, I'd ask for at least
14 | half a day so I can kind of talk to everybody. I
15 | don't want to get up here and misrepresent the
16 | record. And my knowledge of the record is based on
17 | what I've heard from this person, this person, this
18 | person, and an incomplete electronic file. So if
19 | maybe we could have to midday tomorrow so I could
20 | talk to Mr. Melnick and find out more about these
21 | issues. I simply don't know and I just don't want
22 | to prejudice my client by my ignorance.

23 | THE COURT: Sure, I understand. I'm
24 | not going to put you in that position. I have no
25 | desire to do that.

1 MS. COLLINS: Your Honor, now we're in
2 a position where we can't even move forward with
3 our own client in the middle of testimony, so I
4 would object to any delays, first of all.
5 Secondly, Mr. Melnick was on an email -- we were in
6 a tenuous situation where we had two attorneys of
7 record that weren't attorneys in the case
8 purportedly. And Mr. Melnick and Mr. Comer -- or
9 Mr. Comer was unaware that his motion had been
10 denied, I believe, in all honesty until we spoke to
11 him and said, no, you're still in the case. And
12 Mr. Melnick was still attorney of record.

13 So when we were trying to get notice of
14 this on the Defendant, we copied both attorneys and
15 we emailed the pro se Defendant in air quotes, Your
16 Honor. And at that point, the Defendant contacted,
17 I believe, your office directly and she was told --
18 asking for a continuance when it came up on the
19 roster. Judge Dickson, I apologize. She was on
20 that series of emails with Judge Dickson asking for
21 a continuance because of her health and she was
22 informed that she needed to copy everyone including
23 Mr. Melnick and file a motion.

24 And so that's I believe when
25 Mr. Melnick also indicated that he would also be

1 filing a motion. Which he had been requested to do
2 previously by prior judges during status
3 conferences. So they had asked him to do that. I
4 would not be surprised if it went to the wrong
5 place and never became a motion. But he was
6 requested to relieve himself of counsel formally
7 before.

8 So insofar as the discovery though that
9 went to Mr. Ness in November of 2018. So it would
10 not involve any of these attorneys anyway. So it
11 was in November of 2018 when the discovery was
12 issued.

13 THE COURT: All right. Got it. Well,
14 I think I'll deal with the -- I think probably what
15 I need to do is -- to do is and I'm about to
16 conclude this matter for the day. And I think
17 before we -- I stop for the day, we'll try to get
18 to the end of where Mr. Melnick and Ms. Stewart
19 are. And I'm going to do that in just a moment.
20 I'm not going to put you in the middle of it, but I
21 think you probably need to remain.

22 And -- but here is what I do want to
23 do. Is, I want you all to meet and confer. I want
24 you to talk about the request to admit which ones
25 you need and they will respond by in the morning.

1 If you want to go over the documents. I want you
2 to go over this -- whatever discovery if they have
3 questions about what discovery was provided. Just
4 -- I'm not asking you to go over the documents, but
5 just make sure that they've seen the request -- I
6 mean, the responses.

7 And, you know, you guys are obviously
8 you're going forward. If you haven't received
9 discovery, it's going to be very difficult for me
10 to allow it in if you haven't seen it. That's why
11 discovery exists. So that's going to present a
12 problem for you. And, Mr. Melnick, is your office
13 also in Columbia?

14 MR. MELNICK: Yes, Your Honor, it is.
15 I'm in Irmo, but very close to Columbia.

16 THE COURT: Yeah. It counts; right?
17 And, Mr. Phillips, you're in Columbia?

18 MR. PHILLIPS: Yes, ma'am.

19 THE COURT: And, Mr. Melnick, does
20 Mr. Phillips have your phone number so that if
21 you've got any documents that he may need, he would
22 like to have those over the evening, so maybe y'all
23 can chat.

24 MR. MELNICK: Absolutely. I will be
25 happy. I don't know if he has my number or not,

1 but I will be happy to publish either my cell
2 number right now --

3 THE COURT: Just text it to him. Can
4 you text it? Do you have -- Mr. Phillips' law
5 office number is 803.726.4268 and maybe just call
6 his office and give them your cell phone number and
7 they'll pass it along to him.

8 MR. MELNICK: Yes, Your Honor, I will
9 do that as soon as we're done here.

10 THE COURT: And that way if you have
11 any documents that he needs, he would like to see
12 them. I am confident and that will be awesome.
13 Now, but don't leave me because I do want to get to
14 the bottom of this representation situation.

15 Now -- so, are y'all going to go over
16 that, going to go over the request to admit, going
17 to go over the discovery and see where you all are.
18 Cool. Yes? Yes? Yes? Yes? Wonderful.

19 And -- okay. So here is who I need. I
20 need my clerk, my bailiff, my court reporter, my
21 law clerk, counsel, my security, I need you all to
22 remain in the courtroom because I'm going to have
23 an ex parte communication. I'm going to address
24 the issue of attorney. That's it. Okay. And I
25 need to be able to do that with Mr. Phillips,

1 Mr. Melnick, Mr. Comer, and, obviously, with Ms.
2 Stewart.

3 The reason that I'm asking you guys to
4 leave and you can tell your client, is to preserve
5 Ms. Stewart's attorney/client privilege. We're not
6 going to talk about the case, I'm just going to
7 talk about this representation issue and see where
8 we are. Okay.

9 MS. COLLINS: Would you like for us to
10 walk out while you do this and come back and pack
11 or did you want us --

12 THE COURT: Y'all got work to do. I
13 don't know if you can pack right now.

14 MS. COLLINS: Well, then we'll just
15 step out.

16 THE COURT: Hopefully, this will not
17 take long. When I go like this, I know my bailiff
18 will help me.

19 MS. COLLINS: Yes, Your Honor.

20 THE COURT: Thank you so much. She's
21 in my virtual courtroom. Great.

22 (Everyone else left the courtroom)

23 THE COURT: All right.

24 LAW CLERK: Ms. Stewart, can you hear
25 us?

1 MR. PHILLIPS: If you don't mind, Your
2 Honor, I'll call.

3 THE COURT: Perfect. Gosh, I hope she
4 hadn't been in a situation where she hasn't been
5 able to hear.

6 MR. PHILLIPS: I was speaking with her
7 right before we were working on the request to
8 admit. So she was on then and I think -- maybe
9 she's fallen off.

10 (Off the record)

11 MR. PHILLIPS: With permission, I'll
12 turn the speaker on.

13 THE COURT: Yeah.

14 MR. PHILLIPS: Dr. Stewart, this is Sam
15 Phillips. I've got you on speaker phone so the
16 judge can hear you, Mr. Comer is here with me as
17 you know, and then Mr. Melnick is on the virtual
18 courtroom.

19 MS. STEWART: Okay. I hear you.

20 MR. PHILLIPS: And, Your Honor, if I
21 might approach, I'll just put my phone --

22 THE COURT: Yeah, come on over here.
23 We can gather around. And, Dr. Stewart, I'm just
24 going to give -- tell the folks who are in the
25 courtroom and just so you know who's in here. My

1 court reporter is in here, my bailiff, security is
2 here, my law clerk, Mr. Comer is here, your
3 attorney, Mr. Phillips, is here, and those are the
4 people in the courtroom and everyone is under an
5 order not to discuss the matters that will come up
6 and that's to preserve your attorney/client
7 privilege; okay?

8 MS. STEWART: Okay.

9 THE COURT: Thank you so much. Can you
10 hear me okay?

11 MR. PHILLIPS: And, Doctor, if you
12 could mute your computer. Mute the mic on your
13 computer because we get a little feedback.

14 MS. STEWART: Mine is muted. The Court
15 has muted mine.

16 MR. PHILLIPS: Okay. I'm sorry.

17 MS. STEWART: It's muted.

18 THE COURT: Great. Now, Ms. Stewart,
19 who do you want to represent you in this case?

20 MS. STEWART: Mr. Phillips.

21 THE COURT: Well, I certainly
22 understand that. And -- all right. Mr. Comer is
23 here, what is your feeling about Mr. Comer being
24 present? He's been very gracious to be present.
25 But if you're --

1 MS. STEWART: Well, that's wonderful
2 because Mr. Comer was in the courtroom with me the
3 last time, so his observation of what happened that
4 day are critical to this case. So, I don't know
5 how he and Mr. Phillips can work that out. But he
6 obviously has a lot of critical information.
7 Whereas Mr. Melnick would have very little, if any.

8 THE COURT: Okay. So you're okay with
9 Mr. Melnick being relieved?

10 MS. STEWART: Yes. Mr. Melnick should
11 have -- yes. Yes, Your Honor.

12 THE COURT: All right. That was --
13 yes, sir, Mr. Comer, I'm so sorry.

14 MR. COMER: Your Honor, I did file to
15 be relieved. I got consent from Defense counsel
16 and emailed to the Court saying she was okay with
17 it.

18 MS. STEWART: That's right.

19 MR. COMER: It got denied. So I
20 thought if Defense counsel, not you, if Defense
21 counsel consented and my client consented, I
22 thought I should have been relieved, but it was
23 denied. So I sort of like was forced to stay in
24 it. But -- and Judge Maite, she wanted some
25 memorandum of law or something. I never did submit

1 a memorandum of law. I don't know --

2 THE COURT: Okay. Now, so what do you
3 think that Mr. Comer can add that Mr. Phillips
4 can't just stay in communication for anything he
5 needs to know?

6 MS. STEWART: I guess I was just saying
7 that for reference purposes. But Mr. Phillips is
8 my attorney and he can interface with Mr. Comer as
9 he pleases. But what I was saying was on the last
10 hearing with you, Judge, Mr. Comer represented me.
11 So he has critical information for that case.

12 THE COURT: Yeah. And he's done an
13 excellent job of sharing with everyone sort of what
14 his -- what his perception and belief what they
15 were without a doubt. He's done that. Yes, ma'am.

16 MS. STEWART: Yes. And I did get his
17 Motion To Be Relieved and that was not acted upon.
18 So there's been a lot of things not acted upon in
19 this case.

20 THE COURT: Yes, ma'am.

21 MR. PHILLIPS: And, Your Honor, if I
22 could. My point in raising this issue is when Ms.
23 Stewart contacted me last week, she was under the
24 impression that there was going to be a -- there
25 were summary judgement motions pending this week,

1 not a trial. And it is -- I had to pull up the
2 court record and figure it out.

3 THE COURT: Sure.

4 MR. PHILLIPS: And I think her
5 representation issues have caused, for example,
6 we've spoken today about the Order to do away with
7 mediation.

8 THE COURT: Wait a minute. Now, we're
9 going beyond just the representation. I don't want
10 to do that with the other counsel no present.

11 MR. PHILLIPS: I guess what I'm saying
12 is, is that what I'd like to represent to you and
13 counsel is that --

14 THE COURT: Sure.

15 MR. PHILLIPS: -- she is not -- she has
16 told me what happened in the case. I've looked at
17 the record and that's what I'm arguing off of.

18 THE COURT: Sure. Yes.

19 MR. PHILLIPS: But there's clear to me
20 that there's things that occurred that she wasn't
21 aware of. And so that's why I would ask --

22 THE COURT: I gotcha.

23 MR. PHILLIPS: I made an appearance,
24 I'm here for as long as you'll have me, ma'am. So,
25 you know.

1 THE COURT: And you're obviously, let
2 me just say, based on my observation, you're
3 extremely well prepared. You have obviously worked
4 very, very, very hard to get yourself up to speed.
5 Now, let me ask you this question. Mr. Comer
6 obviously cares about Ms. Stewart, but apparently
7 in the past he certainly has made a Motion To Be
8 Relieved. He has certainly given his two cents
9 about what happened at the last hearing.

10 MR. PHILLIPS: He has been very
11 gracious.

12 THE COURT: I don't -- I feel a little
13 bit like he's hostaged. And -- but I know he wants
14 to do the right thing. I know he does, but --

15 MR. PHILLIPS: He does, Your Honor. I
16 can attest to that.

17 THE COURT: What I would think would be
18 appropriate was he's sort of renewed his motion
19 because you are on this case. Obviously, he's
20 available to if you need to consult with him. If
21 you find yourself needing to do that, I will
22 certainly give you breaks to do that. But it seems
23 a little bit like you are so up to speed and it
24 seems to me that you are -- that you are crisp
25 particular to things that have happened very recent

1 future that Mr. Comer may not -- may not be. Not
2 that he isn't knowledgeable because he certainly
3 is, but you have really picked up the football and
4 flying down the field, Mr. Phillips.

5 MR. PHILLIPS: I appreciate it, Your
6 Honor. And we have no objection to his renewed
7 motion going forward.

8 THE COURT: Very well.

9 MR. COMER: Can I say this, Judge?
10 When he called me Thursday? Friday?

11 MR. PHILLIPS: Thursday.

12 MR. COMER: He said, I'm the new
13 attorney and I haven't gotten everything I need. I
14 said, well, I'll email it to you. No, I'm gonna
15 come get it. So, you know --

16 THE COURT: Yeah. Absolutely.

17 MR. COMER: So we spent a couple of
18 hours -- more hours than that, but two hours on the
19 case at least and I opened up everything I had. I
20 made copies of everything I had and gave him my
21 take on it.

22 THE COURT: Absolutely.

23 MR. COMER: And I appreciate the fact
24 that he wanted to come get what he needed to
25 provide the kind of representation that Dr. Stewart

1 | needs. And I appreciate that.

2 | THE COURT: Yes, and he's on it. Yeah,
3 | absolutely.

4 | MR. COMER: So I felt good about his
5 | approach and attitude about it. I said, well,
6 | she's going to be all right, you know. She's going
7 | to be all right.

8 | THE COURT: I can understand you
9 | feeling that way. So what I'm going to do --

10 | MS. STEWART: Well, may I say
11 | something?

12 | THE COURT: Sure.

13 | MS. STEWART: Mr. Phillips might have
14 | said something before. Mr. Comer, thank you. You
15 | have just been graciously representing me and doing
16 | the best as you -- best for me. And, Mr. Phillips,
17 | looks like you're in that vein also. But there's a
18 | lot of things that Mr. Phillips has not had a
19 | chance to catch up on, Your Honor. And I just want
20 | to say that in front of the Court. So, yes, he is
21 | fully prepared --

22 | THE COURT: Yes, he is.

23 | MS. STEWART: -- but he just got this
24 | case -- well, I'll say he's 3/4 prepared. I won't
25 | say fully because it's not 100 percent. But he's

1 | certainly capable. But I would ask the Court to
2 | understand that he just came on the case last week
3 | and so I was just clearly notified that this case
4 | was coming up, so I was going to appeal to the
5 | courts and maybe too late, just out of humanity to
6 | give us a day. Because the courts have just put me
7 | into a bind and finding an attorney is not the
8 | easiest things when I am so far away. And so I
9 | guess I'm going to appeal to you, Your Honor, to
10 | show some mercy in giving us time to get these
11 | documents you're talking about because we only have
12 | -- we have less than 24 hours.

13 | THE COURT: Well --

14 | MS. STEWART: And that just does not
15 | seem like it's human --

16 | THE COURT: Yes, ma'am.

17 | MS. STEWART: I understand what you're
18 | saying that --

19 | THE COURT: Yeah. Yes, ma'am, that's a
20 | different issue than the attorney issue. And Mr.
21 | Phillips is sort of --

22 | MS. STEWART: I know, but I just wanted
23 | to --

24 | THE COURT: -- handling that pretty
25 | well. His arguments have been pretty clear about

1 that. All right. So, and I want to get back to
2 the attorney issue. Mr. Comer is going to grant --
3 he's going to draft me an Order that says he's
4 renewed the motion, that we were on the telephone
5 in virtual courtroom by an ex parte hearing and
6 heard from you that he is certainly available in
7 the event Mr. Phillips needs to consult with him.
8 He will make himself available and -- but it is
9 appropriate that he be relieved.

10 MS. STEWART: Yes, I thought his motion
11 was still out there. He had a motion --

12 THE COURT: Yes, ma'am.

13 MR. PHILLIPS: And, Your Honor,
14 obviously that consultation would be protected by
15 the attorney/client privilege.

16 THE COURT: Sure. Absolutely. Yes,
17 without a doubt. Without a doubt. So he'll shoot
18 me that Order. Now, Mr. Melnick, I need you to
19 just stick your motion in the que again for me.

20 MR. MELNICK: Yes, Your Honor.

21 THE COURT: Okey-dokey.

22 MR. MELNICK: Your Honor, I apologize.
23 I thought it obviously wasn't the best way to do
24 it. Will this be in the form of a motion?

25 THE COURT: No.

1 MR. MELNICK: Just file it or do I just
2 send you a Proposed Order?

3 THE COURT: You'll put an order in it
4 that based on Mr. Comer's, you had filed one
5 previously. Unfortunately it got filed with me
6 rather than the chief administrative judge. We had
7 an in camera ex parte hearing and Ms. Stewart was
8 present and indicated she was okay with you not
9 representing her, that that was her intention.
10 And, therefore, the Court is executing an Order To
11 Clarify that you have not been representing her and
12 you do not represent her. Got it?

13 MR. MELNICK: Yes, Your Honor.

14 THE COURT: All right. Wonderful. And
15 you'll put it in the que under Goodstein.

16 MR. MELNICK: Yes, Your Honor.

17 THE COURT: Okay?

18 MR. MELNICK: Absolutely.

19 THE COURT: All right. And then I'll
20 get that signed. If you can get it in there
21 tomorrow or the next day, I will get it signed,
22 okay?

23 MR. MELNICK: Yes, Your Honor. And I
24 will --

25 THE COURT: And then you and

1 Mr. Phillips will communicate in whatever
2 Mr. Phillips has got or needs from you, you are
3 going to give it to him; yes?

4 MR. MELNICK: Yes, Your Honor.
5 Anything I have I will be happy to double check.

6 THE COURT: I just wanted to put on the
7 record that you would certainly do that.

8 MR. MELNICK: Absolutely. I will call
9 his office as soon as we get done here.

10 THE COURT: That will be perfect.
11 Thank you so much. And that way you can drop-off,
12 you don't have to keep driving around listening to
13 me. That can be dangerous.

14 MR. MELNICK: Well, I apologize.
15 Counsel was going through this and it just wasn't
16 taken care of. So, I apologize --

17 THE COURT: No worries. No worries.
18 Be well and be safe.

19 MR. MELNICK: Thank you.

20 THE COURT: Okay. Great. Done. Okay.
21 Good. So thank you and we're going to bring them
22 back in and I'm going to let them know that what
23 they know to be true is true. And then I'm going
24 to step out and that's going to give you guys about
25 45 minutes up until 5 o'clock to do what you guys

1 | can do.

2 | MR. PHILLIPS: May I suggest -- could
3 | -- I'd like to talk to Mr. Melnick and get his
4 | documents tonight and then confer with the
5 | Plaintiffs in the morning.

6 | THE COURT: No.

7 | MR. PHILLIPS: Okay.

8 | THE COURT: No. Do what you can do
9 | this evening and do whatever else you need to do in
10 | the morning.

11 | MR. PHILLIPS: Okay. Yes, ma'am.

12 | THE COURT: Because we're not going to
13 | start until 10 because I've got a matter first. So
14 | y'all will have time in the morning.

15 | (Everyone came back into the courtroom)

16 | THE COURT: All right. Just as you
17 | probably suspected, Mr. Phillips represents Ms.
18 | Stewart. All right. Wonderful. Mr. Comer has
19 | been very gracious and he'll be available. But
20 | he's going to go about his other responsibilities
21 | and his practice, but he'll be available in the
22 | event Mr. Phillips needs him or anything by the
23 | Court.

24 | Now, with regards to Mr. Melnick, he --
25 | I'm going to sign an Order relieving Mr. Melnick.

1 And, of course, Mr. Melnick, whatever information
2 he's got, he will make available to Mr. Phillips.
3 What I'm going to ask you to do is to meet and
4 confer over documents, information, and see where
5 you all are with regards to discovery documents and
6 information.

7 Let me share with you that I have a
8 hearing in the morning at 10 o'clock that is going
9 to be quite brisk. Quick. Fast, I think. That's
10 not correct. It's going to be an hour and a half.
11 It's a damages hearing. It's a damages hearing it
12 will be about an hour and a half. But what I'd
13 like you to do is Mr. Phillips is wanting an
14 opportunity to also discuss with you guys any
15 information that he may get from Mr. Melnick. Mr.
16 Melnick says he has very little.

17 MS. COLLINS: He wasn't actively --

18 THE COURT: In the matter very long.

19 MS. COLLINS: -- very long.

20 THE COURT: So in any event -- so I'm
21 going to ask two things. I'm going to ask you all
22 to do what you can do here for 45 minutes and then
23 come on in the morning. And you guys can work
24 while I'm tending to that other matter and then
25 we'll finish up tomorrow. Yes?

1 MS. COLLINS: Yes, Your Honor. We're a
2 two man shop and we have a closing, I'm just
3 wondering if I need to push my closing is where I
4 was going with that.

5 THE COURT: Oh, I bet you do. Given
6 how we have raced through this thing today, I would
7 say you might need to move closings for next week.
8 (Laughter) I'm just picking. Hopefully this will,
9 you know, be better.

10 MS. COLLINS: Yes, Your Honor.

11 THE COURT: All right. Of course now,
12 you know, Ms. Stewart will be happy for you to
13 continue this thing.

14 MS. COLLINS: Your Honor, I did think
15 an hour and a half would be enough for it, I must
16 admit, so...

17 THE COURT: Yeah.

18 MR. PHILLIPS: Your Honor, with regard
19 to our witnesses in rebuttal.

20 THE COURT: Yeah.

21 MR. PHILLIPS: They are also elderly
22 and out-of-state, may they also attend by --

23 THE COURT: Yes.

24 MR. PHILLIPS: -- video?

25 MS. MOORE: Your Honor, we would object

1 to any witnesses. We don't have a witness list,
2 never provided. And it was asked for it.

3 THE COURT: Well, if they have
4 witnesses that they're going to call, they can --
5 first question is, you can do it remotely, they
6 don't think you have responded to your discovery.
7 That might be your first little jump over the hoop
8 is to figure out about that.

9 MR. PHILLIPS: Yes, Your Honor.

10 THE COURT: Okay. Obviously, if names
11 haven't been provided in discovery where the folks
12 could be questioned and examined, you got a
13 problem.

14 MR. PHILLIPS: We would be calling them
15 as rebuttal, but I hear what you're --

16 THE COURT: You won't be -- you will
17 not have rebuttal unless, did you counterclaim?

18 MR. PHILLIPS: They would be rebuttal
19 to the testimony that's received here, Your Honor.

20 THE COURT: That would be defending.
21 That would not be rebuttal. Remember? Remember
22 you got a case, those with the burden of proof are
23 the ones who have to have the opportunity to prove,
24 but new information that is obtained in defense;
25 right?

1 MR. PHILLIPS: Yes, ma'am.

2 THE COURT: If you counterclaimed, then
3 you likewise with regard, you would have a rebuttal
4 with regards to your counterclaim. But here's
5 where we are. They're the plaintiffs --

6 MR. PHILLIPS: I understand, Your
7 Honor.

8 THE COURT: They put up their case, you
9 defend and then they rebut.

10 MR. PHILLIPS: I'm not as clear on the
11 pleadings and what we've put in there, so I
12 apologize.

13 THE COURT: Well, you may. You may
14 want to take a look and see if you've got a
15 counterclaim. Okay.

16 MR. PHILLIPS: I thought there was, but
17 I'll have to check.

18 THE COURT: And very well may be now
19 because obviously I just got to the --

20 MS. COLLINS: I believe for fees, Your
21 Honor. There was a counterclaim for -- I'm
22 checking. Failure to state cause of action, motion
23 to strike, lack of standing, quiet title in the
24 counterclaim and that was it.

25 THE COURT: Okay.

1 MS. COLLINS: Which we would argue
2 quiet title is mute at this point as well.

3 THE COURT: It is. Thank you. Cool.
4 Thanks. Thank you. Thank you. Thank you.

5 MS. COLLINS: Thank you, Judge.
6 Appreciate your accommodation.

7 (Court was adjourned until in the
8 morning)

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1 THE COURT: Is everybody ready?

2 MS. MOORE: Yes, Your Honor.

3 THE COURT: Wonderful. All right.

4 Yes, ma'am, if you'll come on back around. And,
5 Ms. Gladden, I think you were on the stand. It's
6 my understanding that you all have had an
7 opportunity to meet and hopefully verify some
8 things with regards to documents and we'll proceed
9 a little faster today. We're going to finish
10 today. And you may continue.

11 CONTINUED DIRECT EXAMINATION BY MS. MOORE:

12 Q. All right. Ms. Gladden, just very
13 briefly. We ended the day talking about that
14 Florida power of attorney; correct?

15 A. Yes.

16 Q. All right. So I want to go back a
17 little bit and I want to talk about why were you
18 and your sisters so concerned about these powers of
19 attorneys and momma's affairs?

20 A. We wanted to make sure that her
21 financial affairs would be handled and would be
22 handled to her best interest and not the interest
23 of anybody else.

24 Q. And why did you not think that momma
25 could handle her own affairs?

1 A. Because mom was incapacitated.

2 Q. And what was she being treated for that
3 made you believe --

4 A. She was being treated for dementia and
5 she was also being treated for Parkinson's disease.

6 Q. When did treatments for those start?

7 A. I'm going to say around '07, '08.

8 Q. Okay. So let's go back to '08, real
9 briefly. And she -- was there a will executed at
10 any time?

11 A. Yes.

12 Q. There was.

13 MS. MOORE: Your Honor, I'd like to
14 introduce into evidence Plaintiff's 1.

15 MR. PHILLIPS: Without objection, Your
16 Honor.

17 THE COURT: Very well.

18 (WHEREUPON, Plaintiff's Exhibit Number
19 1 was entered)

20 MR. PHILLIPS: Your Honor, I apologize.
21 My client has no sound.

22 THE COURT: She has no what?

23 MR. PHILLIPS: She can't hear anything.
24 She has no sound.

25 THE COURT: Oh, that's terrible.

1 MR. PHILLIPS: Your Honor, I think I'm
2 just going to go ahead and log out myself.
3 Obviously, I'm here, so that will cut down on
4 bandwidth, maybe that will help.

5 THE COURT: Okay.

6 MR. PHILLIPS: And there's a potential
7 that you can also add a phone to the Webex; is that
8 correct?

9 LAW CLERK: Yes.

10 THE COURT: That's correct.

11 MR. PHILLIPS: And that might fix it.

12 THE COURT: Yeah.

13 MR. PHILLIPS: Your Honor, if you don't
14 mind, I'll quick call to my client and see if we
15 can get this fixed.

16 (Off the record)

17 Q. So this is the last will and testament;
18 correct?

19 A. Yes, it is.

20 Q. What -- and I believe you testified to
21 this yesterday, but just remind us, when was this
22 executed?

23 A. This was executed on June 10, 2008.

24 Q. Okay. Would you please look at that
25 first page and read that first sentence of the

1 paragraph labeled third.

2 A. "I give all my real estate and all
3 rights that I have under any related insurance
4 policies and equal shares to those of my children,
5 Patricia Reed, Cyndy Reed Stewart, and Jacquelyn
6 Gladden who survive me subject to the below
7 restriction to first deduct that part of my assets
8 that any daughter claims under right of
9 survivorship."

10 Q. Okay. I just needed that first
11 sentence. Thank you so much. All right. So,
12 momma had a will and this was that will?

13 A. Yes.

14 Q. All right. So with all these flying
15 powers of attorneys back and forth, did this will
16 ever change?

17 A. No.

18 Q. Okay. So we discussed that there were
19 preexisting power of attorneys prior to the ones
20 that we put into evidence for 2010?

21 A. Yes.

22 Q. All right. Were you ever instructed on
23 how to sign as a power of attorney?

24 A. Yes.

25 Q. All right.

1 MS. MOORE: I would like to enter into
2 evidence Plaintiff's 2.

3 MR. PHILLIPS: Without objection.

4 THE COURT: Very well. Thank you.

5 (WHEREUPON, Plaintiff's Exhibit Number
6 2 was entered)

7 Q. All right. Ms. Gladden, and your copy.
8 Can you read the title of this document for me.

9 A. "Instructions on estate documents and
10 closing of home."

11 Q. All right. And so we're going to skip
12 ahead to that last page real quick. And towards
13 the bottom there is a cc, can you read out the
14 names this was cc'd to real quick?

15 A. This was cc'd to Cyndy Stewart,
16 Patricia Reed, and Jacquelyn Gladden.

17 Q. Did you receive a copy of this?

18 A. Yes, I did.

19 Q. Okay. And on that first page, we're
20 going back track a little bit. Can you tell me
21 what it says and how -- what it says in that middle
22 page, your attorney-in-fact should?

23 A. "Your attorney-in-fact should never
24 sign their own name as this could obligate them
25 personally as the guarantor on your deaths or

1 | wills."

2 | Q. All right. And that's perfect. And
3 | right above that, what is right above that?

4 | A. It actually shows how you're supposed
5 | to sign. It actually shows how you're supposed to
6 | sign your name.

7 | Q. Okay. So it would be a fair statement
8 | to say that there was some education once power of
9 | attorneys have started being issued on how to sign
10 | it?

11 | A. Correct.

12 | MR. PHILLIPS: Objection, Your Honor.
13 | I think the document states for itself. It doesn't
14 | say anything about education.

15 | THE COURT: So it doesn't say anything
16 | about education and it speaks for itself, what is
17 | the objection?

18 | MR. PHILLIPS: So I believe it is --
19 | the reference is that it was cc'd to everybody, so
20 | everybody received it and received the same
21 | education and that's what I would object to.

22 | THE COURT: Okay.

23 | Q. All right. Is there any indication --
24 | okay.

25 | MS. MOORE: Give me a moment, Your

1 Honor.

2 THE COURT: Sure.

3 Q. All right. We're going to move on.

4 Thank you, Ms. Gladden, for that document. All
5 right. So we have these power of attorneys, she
6 did the Florida power of attorney, you received
7 this letter, is there any -- any suggestion on here
8 that this letter didn't go out to your other two
9 sisters?

10 A. No.

11 MR. PHILLIPS: Object, Your Honor, that
12 would call her to speculate. She didn't mail the
13 letter. She doesn't know who received the letter.

14 Q. All right. Could you read that PS for
15 me on page 2?

16 A. "Daughter's of Theodocia Reed, ladies,
17 your mother met with me alone on Tuesday, June 10,
18 2008 while Cyndy brought Ms. Reed to the office.
19 She did not remain during our meeting. I firmly
20 believe that these estate documents represent your
21 mother's desires and that she has tried to be fair
22 and loving to each of you and hopes you will work
23 together to take care of her and protect her last
24 years so her last years are truly golden."

25 Q. All right. So Ms. Stewart took your

1 mother to get this will done?

2 A. Yes, she did.

3 Q. And this letter is a result of
4 Ms. Knapp drafting that will?

5 A. Correct.

6 Q. So it would --

7 MS. MOORE: Never mind, Your Honor. I
8 will leave it there.

9 Q. All right. So we have these wills. We
10 have this power of attorney, can you tell me what
11 momma was like as the years progressed after she
12 started treatment for dementia and Parkinson's?

13 A. Her dementia continued to progress.

14 Q. Did she remain the same -- like in your
15 opinion from what you witnessed and what you
16 noticed when you spoke to her, did she remain the
17 same? Did she get worse? What did you
18 specifically kind of see as the years progressed?

19 A. Well, her dementia changed. There was
20 a progression of her -- of the dementia and also
21 the Parkinson disease. Okay. We saw a progression
22 of -- my mother did not have, in terms of her
23 dementia, she had more times when she was not
24 oriented times three. She did not know many times
25 where she was. And that almost happened on a daily

1 basis. When she was living with me. You might not
2 have gotten that if she was in the institution
3 somewhere.

4 But certainly to see her on a
5 day-to-day basis, I can truly say that she was not
6 oriented a lot of times. Many times she would ask
7 me -- even though she had been in Columbia awhile,
8 she might ask, Jackie, where am I? And I would
9 have to continue to tell her where she was.

10 Q. And so that didn't get better, it only
11 --

12 A. No. No. That didn't get better.
13 Never got better.

14 Q. All right. So we're finally going to
15 reach that hot button topic and get to that Deed.

16 MS. MOORE: So, I would like to enter
17 this Deed into evidence, please, Your Honor.

18 THE COURT: All right.

19 MR. PHILLIPS: Which exhibit is that?

20 PLAINTIFF: 9. Plaintiff's 9.

21 MR. PHILLIPS: Without objection, Your
22 Honor.

23 THE COURT: All right.

24 (WHEREUPON, Plaintiff's Exhibit Number
25 9 was entered)

1 Q. What's the document that I just handed
2 you?

3 A. This is a quitclaim Deed.

4 Q. All right. And who is conveying the
5 property in this Deed on that first paragraph?

6 A. "This Deed was made and entered into on
7 the 4th of July, 20 blank, between Theodocia K.
8 Reed, a single person whose address is 3029 Banks
9 Road, Tallahassee, Florida, 32309 (Guarantor) and
10 Cyndy Reed Stewart, a married person whose address
11 is 3029 Banks Road, Tallahassee, Florida 32309
12 (Grantee)."

13 Q. Awesome. And at the top of the page,
14 it says filed, can you read the date that this was
15 recorded for me?

16 A. This was filed August 12, 2015.

17 Q. All right. Let's go to the next page.
18 Can you read that very first sentence at the top of
19 the page?

20 A. "In witness whereof, the grantor has
21 executed this Deed on the 4th day of August, 2015."

22 Q. And what's the signature that appears
23 immediately after that?

24 A. "Theodocia K. Reed."

25 Q. So where was your mom again on August

1 4th?

2 A. She was at the hospital.

3 Q. Okay. Is that your momma's signature?

4 A. No, it's not.

5 Q. How do you know?

6 A. I know how my mother signs her name.

7 Q. All right. And because she was at the
8 hospital; right?

9 A. Yes.

10 Q. Okay. Is there any indication on this
11 page that shows that anybody but Ms. Reed signed
12 this document?

13 A. Repeat your question.

14 Q. Okay. In her signature on this page,
15 near the signature, around the signature, is there
16 any indication that this was signed by someone
17 other than Ms. Reed?

18 A. No.

19 Q. Okay. And who signed immediately
20 underneath?

21 A. "Cyndy R. Stewart."

22 Q. Okay. Where was this signed? Can you
23 read the state and county on that block for me?

24 A. "Richmond County, Georgia."

25 Q. And where was your mom being

1 | hospitalized?

2 | A. Georgetown, South Carolina.

3 | Q. Okay. Did Ms. Reed know that momma was
4 | in the hospital at this time?

5 | A. Did who?

6 | Q. Did Ms. -- I'm sorry. Ms. Stewart.
7 | Did Ms. Stewart know momma was in the hospital at
8 | this time?

9 | A. Yes, she did.

10 | Q. How did she know?

11 | A. We were all informed.

12 | Q. You were all informed. Did she ever
13 | come see Ms. -- did she ever come see momma in the
14 | hospital?

15 | A. Yes.

16 | Q. Okay. Do you recall those dates?

17 | A. No, I don't. Because I did not
18 | personally see her.

19 | Q. Oh, okay. So then you don't have
20 | personal knowledge of that. All right. So what --
21 | who witnessed this Deed? Can you read that name
22 | for me?

23 | A. Cyndy R. Stewart. There are several --

24 | Q. That's the grantees signature. Right
25 | underneath it says, this witness --

1 A. Yes.

2 Q. Can you read that name?

3 A. Portia Hopper.

4 Q. Who is Ms. Hopper? Do you know?

5 A. A friend of Ms. Stewart.

6 Q. Okay. And do you know who James E.

7 Hopper is on that last page?

8 A. James Hopper.

9 Q. Do you know who that is?

10 A. I'm assuming that's a friend of Ms.
11 Stewart.

12 Q. Okay. So when this Deed was signed,
13 momma was in the hospital. Based on what you
14 witnessed with her in the hospital, do you think
15 she had the capacity at that time to sign?

16 A. No.

17 Q. What was she like in those final days?

18 A. Mom was in a comatose state. Mom was
19 not able to even -- mom was not even talking. When
20 I saw her at the hospital, she was barely talking.
21 She was not talking.

22 Q. Okay. So you read Ms. Stewart's
23 Answer; correct? The Answer in this case?

24 A. Yes.

25 Q. And she admitted to signing this

1 document?

2 A. Correct.

3 Q. All right. Do you remember why she
4 signed it? Do you remember what she said in her
5 answer?

6 MR. PHILLIPS: Objection, Your Honor.
7 I think the answer states for -- the answer speaks
8 for itself. And she's trying to put the words of
9 the answer into her client's mouth and I don't
10 think that's appropriate.

11 MS. MOORE: Okay. I can ask a
12 different question.

13 THE COURT: Okay. Had you ever seen
14 Ms. Stewart sign as a power of attorney before?

15 A. I have seen her signature and POA, yes.
16 I have seen her sign a document or checks and put
17 comma, POA.

18 Q. How did she sign it as a POA?

19 A. She signed Cyndy Reed Stewart, POA.

20 Q. Okay. Did she sign Ms. Reed's name at
21 all in that signature block or in that signature
22 line that you witnessed?

23 A. Which one?

24 Q. When she was signing as POA that you
25 just testified you watched her do, did she write

1 Ms. Reed's name at all in that signature line?

2 A. No. She wrote her name, POA.

3 Q. Okay. So, you saw her sign this way,
4 so she knew how to sign as a POA based on that --
5 based on what --

6 A. Her signature was much different than
7 what was signed on this quit Deed, yes.

8 Q. All right. How did you find out about
9 this Deed?

10 A. I became alert to the Deed or had
11 indication that a Deed was done after Cyndy
12 admitted this -- she admitted -- well, let me back
13 up. We knew that through the appraisement that
14 was, given to us, concerning the probate, we
15 recognize that the Orangeburg property was not
16 listed.

17 Q. Okay.

18 MS. MOORE: One moment, Your Honor. My
19 documents have gotten out of order. All right. I
20 would like to use this to refresh her recollection.
21 I do have it marked if you would like me to move it
22 into evidence. I just want to -- we're using it to
23 show when she was notified --

24 MR. PHILLIPS: Sure, you can put it in
25 evidence as Plaintiff's 10 without objection.

1 THE COURT: Okay.

2 (WHEREUPON, Plaintiff's Exhibit Number
3 10 was entered)

4 Q. Would you read the title of that for
5 me, please?

6 A. "Inventory and appraisalment, probate
7 property -- of the probate property."

8 Q. All right. And that is what you
9 received that started this?

10 A. Yes.

11 Q. All right. And what about this
12 document alerted you to the fact that this property
13 had been moved?

14 A. Well, it listed the Bamberg property.
15 In Section 8 where it talks about where it
16 references the real estate, that this called the
17 Bamberg property. But clearly does not state or
18 gives a description of the Orangeburg County
19 property.

20 Q. All right. We discussed the 2009 Order
21 yesterday. Do you remember that Order or do you
22 need me to pull it out for you so you can look at
23 it real quick?

24 A. I remember it, but I guess I would need
25 it.

1 Q. All right.

2 MS. MOORE: I would like to draw the
3 Court's attention again to paragraph 7 on page 7.

4 MR. PHILLIPS: I apologize, what
5 exhibit is that?

6 MS. MOORE: I'm sorry. This is
7 Plaintiff's -- one second. It's the 2009 Order
8 which is Plaintiff's 3.

9 MR. PHILLIPS: Okay. Thank you.

10 Q. Would you read the sentence that begins
11 at the request and direction of Ms. Reed again for
12 us.

13 A. "That at the request of Theodocia Reed,
14 Cynthia Stewart will provide her with assistance
15 with financial matters, such as paying bills.
16 However, Ms. Reed will have the ultimate decision
17 making authority and will be consulted with respect
18 to all matters affecting her finances. At the
19 request and direction of Ms. Reed, Cyndy Stewart
20 will keep Jacquelyn Gladden and Patricia Reed
21 promptly and adequately informed of all of Ms.
22 Reed's financial matters, including providing full
23 copies of all bank statements or accounts held in
24 Ms. Reed name or held for her benefit and keeping
25 them informed of other matters affecting Ms. Reed

1 | finances (such as lease arrangements for the
2 | Orangeburg County property and the management and
3 | any renovations of Ms. Reed's real property in
4 | Bamberg County)."

5 | Q. Would you say the disposal of the
6 | Orangeburg property whether sell to family member
7 | or anybody else would be a matter that you were to
8 | be informed of under that provision?

9 | MR. PHILLIPS: Your Honor, I think the
10 | document speaks for --

11 | A. I would think so, yes.

12 | THE COURT: When there's an objection,
13 | ma'am, you have to stop.

14 | A. Okay.

15 | MR. PHILLIPS: Your Honor, I think the
16 | document speaks for itself and the witness is being
17 | asked for a legal conclusion about the significance
18 | of the language which would be inappropriate.

19 | MS. MOORE: Your Honor, if I may, I'm
20 | not asking for a legal conclusion. I'm asking a
21 | layperson what they would think their obligation
22 | was under that.

23 | MR. PHILLIPS: As a legal document,
24 | Your Honor, it's a matter of law not a layperson's
25 | judgement.

1 THE COURT: Here's what I will allow.
2 I will allow you -- I agree that the obligation of
3 someone else is a legal matter. The interpretation
4 of the document is a legal matter. However, she
5 can testify with regards to how she anticipated
6 being treated by virtue of her understanding of the
7 document. And I think that's where you were going.

8 MS. MOORE: Yes, Your Honor.

9 MR. PHILLIPS: Thank you, Your Honor.

10 Q. So let me try to rephrase that
11 question. So, did you expect Ms. Stewart to keep
12 you informed of financial decisions and disposing
13 of property and anything like that based on that?

14 A. Yes, I did.

15 Q. Did she --

16 A. No.

17 Q. -- tell you about the sell of the -- or
18 the Deed on the Orangeburg property?

19 A. No.

20 Q. Okay. So we have this Deed, it was
21 transferred. Did you have any kind of expectation
22 in that property being divided in someway that you
23 would benefit from?

24 A. Yes.

25 Q. Have an expectation in that

1 | inheritance?

2 | A. Yes.

3 | Q. Okay. What has happened with the
4 | property since? Have you been able to see it?

5 | A. No.

6 | Q. Have you been able to get any kind of
7 | appraisal done?

8 | A. No.

9 | Q. Have you been permitted to go and look
10 | at it?

11 | A. Let me correct my statement.

12 | Q. Yes, ma'am.

13 | A. Have I been able to see it? Anybody
14 | can see from the road. In terms of being able to
15 | actually go in, no.

16 | Q. Okay. Did you ask to be able to go in?

17 | A. Yes, at some point. Yeah.

18 | Q. All right. How many times have you had
19 | to come to court for this?

20 | A. This is the fourth. I believe this is
21 | the fourth if I'm not mistaken.

22 | Q. And you live in Columbia; correct?

23 | A. Yes.

24 | Q. So it's a drive?

25 | A. Yes.

1 Q. All right. Four times. All right. So
2 in each of those times you've missed a day of work,
3 didn't you?

4 A. Yes.

5 Q. Okay. And you were ready to go every
6 time we came; correct?

7 A. Yes.

8 Q. All right. So -- all right. So,
9 you've spent a lot of time preparing and coming to
10 trial and we're still here today?

11 A. Yes.

12 Q. Okay. So let's go back to the property
13 then. Without being able to see it or anything,
14 what did you decide to do for damages?

15 A. Well, I became aware that perhaps we
16 could look at the tax value.

17 Q. Okay.

18 MS. MOORE: And I would like to move
19 this into evidence as Plaintiff's 12.

20 THE COURT: Okay.

21 MR. PHILLIPS: Without objection.

22 (WHEREUPON, Plaintiff's Exhibit Number
23 12 was entered)

24 Q. Do you recognize that chart?

25 A. Yes.

1 Q. So can you read the first line that
2 tells me what the tax value is?

3 A. 2015? The top line?

4 Q. No. No. The starting value.

5 A. Oh, the starting value is \$75,800.

6 Q. And that is what?

7 A. That would be the value based on the
8 2020 tax bill.

9 Q. Okay. And so if you were able to sell
10 it in 2015, let's say all things being equal, it
11 never left the property -- or never left the estate
12 and you guys came to an agreement and you sold it.
13 Do you believe that that would be fair value at
14 that time?

15 MR. PHILLIPS: Your Honor, I have to
16 object. She's asking the witness to put a value on
17 a piece of property. As the Court knows, a
18 homeowner can value their own property, but by her
19 own testimony, she hasn't had access to the
20 property, has no idea of the condition it's in,
21 therefore, she would just be merely speculating as
22 to what the market value of the property is.

23 THE COURT: I got you. Well, she's
24 presuming she would be a homeowner because I gather
25 there is a building on there, is there not?

1 MS. MOORE: There is and I'm saying if
2 everything had been done --

3 THE COURT: She would be an owner of
4 it, she would be an owner of this property. I'm
5 going to allow it. I think what you're speaking of
6 certainly is perfect for cross examination. You
7 may proceed.

8 MR. PHILLIPS: Thank you, Your Honor.

9 Q. So in 2015, do you believe that you
10 could of -- if you had been the homeowner at that
11 time you could have sold it for at least the tax
12 value listed here?

13 A. I believe so.

14 Q. All right. So -- and then the rest of
15 this is just the interest that we did. Because
16 judicially -- let me ask that again. So what is
17 the interest? What interest did you use?

18 A. For 2015?

19 Q. Where did these interest rates come
20 from?

21 A. That's the judicial interest rate.

22 Q. Okay. So all totaled, if you had owned
23 the home and sold it, everything being created
24 equal, you believe that you would have had a total
25 interest of what?

JACQUELYN GLADDEN - CROSS EXAMINATION BY MR. PHILLIPS

1 A. 11,000.

2 Q. All right. Individually; correct?

3 A. Individually, \$11,858.50; correct.

4 Q. So the total --

5 A. Approximately.

6 Q. So the total damages for you and your
7 sister who has yet to testify would be what?

8 A. \$23,721.

9 Q. And do you believe that's fair?

10 A. I believe it's fair.

11 Q. Okay.

12 MS. MOORE: One second, Your Honor.

13 THE COURT: Yep.

14 MS. MOORE: I believe the Plaintiff
15 rests. We are good. Thank you, Your Honor.

16 THE COURT: All right. Cross
17 examination?

18 MR. PHILLIPS: Thank you, Your Honor.
19 Your Honor, may I turn the podium?

20 THE COURT: I don't care.

21 CROSS EXAMINATION BY MR. PHILLIPS:

22 Q. Good afternoon, Ms. Gladden. My name
23 is Sam Phillips, I'm representing your sister in
24 this matter. Let me -- you started your testimony
25 yesterday, so there's a few things you testified to

1 I'd like to go back to. So, I don't mean to
2 confuse you just want to go back and ask.

3 Because you had said that you went to
4 court for the first time in Columbia against --
5 essentially, to have your mother declared
6 incompetent and to have her powers of attorney
7 favoring your sister cancelled out; correct?

8 A. We went to court to obtain guardianship
9 and conservatorship.

10 Q. And where was she living at the time
11 that you pursued that action?

12 A. She was living --

13 Q. Was it Florida?

14 A. She was living in Florida, yes.

15 Q. With your sister?

16 A. Yes, she was.

17 Q. And you wanted to have her be moved
18 back and put under your care here in Columbia;
19 correct?

20 A. There was an agreement that she would
21 -- there was an agreement in place already that
22 each sister would have her a certain amount of
23 time.

24 Q. Okay.

25 A. And I think that at that particular

1 time it was my time to get my mother.

2 Q. And that agreement -- you testified
3 about that agreement with Judge Belton, who a year
4 after you filed the action, issued the Order which
5 we have been talking about as Plaintiff's Exhibit
6 Number 3; correct?

7 A. I didn't talk about an agreement with
8 Judge Belton in terms of her living arrangement.

9 Q. So her living arrangements were
10 addressed in Judge Belton's Order?

11 A. They were addressed in the -- what the
12 judge did was she left that up to us to decide.

13 Q. Well, in that --

14 A. We had to be an agreement with that. I
15 mean, that the three of us would be in an agreement
16 with that. She left it to us to decide.

17 Q. Well, now, I think she was pretty
18 specific about the arrangements. So, for example,
19 I'm looking at Plaintiff's Exhibit 3, I don't know
20 if you have that --

21 A. I don't.

22 Q. -- available?

23 A. Not in my possession, no.

24 MR. PHILLIPS: Do we want to use the
25 Court's Exhibit? Either way is fine with me. I'd

1 just like her to -- that's fine.

2 Q. So with regard to this Order, it found
3 your mother to be competent, did it not?

4 A. It did.

5 Q. I apologize, I got to open my book. So
6 it found her to be competent. It noted that your
7 sister, Cyndy Stewart, would be in charge of your
8 mom's finances, did it not?

9 A. It did.

10 Q. It also specified that your mother's
11 intentions were to have her properties left
12 available for her to visit; correct?

13 A. Correct.

14 Q. And that each sister was allowed to
15 visit, but not their children, unaccompanied
16 children of each sister could not stay in that
17 property; is that correct?

18 A. As long as there was one of us there.

19 MS. MOORE: I'm going to object. The
20 document speaks for itself. And I'm looking at it,
21 I don't see anything about unaccompanied children.

22 MR. PHILLIPS: Sure. It's on the
23 exhibit, page 8. Paragraph 9 says, "Bamberg
24 residence."

25 MS. MOORE: It just says other family

1 | members. It says nothing about unaccompanied
2 | children and I would use the objection that the
3 | document, of course, speaks for itself.

4 | THE COURT: The document would speak
5 | for itself.

6 | Q. Let me ask you. Was there ever a
7 | controversy over any person related to you staying
8 | in your mother's Bamberg house?

9 | MS. MOORE: I'm going to object based
10 | on relevance. We're not talking about the Bamberg
11 | property. We're not talking about anybody that
12 | stayed in the property. We're talking about a Deed
13 | that conveyed a property and what led up to that
14 | conveyance.

15 | MR. PHILLIPS: And this is what led up
16 | to that conveyance, Your Honor. It starts back in
17 | 2008. It precedes --

18 | THE COURT: It's nonjury, I'll hear for
19 | a little bit. If it looks like it's not
20 | particularly relevant, I'll speak up.

21 | MR. PHILLIPS: Thank you, Your Honor.

22 | Q. So, was there ever a controversy
23 | amongst you and your sisters about people living in
24 | your mother's home when she was not there?

25 | A. There was not a controversy between Ms.

1 Reed and myself.

2 Q. Was there a controversy between you and
3 Ms. Stewart?

4 A. I believe that Cyndy had an objection
5 about it.

6 Q. And that was an objection that was
7 raised and your mother spoke to that in this
8 document; correct?

9 A. My mother did not speak to that. I
10 never remember my mother speaking to this. The
11 judge never addressed this issue with my mother.

12 Q. Your mother was in the courtroom during
13 this proceeding?

14 A. Yes. I never heard my mother speak to
15 that.

16 Q. She went back in chambers with Judge
17 Belton; correct?

18 A. She did go back in chambers.

19 Q. And if you look at page -- on page 5,
20 the next to the last full paragraph. I'll give you
21 a second to look at it. It says, Ms. Reed has the
22 ability to make her own decision. The Court asked
23 her if she wanted to have new powers of attorney
24 done to reflect the same and she stated she wanted
25 the Court to do an Order; correct?

1 A. Yes.

2 Q. And this is the Order your mother asked
3 for; correct?

4 A. Yes.

5 Q. And so is it your testimony that Judge
6 Belton didn't consult with your mother, her
7 guardian?

8 A. I did not say that. What I said is
9 that I did not hear that conversation between my
10 mother and Judge Belton. I know that she issued an
11 Order, but I didn't hear that conversation between
12 the two of them because of course she was back in
13 chambers.

14 Q. Okay. So you testified the proceeding
15 -- the first Order came out in 2009 from Judge
16 Belton and the second one came out in 2010;
17 correct?

18 A. That's correct.

19 Q. And you testified regarding Plaintiff's
20 Exhibit 2 just a moment ago, and said that, I
21 believe your counsel called it your education on
22 how to use a POA; correct?

23 A. Correct.

24 Q. So you had that education in 2008. Did
25 you not remove more than \$80,000 from your mom's

1 bank accounts without using that format?

2 A. Repeat your question.

3 Q. Sure. You testified that you were
4 educated on how to sign a POA in 2008; correct?

5 A. Correct.

6 Q. In 2009, did you not remove from your
7 mother's bank account, in the form of a certificate
8 of deposit, did you not remove more than \$80,000 of
9 your mother's money and give it to yourself?

10 A. I didn't give it to myself. It was put
11 in a trust for her.

12 Q. Well --

13 MR. PHILLIPS: Your Honor, may I
14 approach the witness to --

15 A. It was put in a trust for her -- I'm
16 sorry.

17 MR. PHILLIPS: May I approach the
18 witness, Your Honor, and show her a document?

19 MS. MOORE: I'm going to object. We
20 didn't receive it. We haven't had a chance to look
21 at it.

22 MR. PHILLIPS: It's an impeachment.

23 THE COURT: Let me say this. You can
24 -- to refresh her recollection, you can show her
25 the Manhattan phonebook. Doesn't mean it's coming

1 | into evidence. It will be marked for
2 | identification purposes. But at this point not
3 | coming into evidence.

4 | MR. PHILLIPS: I understand, Your
5 | Honor. So, madam court reporter, if you could mark
6 | that Defendant's 1.

7 | (WHEREUPON, Defendant's Exhibit Number
8 | 1 was marked for ID only)

9 | Q. I'm going to ask you to take a look and
10 | tell me if you recognize that document.

11 | THE COURT: You're having her
12 | authenticate it, no, sir. The question is, if
13 | you've shown it to her, she doesn't have to
14 | authenticate it. You just ask her a question. I'm
15 | presuming you're showing it to her to refresh her
16 | recollection?

17 | MR. PHILLIPS: I am, Your Honor.
18 | That's why I asked her if she recognized it.

19 | THE COURT: I got you. You should
20 | really ask her does it refresh her recollection
21 | quite frankly.

22 | MR. PHILLIPS: Okay.

23 | A. I don't really remember that, but my
24 | name is there.

25 | Q. Okay. You don't remember receiving a

1 | \$61,153.02 check?

2 | A. I remember putting some -- I remember
3 | putting some funds in that account --

4 | MS. MOORE: I was going to say, object,
5 | asked and answered. She answered the question said
6 | she didn't remember, but never mind.

7 | THE COURT: Okay.

8 | MR. PHILLIPS: May I mark for
9 | identification purposes, Defendant's 2?

10 | MS. MOORE: Standing objection on any
11 | documents. We never received anything.

12 | THE COURT: I understand.

13 | (WHEREUPON, Defendant's Exhibit Number
14 | 2 for identification only)

15 | THE COURT: Now, tell me what the
16 | relevance of this line is?

17 | MR. PHILLIPS: So, Your Honor, the
18 | implication from the testimony was that my client
19 | understood a POA, didn't use it properly, and got
20 | some benefit from the estate.

21 | THE COURT: Okay.

22 | MR. PHILLIPS: I assume that that will
23 | be support for the two causes of action that we're
24 | going forward with. The witnesses testified about
25 | the education and how it was received. So the

1 transfer of the property was part of the estate.
2 This Order which has been repeatedly referenced, it
3 makes light of these transfers.

4 THE COURT: What you are asking her is
5 did you make these transfers of your mother's
6 property using the POA format; is that what you're
7 asking?

8 MR. PHILLIPS: Improperly and that
9 Judge Belton reversed them.

10 THE COURT: Is that what you're -- I
11 don't care about that. But my question is, is that
12 the purpose that you are were showing it to her?

13 MR. PHILLIPS: It is, Your Honor.

14 THE COURT: Okay. Sure. Go ahead.

15 A. Could I see the date?

16 Q. Of the first one?

17 A. Of that document that you just showed
18 me.

19 Q. Sure.

20 MS. MOORE: Can I look at it, please?

21 MR. PHILLIPS: Sure.

22 MS. MOORE: Okay.

23 MR. PHILLIPS: Then I'm going to hand
24 her the second one.

25 MS. MOORE: Okay.

1 Q. So this is the document you asked to
2 see again. And then this is the new one I'd like
3 you to take a look at. And I believe the date is
4 2009 date at the top of the form. This has a
5 similar date on it.

6 A. What is this 22,403? I don't see my
7 name anywhere on that document.

8 Q. Who is that document made out to?

9 A. Theodocia Reed.

10 Q. So, my question to you is, with
11 reference to the Order which is Plaintiff's Exhibit
12 Number 3. In that Order, the judge found that you
13 wrongfully removed \$8,000 from your mom's account
14 to pay for your attorney for this action; is that
15 correct?

16 A. The judge asked us to repay the money.

17 Q. Why did she ask you to repay the money?

18 A. Because she felt that money was due my
19 mother.

20 Q. Because it was your mother's money?

21 A. It was her money.

22 Q. Okay. She also asked you to restore
23 this 80 some odd thousand dollars --

24 A. She told us to put it back into her
25 original account. But the money was put in trust.

1 Q. And, in fact, those large sums were
2 reversed by the bank because they weren't properly
3 withdrawn; is that correct?

4 A. I don't remember that.

5 Q. You don't?

6 A. No.

7 Q. Let me have you look at the Order?

8 MS. MOORE: Just to preserve the
9 record, Your Honor. Objection to the new document
10 that he's going to submit. I apologize, Your
11 Honor.

12 Q. I want you to look at the Order,
13 Exhibit 3.

14 MS. MOORE: Okay.

15 Q. And on page 10, item 16, you see where
16 I'm referring to?

17 A. I do.

18 Q. So, Judge Belton found that, "At the
19 commencement of these actions a net sum of \$8,000
20 was paid by Patricia Reed and Jacquelyn Gladden to
21 a law firm." Do you see where I'm reading?

22 A. Yes, I do.

23 Q. Did you sign those checks with a power
24 of attorney?

25 A. I believe that the monies were removed.

1 And we were advised by our attorney at that time
2 that we could in fact -- to take out that money in
3 defense of our mother. Because we were going to do
4 a conservatorship. So we were so advised that we
5 could do that. And we went on the advice of our
6 attorney Mr. Wayne -- Mr. Payne and Black.

7 Q. So you relied on that evidence that the
8 Court --

9 A. I relied on the advice of our attorney
10 at that time. We were so advised.

11 Q. And Judge Belton found it improper and
12 reversed the transaction --

13 A. Yes.

14 Q. -- per this Order?

15 A. And we agreed.

16 Q. Okay. You also on the next page, on
17 page 11, item paragraph number 17, it's towards the
18 bottom of the page. It said, in addition to that
19 \$8,000, you were to have restored certain monies to
20 your mother's certificate of deposits; correct?

21 A. Where is that?

22 Q. 17, it's at the bottom of the page on
23 -- it's page 11 of 14 of Exhibit 3.

24 A. I see that.

25 Q. And down towards the bottom it says the

1 transfers of your mother's certificates of deposit
2 were previously reversed by the banks. So that
3 \$22,000 check that was written out to your mother,
4 your mother didn't get that \$22,000, did she?

5 A. I don't recall.

6 Q. It was reversed here by the Court;
7 correct?

8 A. It says it was reversed by the bank.

9 Q. Right. Reversed by the bank given back
10 to your mother. At a time she was competent, 80
11 some odd thousand dollars of her money went missing
12 and she had to go to a bank to get it back;
13 correct?

14 A. The money went into an account for
15 trust for my mother, but that was not money that
16 was hidden. That came out in the court. And also
17 we conveyed why that money was put in the trust for
18 our mother.

19 Q. But those checks were not cut to any
20 account, ma'am, they were cut to you and to your
21 mother who didn't authorize the withdrawal.

22 A. I don't remember any checks being cut.
23 I remember money being transferred.

24 Q. So the two documents I just showed you,
25 one that's in your -- a check made out to you, the

JACQUELYN GLADDEN - CROSS EXAMINATION BY MR. PHILLIPS

1 other \$22,000 check to your mother, you have no
2 recollection of that?

3 A. I remember money being taken out, yes,
4 I do.

5 MS. MOORE: Asked and answered at this
6 point, I think.

7 MR. PHILLIPS: So last question on
8 this, Your Honor.

9 Q. Who caused that money to be -- that
10 \$80,000, who caused that to be taken out of her
11 account?

12 MS. MOORE: Asked and answered. We've
13 been over this.

14 MR. PHILLIPS: I haven't heard -- I've
15 heard the witness say that it happened and that she
16 talked to lawyers about the \$8,000, but I haven't
17 heard who withdrew \$80,000 from their mom.

18 MS. MOORE: He presented two documents
19 to her. She said -- if I remember correctly, she
20 said I didn't recall those documents. And she even
21 specifically asked to look at it again to make sure
22 that she had the dates correct. It's been asked
23 and answered. He showed her the documents and she
24 answered about those documents.

25 THE COURT: The question is, who

1 removed the \$80,000 that wasn't --

2 MR. PHILLIPS: From mother's CD's.

3 THE COURT: -- but -- and I think that
4 the reason for this, is it not, was to illuminate
5 whether or not it was removed -- it being monies
6 were removed with a signature that had comma POA
7 associated with it?

8 MR. PHILLIPS: After the education on
9 the POA, \$80,000, a significant amount of CD's were
10 cashed in and the checks were written to --

11 THE COURT: That's not before the
12 Court. She hasn't said this. I mean, this is not
13 in any evidence that's before the Court.

14 MR. PHILLIPS: And that's why I'm
15 asking, Your Honor. So how did this -- I
16 understand the checks are the manifestation of the
17 transaction, I'm just saying who conducted the
18 transaction? Who cashed in the CD's? I don't
19 believe I heard an answer to that.

20 MS. MOORE: And, Your Honor, she has
21 said repeatedly that they did it to put it in a
22 trust for momma. She said that. Multiple times.

23 THE COURT: Yes, I think she did say
24 that.

25 MR. PHILLIPS: Your Honor, I

1 | understand. I'd just like a little clarification
2 | for the record who the "they" is. Because she's
3 | also answered that her attorneys were involved.

4 | THE COURT: Who is "they"?

5 | A. Pardon me?

6 | THE COURT: Who is "they"? We would
7 | like to know who is "they"?

8 | A. They? I'm sorry, Your Honor.

9 | THE COURT: Yes, ma'am. I believe what
10 | we are on this issue with regards to some CD's that
11 | at some point were transferred to NBSC and then the
12 | bank reversed the transaction. The Order of Judge
13 | Belton makes reference to there being some balance
14 | remaining that would be returned to Ms. Reed. The
15 | question of counsel is, who is the "they" that
16 | utilized the CD's to establish an account that you
17 | say was a trust on behalf of your mother at NBSC?
18 | Who is the "they" that did that?

19 | A. The "they" that transferred the funds?

20 | THE COURT: Yes.

21 | A. We did. I did.

22 | THE COURT: Okay.

23 | Q. And who's the other -- I understand
24 | you, who's the other "they"? Is that your sister?

25 | A. I'm not -- yes, I guess. I'm not sure.

1 Q. Okay. So when you testified yesterday,
2 you said that you went to court because the POA's
3 were terminated and that you believed funds were
4 moved by Cyndy Stewart. Can you point to me
5 anything in Exhibit 3 in that Order, we've gone
6 over funds moved by you and your sister, but is
7 there any evidence that Ms. Stewart moved any
8 funds?

9 A. No, not -- no, not by the Order. No.

10 Q. All right. Thank you. So we're here
11 speaking about -- after this litigation was over in
12 Columbia; right? Then a lawsuit was instituted in
13 Bamberg in the probate court after your mother
14 passed; correct?

15 A. Correct.

16 Q. And that was in 2015. And at that
17 time, you challenged the appointment of your sister
18 as the personal representative of that estate, did
19 you not?

20 A. Yes. I was -- my mother appointed all
21 three of us as PC's or PR's.

22 Q. PR's.

23 A. PR's.

24 Q. And the probate judge in Bamberg saw
25 that, you had a hearing, and she appointed your

1 | sister Cyndy Stewart as the sole personal
2 | representative, PR?

3 | A. Correct.

4 | Q. And that was after extensive litigation
5 | starting in 2015; correct?

6 | A. It was after litigation, yes.

7 | Q. And so you litigated it in front of the
8 | probate court. You litigated it in an appeal to a
9 | circuit judge, and then you litigated it up until
10 | the circuit -- I'm sorry, the Court of Appeals;
11 | correct?

12 | MS. MOORE: Your Honor, I would like to
13 | object based on relevance. Yesterday we made it
14 | very clear we weren't going into probate matters.
15 | And so we expressly avoided probate matters in
16 | bringing it up because I thought it was pretty
17 | clear yesterday that that was not going to be
18 | addressed by this Court.

19 | MR. PHILLIPS: But, Your Honor, with
20 | all due respect. It is -- these allegations are
21 | allegations of fraud, breach of fiduciary duty
22 | which are inextricably linked with probate court.
23 | And I understand the Court's ruling in denial of my
24 | motion and I'm not trying to reargue it. I respect
25 | the Court's ruling. I'm trying to abide by it.

1 But for my client to have a fair hearing in this
2 matter, we have to talk about the history leading
3 up to this Deed transfer.

4 THE COURT: I think the Deed transfer
5 was before --

6 MS. MOORE: Yes, Your Honor.

7 THE COURT: -- a judge. So it would --

8 MR. PHILLIPS: The Deed transfer was in
9 2015 and that --

10 THE COURT: Prior to Ms. Reed's --

11 MS. MOORE: Death.

12 THE COURT: -- passing.

13 MR. PHILLIPS: Five days, yes, ma'am.

14 THE COURT: So what occurs in the
15 probate -- really, if what you're trying to do is
16 to explain what ran up to the transfer of the Deed,
17 whatever happened in the probate court wouldn't
18 have any effect. Because that Deed transfer as I
19 understand it, it occurred about a month prior to
20 the death of Ms. Reed; yes?

21 MR. PHILLIPS: It was a little shorter
22 period than that. But, Your Honor, this is -- so
23 the damages as you heard testimony from is they're
24 seeking damages on the value of the property from
25 the minute that it was transferred up until the

1 Deed was transferred putting the property back in
2 the estate. So that's the period of time.

3 THE COURT: Right.

4 MR. PHILLIPS: If the damages run for
5 that long period of time, then I should be able to
6 inquire about the status of it. Because the claim
7 was that, well, we could have sold it. Well,
8 that's -- legally that's not correct. The property
9 would -- if not -- if the transfer was set aside as
10 it was, it goes to the estate, the estate would
11 have to sell it. And so, therefore, what was going
12 on in the estate with regard to the claim that they
13 couldn't sell it --

14 THE COURT: No. No. Because as I read
15 the will, the property would have gone to the three
16 daughters at the time of death. Now, obviously,
17 there needed to be a Deed of distribution done out
18 of the probate process, but the interest passes at
19 the time of death. So they would have had the
20 interest. Now, they may not have had the Deed of
21 distribution. And given that they've not -- there
22 hadn't been copacetic one with the other that might
23 have become problematic, but the interest would
24 have passed.

25 MR. PHILLIPS: And no objection to what

1 | you just said. But because of this \$80,000
2 | transfer, that money was distributed -- it was
3 | distributed unequally and it is therefore that's an
4 | asset that the probate judge looking to balance
5 | things, can and sometimes do say, all right, well,
6 | the will says you get a third, a third, a third,
7 | but you have this debt to the estate and so it can
8 | be offset. And again, the personal representative
9 | has the capacity to take these kind of claims and
10 | make these kind of calculations themselves and then
11 | ask that they be approved by the Court. Or if the
12 | parties can't agree, they go in front of the Court
13 | and the Court decides.

14 | MS. MOORE: And, Your Honor, I would
15 | argue that just like he argued yesterday that would
16 | be a matter to be heard by the probate court since
17 | it happened after her death. And we do have a
18 | pending action in probate court. So I believe
19 | that's a valid argument in probate court, but not
20 | today.

21 | MR. PHILLIPS: But just so this Court
22 | doesn't step on the probate court's toes, if you're
23 | assigning damages based on the period of time that
24 | the property should, you know, and I understand how
25 | and I apologize, I kind of cut to the chase, a

1 person dies, the property transfers immediately and
2 then the probate court catches up and does a Deed
3 of distribution --

4 THE COURT: Yes.

5 MR. PHILLIPS: -- after they look at
6 the entire estate. And so it is -- in my view is
7 it's not official, it's a springing interest in
8 property that has to then be worked out. Because
9 if there's creditor claims, nobody is going to get
10 that property. It's not going to be sold. It's
11 going to be sold to benefit creditor claims or
12 could be. And, I mean, that's why it's kind of not
13 automatic.

14 So, anyway, Your Honor, that's --
15 again, if we're going to talk about damages over a
16 period of time after her death, then I think I can
17 inquire about the parties' relationships what was
18 going on and monies exchanged between them.

19 THE COURT: Well, we probably argued
20 longer than it would have taken for you to put the
21 information in through the witness. I will allow
22 you to ask it. It's nonjury. And at this point,
23 I'm not certain of the relevance. But, again,
24 you've argued about it longer than it would take
25 you to put it in and I'll make the determination,

1 | so go ahead.

2 | MR. PHILLIPS: And let me go to the
3 | heart of the matter.

4 | THE COURT: Okay.

5 | Q. So, Ms. Gladden, tell me about the
6 | history of the Orangeburg property that's the
7 | subject of this action?

8 | A. That was some property that was
9 | inherited by my mother.

10 | Q. Who did she inherit it from?

11 | A. She inherited that from my aunt.

12 | Q. And who did your aunt get the property
13 | from?

14 | A. I'm not sure.

15 | Q. Okay. Did you ever hear your mother
16 | refer to it as a legacy property?

17 | A. No.

18 | Q. Do you know what that means?

19 | A. I would assume that she meant that it
20 | was being passed down by former family members.

21 | Q. Did you know that the home has a
22 | significant history in the City of Orangeburg?

23 | A. We were trying to get it registered.

24 | Q. Who was doing that?

25 | A. I don't know who did it.

1 Q. Was that Cyndy Stewart?

2 A. No, I don't know anything about that.
3 I know that we had talked about it in the past, but
4 I have never known her to actually do that. I've
5 never seen any documents that said that it was put
6 on some historical registry or anything.

7 Q. When was the last time you were inside
8 the home?

9 A. Again, I did not have keys to get into
10 the home.

11 Q. When your mother was alive were you
12 ever in the home?

13 A. Oh, yes. Oh, yes.

14 Q. Okay. Was there ever a tenant in that
15 home? Someone --

16 A. There was a tenant in the home.

17 Q. And when was that?

18 A. I -- I'm not sure of the date. But
19 there was a tenant in the home that messed up the
20 home. And Patricia, my sister Patricia had to get
21 that tenant out of the home. And I do recall that
22 Ms. Cyndy Stewart is the person that had something
23 to do with the tenant being in that home. But she
24 left and went to Florida and my sister Patricia
25 Reed had to end up getting the tenant out of the

1 | home. My mother was not even in a position at that
2 | time to conduct her business. So it took the
3 | assistance from my sister to help get that tenant
4 | out of the home while Ms. Stewart was in Florida.

5 | Q. The tenant that you refer to was a
6 | college student, wasn't it?

7 | A. I don't know who the tenant was.

8 | Q. Was it back in the 1970's?

9 | A. No. It was more recent than the '70's.

10 | Q. So you didn't have any personal
11 | involvement in this tenant matter?

12 | A. What I can tell you is that I was with
13 | my mother when we had to go and clean the home up.
14 | You see, my husband and my children and I went to
15 | the home and we cleaned this home up that was
16 | really messed up.

17 | Q. And when was that?

18 | A. And we took part in trying to get this
19 | home cleaned up. And this was way before -- this
20 | was way past the '70's.

21 | Q. Do you recall when that was?

22 | A. No, I don't. I don't remember exactly
23 | when. Maybe, but it was prior to probably, I'm
24 | going to say about '04, '05. There were many
25 | occasions that my husband and I and the children

1 | would go there and we did the grounds. While they
2 | were doing -- while my husband was doing the
3 | grounds, I was inside. Okay.

4 | Q. So that was at a time when your mother
5 | was fully -- had full capacity?

6 | A. Yes. She was pretty much operating
7 | okay. But she needed assistance.

8 | Q. So once the property was cleaned back
9 | up 2004, 2005 --

10 | A. It was never really cleaned back up
11 | fully. It was never fully cleaned back up.

12 | Q. Did your mother ever make any efforts
13 | to rent that property after you partially cleaned
14 | it up in 2004 or '05?

15 | A. Like I said, it was never really -- it
16 | never came up to par. The last time I was in the
17 | house, we were -- the last time my sister and I --
18 | or Cyndy Stewart and I got together was to put a
19 | roof with my mother's funds. Okay. And I'm not
20 | sure, I can't remember exactly when that happened.
21 | But after that, again, we -- I did not have
22 | possession of any keys to get into the property.

23 | Q. But my question was a little simpler
24 | than that. After the partial cleaning you
25 | testified to in 2004 and 2005 --

1 A. Around that time. About that time.

2 Q. Around that time. Did your mother make
3 any attempt to have a tenant in that house?

4 A. Not that I know of.

5 Q. And in Exhibit 3, the 2009 Order from
6 Judge Belton, she specified that that house was to
7 be maintained as it is so she could visit it and
8 her three daughters; correct?

9 A. The Orangeburg property?

10 Q. The Orangeburg property; correct.

11 MS. MOORE: Your Honor --

12 A. I think it was referring to her home.
13 Her home. Her property. Her home. I think it was
14 -- that's my recollection of that. That's my
15 understanding. Because the home at that time was
16 in disarray. But I know she didn't expect to go
17 back to that home.

18 Q. Okay. So in this Order that your
19 mother asked Judge Belton, who is a very sharp
20 individual --

21 A. She is.

22 Q. -- to help her draft, your testimony is
23 then that the provision about her property which is
24 on page 8 and in a section entitled Bamberg County
25 residence, that's all it pertains to is the Bamberg

1 | property, not the Orangeburg property?

2 | MS. MOORE: Your Honor, I would just --
3 | the document speaks for itself. It says it right
4 | there.

5 | THE COURT: All right. Thanks. Yes.
6 | Okay.

7 | MR. PHILLIPS: Again, Your Honor, the
8 | witness was asked for her perception of the
9 | document. So I'd like her perception that -- as I
10 | think she just stated that paragraph number 9 only
11 | pertains to the Bamberg property. Let me ask the
12 | question a different way, Your Honor.

13 | THE COURT: Okay.

14 | Q. Do you have that document? If you'd
15 | like to refer to it, it's on page 8.

16 | A. I see it.

17 | Q. Okay. So it's entitled Bamberg County
18 | residence. And so the second full sentence is,
19 | house will be retained by Ms. Reed, that's your
20 | mother, for future visits of an open duration;
21 | correct?

22 | A. Correct.

23 | Q. So can you point to anywhere else in
24 | this Order where your mother's intentions regarding
25 | the Orangeburg house were listed?

1 A. No.

2 Q. So would you agree with me then that
3 your mother treated the Orangeburg house
4 differently than her other property?

5 A. Yes, I would say that.

6 Q. All right. So you testified that you
7 haven't been in the home in a while. But you've
8 been out by -- you've driven through the
9 neighborhood; correct?

10 A. Correct.

11 Q. If I represent to you that this home
12 was built by your grandfather who was a minister
13 and served as a meeting place for the religious
14 community, the African American --

15 A. I knew my grandfather was a minister.
16 I don't know who gathered at the home.

17 THE COURT: Yes, ma'am, let him finish
18 the questions before you answer, okay?

19 A. Okay.

20 Q. If I represent to you and you can tell
21 me I'm a liar, the will Judge will smile and not do
22 anything about it. Okay. If I represent to you
23 that your grandfather was a prominent minister,
24 built that home as a gathering center for the
25 African American community shortly after slavery in

1 Orangeburg, would you say I'm right or wrong? Or
2 you don't know?

3 A. I would not be able to tell you if
4 you're right or wrong. I can't make that
5 determination.

6 Q. Do you believe -- do you have any
7 knowledge that your mother was aware of the legacy
8 of that house?

9 A. No. If she was, she never talked to me
10 about it.

11 THE COURT: Right. Yes.

12 MS. MOORE: Relevancy.

13 THE COURT: Yeah. Right.

14 MR. PHILLIPS: I'll bring it together,
15 Your Honor, I promise. I'll move on to something
16 very much more on point.

17 THE COURT: Okay.

18 Q. So with regard to -- you testified that
19 the property -- your damages are calculated based
20 off the tax value of the property; correct?

21 A. From what I -- yeah, my awareness about
22 that.

23 Q. Okay. So I know we all went to lunch
24 and walked around downtown Orangeburg, would you
25 agree with me that there are homes that are

1 | emaculately preserved in downtown Orangeburg and
2 | some that have fallen apart?

3 | A. I didn't walk around Orangeburg. In
4 | fact, we were not --

5 | Q. Let me ask you about the neighborhood
6 | where this property is. You've driven by it, you
7 | testified, I believe?

8 | A. Yes.

9 | Q. Okay. Characterize the neighborhood
10 | the home is in.

11 | A. Well, some of the homes are broken
12 | down. But they have some other homes on the front
13 | end of that road that are pretty decent that are
14 | pretty.

15 | Q. Do you believe the characteristics of
16 | the neighborhood affects the market price of the
17 | property?

18 | A. It usually does.

19 | Q. Okay. And then you testified that even
20 | when you did some clean up back in 2004 or '05 of
21 | the property it still wasn't back in good shape;
22 | correct?

23 | A. Not inside. It was better maintained.

24 | Q. And nobody has -- would you agree with
25 | me that no one has lived in that home since 2005,

1 2006?

2 A. Not that I know of.

3 Q. Would you agree with me that a home
4 where the interior's in poor shape has less of a
5 market value of one that's all spiffed up?

6 MS. MOORE: Your Honor, I object to
7 this line of questioning. We established that she
8 was not able to go inside and make any kind of --
9 she doesn't have any personal knowledge of the
10 interior at this point.

11 MR. PHILLIPS: I'm asking her, Your
12 Honor, she's advancing the tax value as the value
13 of the home. I'm just --

14 MS. MOORE: For the very specific
15 purpose that she has no idea what the condition is
16 like.

17 MR. PHILLIPS: But yet she's claiming
18 the full tax value of it. And I just want to get
19 into what factors she believes would be relevant to
20 the market value which is going to be different
21 than the tax value.

22 THE COURT: Mr. Phillips, the tax value
23 or tax assessment of a piece of property is a tax
24 -- the assessment of a piece of property, it
25 doesn't purport to be fair market value; right?

1 MR. PHILLIPS: It does not, Your Honor.

2 THE COURT: It is what it is. It's a
3 tax assessor's value. And so, you know, you're
4 going to have to have the tax assessor come in to
5 talk about what that is.

6 MR. PHILLIPS: I understand, Your
7 Honor. But my point is, is that if we're going to
8 set damages based on, well, I could have sold it
9 for the tax value, I think I can explore whether
10 that's really the value -- the market value --

11 THE COURT: You can ask her, do you
12 know what goes into the tax assessor's
13 determination of the tax assessor's value. You can
14 ask her that. But I don't know that she knows
15 anything more than just that's the tax assessor's
16 value. But you can certainly ask her that.

17 MR. PHILLIPS: Again, Your Honor, I'm
18 conscious of the time.

19 THE COURT: You know, your client could
20 have had a fair market value done if she wished.

21 Q. Let me ask you. Have you spoken to an
22 appraiser about the value of that house?

23 A. No.

24 Q. Have you spoken to a realtor about the
25 value of that house?

1 A. No.

2 Q. Have you looked at what comparable
3 houses in the area have gone for? Have sold for?

4 A. No.

5 Q. I believe you testified yesterday that
6 when your -- let me back up. After your mother
7 moved to Florida and stayed with your sister, how
8 many times did she come back to South Carolina?

9 A. From what time?

10 Q. Well, she was living down there in
11 2008. So let's just pick a random, 2010. How much
12 time in 2010 do you recall your mother spent here
13 in South Carolina?

14 A. Well, my mother was with me, I believe,
15 in '10. She was with me in '12. In 2012, my
16 mother would spend like anywhere from four to six
17 months with each daughter between that time, so.

18 Q. So, and -- well, let's take the --
19 let's take the last year of her life, 2015. In
20 January she was in Florida, wasn't she?

21 A. She was in Florida; correct.

22 Q. And she came up to South Carolina to
23 attend a wedding in, I believe, in July?

24 A. Correct.

25 Q. Okay. I believe you testified

1 | yesterday that she was in very bad condition when
2 | she came up?

3 | A. Her condition had progressed.

4 | Q. Had progressed. And when she was
5 | staying with you, what services did you provide for
6 | her in light of her medical conditions?

7 | A. During what time?

8 | Q. 2015.

9 | MS. MOORE: Relevancy.

10 | THE COURT: Yes, to what relevance?

11 | MR. PHILLIPS: Your Honor, it is --
12 | I'll tie it together in the next question, I
13 | promise.

14 | THE COURT: Okay.

15 | Q. What kind of services did you provide
16 | your mother when she was here, let's use 2014, the
17 | year before she passed away?

18 | A. What type -- what kind of services are
19 | you asking me about?

20 | Q. Any kind of memory care services? Any
21 | kind of physical services? Any kind of spiritual
22 | services?

23 | A. Yes. My mother went to church with me
24 | quite often.

25 | Q. Okay. So in 2014, when did she stay

1 with you in 2014?

2 A. My mother never stayed with me in 2014.

3 Q. Okay. How about 2013?

4 A. My mother was supposed to be returned
5 and to come into my home 2013. But in 2013 and
6 2014, my mother was not living with Cyndy Stewart.
7 My mother was in a nursing home.

8 Q. And the reason I ask is that the
9 \$82,000 that was returned to your mother's CD's, at
10 some point that money was distributed amongst the
11 three sisters; correct?

12 A. Correct.

13 Q. What was that --

14 A. Not -- I'll withdraw that. Not the --
15 there were certain portions of that, but not the
16 entire 80,000. No, that's incorrect.

17 MS. MOORE: I'm also going to ask
18 relevancy.

19 THE COURT: Was that going to tie it
20 up? Is that the question that was going to tie it
21 up?

22 MR. PHILLIPS: Yes, Your Honor. Again,
23 it goes to we're talking about values of property
24 and monies. And so --

25 MS. MOORE: Your Honor, I don't know

1 | where we ever brought up \$80,000 as a part of our
2 | damages. Or -- I'm not sure. I don't know.

3 | MR. PHILLIPS: Your Honor, one of the
4 | allegations that's been raised is that my client
5 | didn't put a tenant in there, didn't maintain the
6 | property.

7 | THE COURT: But you did that. You
8 | raised it. You raised it.

9 | MR. PHILLIPS: I did, Your Honor. It's
10 | in their Complaint. It's in their pleadings.

11 | THE COURT: You just raised it in
12 | examination and I didn't know what the relevancy
13 | was then. It is very clear to me at least at this
14 | point that this witness does not know what the fair
15 | market value of this piece of property is. She
16 | hasn't had, whatever reason, I suspect it's because
17 | she hasn't had access to the house and the property
18 | because the title just went back to the estate very
19 | recently. She hasn't been there other than maybe
20 | drive by it. She hasn't been inside. She didn't
21 | have an appraisal done. She hasn't had a real
22 | estate person do an appraisal. What she has is
23 | only the tax assessor's value of this piece of
24 | property. Now --

25 | MR. PHILLIPS: I understand, Your

1 Honor.

2 THE COURT: So what happens with CD's,
3 what happened with CD's, you know, unless you can
4 tie it in by saying isn't it true that y'all had
5 some side agreement about this particular residence
6 with regards to the CD, maybe that would have some
7 relevance on the issue of forgery. But, you know
8 --

9 MR. PHILLIPS: I believe.

10 THE COURT: -- probably not.

11 MR. PHILLIPS: I believe that as the
12 damages that it could have been sold. I believe
13 that was the testimony.

14 THE COURT: Right.

15 MR. PHILLIPS: And so I think I've
16 established that maybe it's not in the best
17 condition to sell. And then I'd like to inquire
18 about the funds that were distributed so that if
19 that was an issue, if you wanted it to be sold when
20 you didn't know about the transfer, before the
21 transfer, the money was distributed before the
22 transfer, if you wanted it fixed up and rented and
23 sold, you had the funds to do it and you didn't do
24 it. Now you're seeking damages because my client
25 didn't do it. That's I think the relevancy of it.

1 THE COURT: But you didn't -- here's
2 the problem with that. The question that I would
3 have about the relevancy is -- would be this.
4 You're talking about the reality of the
5 distribution of a CD; right?

6 MR. PHILLIPS: Yes, ma'am.

7 THE COURT: She didn't have access to
8 the property. So what is reality and what isn't
9 reality. In other words, if you're going to ask
10 her why didn't you fix it up, she couldn't fix it
11 up. She didn't have title to it.

12 MR. PHILLIPS: But, Your Honor, I
13 understand that's her claim, but she made no
14 request to do it. She had the funds to it. She
15 made no effort to do it. And now she's complaining
16 it wasn't done.

17 MS. MOORE: And, Your Honor --

18 MR. PHILLIPS: I mean, if you seek
19 damages for something that a fiduciary didn't do,
20 but yet this property was never rented and so, you
21 know, but you breached your duty for not renting it
22 just like your mother didn't rent it. You breached
23 your duty for not cleaning it up. When they
24 testified, they didn't fully clean it up. So it is
25 --

1 THE COURT: She hadn't testified about
2 loss rentals. They haven't charged you with that.
3 They haven't claimed those as damages which they
4 probably could, but she hasn't done that. All
5 she's claiming at this point is that if we had had
6 it, we would have had the opportunity to sell it
7 and we haven't been able -- we didn't have it,
8 couldn't sell it.

9 MR. PHILLIPS: Right, Your Honor. If
10 you didn't know you didn't have it until you saw
11 the inventory, in the intervening period, you had
12 the funds, you had the will, you had the ability to
13 ask for it and you didn't. But now you want to say
14 it's a breach of duty because you didn't do what we
15 asked -- we didn't ask you to do. That's my point.

16 MS. MOORE: Your Honor, if I may.

17 THE COURT: Sure.

18 MS. MOORE: We didn't raise anything
19 about how she breached duty with the property.
20 We're saying she breached duty by doing this Deed.
21 We didn't raise anything about --

22 THE COURT: Well, let me just stop you.
23 And you don't intend to go into that? In other
24 words, insofar as the allegations that you --

25 MS. MOORE: That occurred after her

1 death --

2 THE COURT: -- intend to raise --

3 MS. MOORE: -- no, ma'am.

4 THE COURT: Don't interrupt me, please,
5 because my court reporter is going to quit.

6 MS. MOORE: I'm sorry.

7 THE COURT: That's okay. She's very
8 talented. I don't know why she can't type with her
9 feet also, but she can't. She does great with her
10 -- just because she types with her hands. But --
11 so, the issue with regards to a breach of fiduciary
12 duty only is relevant insofar as the execution of
13 the Deed; correct?

14 MS. MOORE: Yes, ma'am.

15 THE COURT: Okay. That's it.
16 Goodnight. Goodnight. They're not tasking your
17 client with having violated her fiduciary duty by
18 not renaming this property.

19 MR. PHILLIPS: All right. Thank you,
20 Your Honor.

21 THE COURT: Okay.

22 MR. PHILLIPS: Your Honor,
23 unfortunately, like I said, my client's not here --

24 THE COURT: Would you like to step away
25 and just have a conversation with her?

1 MR. PHILLIPS: If I could, five
2 minutes.

3 THE COURT: You would certainly be able
4 to do that if she was here. So we'll take a five
5 minute break while you take your five and go have a
6 conversation will be perfect.

7 MR. PHILLIPS: Appreciate it, Your
8 Honor.

9 THE COURT: We'll take a break. Just
10 don't -- please feel free to take a comfort break.
11 Get some water. Walk around. Go to the ladies
12 room. Just don't discuss your testimony with
13 anyone. And I don't know what happened to the
14 Yankees last night, so I don't know if you can talk
15 about their continuing loss record or not.

16 (Laughter)

17 (There was a short break)

18 MR. PHILLIPS: Your Honor, no further
19 questions.

20 THE COURT: Oh, okay. Any redirect?

21 MS. MOORE: Four or five. Like four.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION BY MS. MOORE:

24 Q. Ms. Gladden, you were asked extensively
25 about that 80,000 that you took out of the -- that

1 | was taken out of the accounts?

2 | A. Yes.

3 | Q. Did you directly benefit from any of
4 | that?

5 | A. No. The intent was not to me to
6 | benefit. In fact, we were trying to ensure that my
7 | mother would retain that money because we were
8 | afraid that the money would be spent unwisely and
9 | not on her.

10 | Q. All right. Thank you. And then I'm
11 | going to have you look and I promise you this will
12 | be the last time I make you look at this Order.
13 | That 2009 Order. So on page 8, that faithful
14 | paragraph 9, would you read that first sentence?

15 | A. "That neither Cynthia Stewart,
16 | Jacquelyn Gladden, nor Patricia Reed will be
17 | permitted to sell any property owned by Ms. Reed
18 | which includes the former residence in Bamberg
19 | County."

20 | Q. So that's any property; right? It says
21 | any property --

22 | MR. PHILLIPS: I object, Your Honor.
23 | It says what it says.

24 | MS. MOORE: Thank you. Nothing
25 | further, Your Honor.

1 THE COURT: Any recross?

2 MR. PHILLIPS: One question, Your
3 Honor.

4 RECROSS EXAMINATION BY MR. PHILLIPS:

5 Q. Is it your testimony here today that
6 between the money, the \$80,000 of your mother's
7 that you used to pay your attorney and the 82,000
8 and change that came out of her CD's, that all that
9 money was repaid to your mother; is that your
10 testimony today?

11 A. That money went into a trust and the
12 monies that were spent, we were advised by
13 attorneys that money was repaid fully by my sister
14 and I. We were advised to do that and I agree with
15 the judge at that particular time. But we were
16 advised by the attorneys to do it like that for my
17 mother. Okay. It was for her. It was not to be
18 used by our personal gain in any way or any
19 fashion. But that money was paid back. And I --
20 in retrospect, I agreed with the judge. I could
21 see that. Okay. But when you're advised by your
22 attorney that's what you do and that's exactly what
23 we did. Got with the attorney -- well, when the
24 judge said --

25 THE COURT: I got it. I got it.

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 A. Okay. Thank you, Your Honor.

2 Q. So your testimony is, every dime that
3 came out of your mother's account went back to her?

4 A. Yes, it went back to her.

5 Q. All right. Thank you.

6 MR. PHILLIPS: No further questions,
7 Your Honor.

8 THE COURT: All right. Come on down.
9 Call your next witness, please.

10 MS. MOORE: Yes, ma'am. I'd like to
11 call very briefly, Ms. Patricia Reed.

12 PATRICIA REED,
13 being first duly sworn, was examined and testified
14 as follows:

15 THE COURT: Thank you so much. And
16 please be seated. And if you would state your full
17 name for our record and spell your first name.

18 MS. REED: I'm sorry, Your Honor, what
19 did you say?

20 THE COURT: Spell your name.

21 MS. REED: My name is Patricia Elaine
22 Reed. First name is P-A-T-R-I-C-I-A.

23 THE COURT: Thank you. Your witness.

24 DIRECT EXAMINATION BY MS. MOORE:

25 Q. How are you doing this afternoon?

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 A. I'm fine. Thank you.

2 Q. All right. Could you tell us a little
3 bit about what you do?

4 A. I am a special education teacher. I've
5 been teaching now for 48 years. Special education
6 teacher in Georgetown County.

7 Q. And you're one of Ms. Reed's daughters?

8 A. I'm the oldest daughter.

9 Q. The oldest daughter. Okay. So you've
10 heard what's been going on in court today. I want
11 to focus on momma's treatment. So did you -- what
12 did you notice specifically in her -- in how she
13 was after she started treatment verses how she was
14 in 2014, let's say?

15 A. I could tell my mom had --

16 MS. SPIRES: I need her to speak up,
17 please.

18 A. I knew it was going to be a gradual
19 progression because mom had Parkinson's as well as
20 dementia. And so from the time mom left us in 2012
21 -- 2012 until she returned in 2015 there had been a
22 great progression.

23 Q. All right. So let's focus in -- let's
24 focus on the year of 2014. Were you in regular
25 contact with momma?

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 A. I'll would call mom, yes. If I knew
2 where she was --

3 Q. If you knew where she was.

4 A. -- in Florida.

5 Q. How often did you call her?

6 A. I pretty much call mom every week,
7 every two weeks, depending upon if I knew where she
8 was.

9 Q. All right. And what was she like on
10 those phone calls?

11 A. Mom's messages, she was glad to hear my
12 voice, you know, she didn't -- the caregiver said,
13 you know, she knew your -- she knows your voice
14 because they would get on the phone sometimes. But
15 mom's biggest thing is to come home. I want to
16 come home. Come and get me. Please come and get
17 me.

18 Q. Did you know where she was at the time?

19 A. Sometimes I did, sometimes I did not.

20 Q. Okay. When you knew where she was,
21 where was she?

22 A. I knew the first time she was at a
23 nursing home. And when I took mom back, mom went
24 back to Florida something like July 3rd and by July
25 5th, mom was in a nursing home.

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 Q. And what year was that, do you recall?

2 A. I think that was -- I'm not sure, 2012.
3 Because mom had been out of our lives for so long.
4 Maybe 2013. I'm not exactly sure.

5 Q. Okay. What about June of 2014, do you
6 recall talking to momma at anytime during that time
7 period?

8 A. June of 2014?

9 Q. Yes, ma'am.

10 A. I'm not sure. I may have.

11 Q. On the phone, do you remember talking
12 to momma at all in 2014?

13 A. Oh, yes.

14 Q. Okay. And what did you perceive her to
15 be like? Was she cognizant of who you were or
16 anything like that?

17 A. Yes. She knew who I was, yeah. And
18 she knew she wanted to come home. That was mom's
19 message every time, when are you coming to get me.

20 Q. Okay. Did she -- did she know where
21 she was?

22 A. No.

23 Q. She didn't know where she was. Do --
24 did you ever talk about her property or anything?

25 A. No.

1 Q. Okay. So in 2014, based on your
2 conversations with her, do you believe she had
3 capacity to sign anything?

4 A. No. No, not at all.

5 Q. Why don't you think she had capacity?

6 A. Mom -- she could sign if you put it in
7 front of her, but she wouldn't know what she was
8 signing.

9 Q. Okay. What leads you to believe that?

10 A. Because mom had use of her hands.

11 Q. No. No. No. Let me rephrase the
12 question. What led you to believe that momma
13 wouldn't understand what she was signing?

14 A. Oh, because I know my mom was before
15 she left. Mom had very short term memory and she
16 didn't have long term memory. She was very
17 incoherent most of the time.

18 Q. Okay. And do you recall her last
19 illness when she was in Georgetown? Do you recall
20 that last illness?

21 A. You talking about when she was in the
22 hospital?

23 Q. Yes.

24 A. Yes.

25 Q. And what was your perception of those

1 | events? What did you see about momma? What did
2 | you notice?

3 | A. Mom had a very hard time breathing.
4 | You know, when she got up in Florida she had a very
5 | hard time breathing. During her stay in the
6 | hospital, I stayed there with her most of that
7 | time, every night. Pretty much all during the day.
8 | And if I wasn't there, because I needed to be there
9 | especially at night so I would tell the people, the
10 | respiratory specialist come in and Nebulize her,
11 | please give my mom oxygen. She was on oxygen, but
12 | the Nebulizer so she could breathe at night.

13 | Q. What about the capacity, what did you
14 | notice about her mental state at that time in 2015?

15 | A. Mom was really out of it in 2015.
16 | Okay. She went Talia's, my niece's wedding. She
17 | knew that she was among family. She was happy to
18 | see them, but that was all we got. You know, her
19 | happiness, her eyes, the way she looked at
20 | everybody and then when she spoke.

21 | Q. All right.

22 | MR. PHILLIPS: Your Honor, if I could
23 | just -- my client's lost the audio, so I'm going to
24 | put the phone back. Sorry about that.

25 | THE COURT: Okay.

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 (Putting Ms. Stewart on speaker phone)

2 MR. PHILLIPS: Thank you, Your Honor.

3 Q. All right. Ms. Reed, did you ever get
4 a copy of the last will and testament? Did you
5 know that this existed?

6 A. That's the second one, yes. Momma's
7 will, yes, that's the second will and testament.

8 Q. And it was read in court that real
9 estate was to be done by equal one-thirds; correct?

10 A. Yes, that's correct.

11 Q. And you had no expectation that
12 anything else would happen?

13 A. No.

14 Q. Okay. Did you also -- and I'm going
15 back to -- so that was Plaintiff's Exhibit 1. I'm
16 also referring back to Plaintiff's Exhibit 2. Did
17 you also receive this letter from Ms. Knapp?

18 A. Yes, I did.

19 Q. All right. So you also received
20 instruction on signing as a POA?

21 A. Yes, I did.

22 Q. All right. I don't want to rehash any
23 testimony, so I'm just going to get right to it.
24 Tell me about this case. How often have you had to
25 come to Orangeburg for this case?

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 A. Three times.

2 Q. And you had to miss work every single
3 time?

4 A. Every single time.

5 Q. Is that easy for you to do?

6 A. No.

7 Q. All right. And have you been able to
8 see or view the property or do any of that?

9 A. Other than just ride by the property
10 and sometimes I go and walk on the property. But,
11 no, I could not go inside.

12 Q. All right. And had it been -- all
13 things being equal, had it transferred as it was
14 supposed to and you were able to sell it
15 immediately, do you believe that the tax value --

16 MR. PHILLIPS: Objection, Your Honor.
17 That's kind of speculative. Transfer as it's
18 supposed to.

19 MS. MOORE: I was just trying not to
20 repeat the whole hypothetical that I repeated to
21 Ms. Gladden, I'd be happy to do it. I was trying
22 to shorthand, Your Honor.

23 THE COURT: Okay.

24 Q. So, all things being created equal,
25 let's say you got the property at momma's death and

PATRICIA REED - DIRECT EXAMINATION BY MS. MOORE

1 | you were able to sell it, do you believe that it
2 | would have sold for at least the tax value as
3 | indicated on Plaintiff's 12?

4 | A. For the 75,000?

5 | MR. PHILLIPS: Objection, Your Honor.
6 | Again, you're asking a layperson to speculate on
7 | the market value of a property that they don't have
8 | personal knowledge of.

9 | MS. MOORE: I'm not asking about market
10 | value --

11 | MR. PHILLIPS: She asked would it sell
12 | for at least. And so that's a market value when
13 | you sell something.

14 | THE COURT: Thank you. Overruled. You
15 | may proceed.

16 | MS. MOORE: Okay.

17 | Q. For that tax value that we discussed
18 | earlier?

19 | A. Yes.

20 | Q. And if you were able to gain interest
21 | on that tax value, how much do you -- how much
22 | would you have had today?

23 | MS. MOORE: And this is Plaintiff's 12
24 | just to...

25 | THE COURT: Sure.

PATRICIA REED - CROSS EXAMINATION BY MR. PHILLIPS

1 A. The total interest would have been
2 \$35,575.51.

3 Q. So that would have been total, what
4 would have been your share?

5 A. My share would have been \$11,858.50.

6 Q. All right. So --

7 MS. MOORE: Nothing further, Your
8 Honor. I think we're going to end it there just so
9 that we can --

10 THE COURT: Thank you. All right.
11 Cross examination?

12 MR. PHILLIPS: Yes, Your Honor.
13 Briefly.

14 CROSS EXAMINATION BY MR. PHILLIPS:

15 Q. Ms. Reed, how often did you visit your
16 mother in Florida?

17 A. Twice when I knew -- if I knew where my
18 mother was.

19 Q. And where was she those times?

20 A. I think the first place she was at
21 Consulate, I think that's where she was.

22 Q. I'm sorry.

23 A. Consulate.

24 Q. Okay.

25 A. And the second time I had to find out

1 from a physical therapist who made contact with me
2 because he could not make contact with Cyndy and
3 momma was there in Florida.

4 MR. PHILLIPS: Your Honor, I would
5 object to the hearsay testimony.

6 THE COURT: Say what?

7 MR. PHILLIPS: I'd object to the
8 hearsay. She's testifying about a conversation and
9 my question was, how many times did you visit your
10 mother in Florida?

11 THE COURT: All right. So just --

12 A. Twice.

13 THE COURT: Thank you.

14 Q. One time at a memory care facility
15 Consulate Assisted Living?

16 A. I think that was -- yeah. Supposed be
17 like assisted living, but actually mom was under
18 skilled nursing care.

19 Q. Okay. And then where was the second
20 visit?

21 A. The second one was at a home that my
22 sister Jackie and I went to Florida unbeknownst to
23 us as to where mom was and we found out she was
24 living with a family. And momma's moved again
25 after that.

1 Q. And what year did those visits take
2 place in?

3 A. I think those were in like 2013, maybe
4 2014. I'm not sure.

5 Q. So when your mother after she was
6 adjudicated competent in Richland County 2008,
7 2009, 2010, how many times did you visit her while
8 she was living with Cyndy in Florida?

9 A. None. Except to take mom, you know,
10 take mom -- my mom's here just to my nephew's
11 graduation, but I didn't have to because mom was
12 coming back to South Carolina while I was working
13 and so was Cyndy.

14 Q. And you testified several times that
15 you believed your mother was incompetent -- or
16 incoherent?

17 A. Yes.

18 Q. Did you take any steps to have that
19 addressed -- to have her capability assessed by a
20 medical professional?

21 A. Yes. She had doctor's care when she
22 was here in Georgetown. When she was with me in
23 Georgetown she also had the help of a medacist.
24 She also had the help of a physical therapist
25 coming in, an OT.

1 Q. I asked did you have a doctor determine
2 her competency like you all tried to do in the 2008
3 proceeding?

4 A. No.

5 Q. Okay. Because in 2008 you believed she
6 was incompetent -- incoherent and had -- tried to
7 have her adjudicated as such and the Court
8 disagreed; correct?

9 A. Because she was seeing a neurologist
10 who said mom was --

11 Q. But my question is that you brought an
12 action alleging she was incompetent and the Court
13 disagreed in the Order that we've talked about
14 that's Plaintiff's Exhibit 3?

15 A. You keep saying we brought an action on
16 the fact that mom was incompetent. We didn't take
17 mom -- we took Cyndy to court for revoking our
18 power of attorney. I find that -- we didn't
19 mention momma being incompetent. We didn't take
20 mom to court. We took Cyndy to court.

21 Q. If I could get you to look at Exhibit
22 Number 3, that's the Order that we've referred to
23 several times.

24 MS. MOORE: This is the only copy I can
25 get my hands on. I'll let you look at real quick.

1 I'm so sorry.

2 MR. PHILLIPS: No, I mean, I have it.

3 I want the witness to have it.

4 MS. MOORE: Right. I was just letting
5 you know that it was marked up --

6 MR. PHILLIPS: That's fine.

7 Q. So I direct your attention to page 1,
8 very first sentence. And this matter is before the
9 Court the filings of a Summons and Complaint. Did
10 you and your sister have that Summons and Complaint
11 filed?

12 A. That's true.

13 Q. And it says that you filed the petition
14 to appoint a guardian and conservator; is that
15 true? That's what you filed is to have a guardian
16 in the case?

17 A. Yes.

18 Q. All right. Then if you would turn over
19 to page 7 of 14. At the top of the paragraph,
20 paragraph 3. The Court found your mother to not be
21 an incapacitated person. In other words, she was
22 competent?

23 A. At that time, yes.

24 Q. And so because of that, they didn't --
25 the Court declined to appoint the guardian and

1 conservator that you all filed for?

2 A. That's true.

3 Q. So your allegations about her capacity
4 were declined back in 2008?

5 MS. MOORE: Your Honor, I object. We
6 didn't talk about her capacity in 2008. We talked
7 about it in 2014.

8 MR. PHILLIPS: We've talked about this
9 Order extensively, Your Honor. And so she --

10 THE COURT: I know. I know that you
11 all have. I'm not so sure that I understand the
12 relevance of it, but you can go ahead and it is
13 what it is and the judge ruled what the judge
14 ruled.

15 MR. PHILLIPS: I understand, Your
16 Honor.

17 THE COURT: Sure.

18 Q. So if you were wrong about your
19 capacity opinion in 2008, could you have been wrong
20 about it in 2010 also?

21 A. I don't think I was wrong then because
22 I got notice from the neurologist. The judge is
23 not a neurologist. But the neurologist is a
24 medical doctor. He said mom had dementia. And mom
25 also at that point had four strokes, mini strokes.

1 So, yes, I went on the judgement of the doctor, not
2 the judge. And that's what we went to court on.

3 Q. Okay. But I didn't ask about dementia.
4 With your mom, did she have good and bad days?

5 A. When you're saying good and bad days,
6 define that.

7 Q. Days when she was more functional than
8 she was on other days?

9 A. Well, I would say, yes, we all do
10 whether we're sick or not.

11 Q. And your mother when she had dementia,
12 she too had good and bad days; correct?

13 A. She had times where her short term
14 memory was a little off, yes.

15 Q. So my question was not whether a
16 medical professional diagnosed her with dementia,
17 Parkinson's disease, or the other condition she
18 had. My question is, when you are alleging that
19 she was incapacitated in 2012, did a doctor make a
20 capacity determination pursuant to the law like you
21 sought back in 2008 and 2009?

22 A. No, because I don't think mom was at
23 that point yet where a doctor made recommendation
24 except for the dementia.

25 Q. Thank you, ma'am.

PATRICIA REED - REDIRECT EXAMINATION BY MS. MOORE

1 MR. PHILLIPS: No further questions,
2 Your Honor.

3 THE COURT: All right. Any redirect?

4 MS. MOORE: Just one.

5 REDIRECT EXAMINATION BY MS. MOORE:

6 Q. I would like you to look at Plaintiff's
7 5. This is the 2010 Order; correct?

8 A. Yes.

9 Q. And I had your sister read a portion of
10 it to the Court yesterday. Give me one second. I
11 would like to refer you back to that portion on
12 page 2 at the very bottom.

13 MR. PHILLIPS: Your Honor, I would just
14 note that this isn't the Order that I made
15 reference to in my cross and so I'm fine if she
16 wants to go into a new Order, I'd just ask to have
17 latitude to do the same.

18 MS. MOORE: Your Honor, I'm trying to
19 rebut that momma wasn't declared incompetent
20 because it --

21 THE COURT: It was adjudicated to be
22 incompetent --

23 MS. MOORE: Incapacitated --

24 THE COURT: One of us talk, remember.

25 MS. MOORE: I'm sorry.

1 THE COURT: That's okay. Mom was
2 adjudicated to be incompetent in the Order of, I
3 believe the judge's name --

4 MR. PHILLIPS: It's this one, Your
5 Honor. It's Exhibit 5.

6 THE COURT: Judge --

7 MR. PHILLIPS: Plaintiff's 5.

8 THE COURT: December 30th of 2010.

9 MS. MOORE: That's all I'm trying to
10 get to, Your Honor.

11 THE COURT: I got it. Yeah.

12 Q. Would you read that sentence for us
13 real quick?

14 A. I'm sorry, which one?

15 Q. The last --

16 THE COURT: I take judicial notice of
17 the fact that on December 30th of 2010, that Judge
18 Belton adjudicated Ms. Reed as being incompetent at
19 that point.

20 MS. MOORE: Thank you. Nothing further
21 then.

22 THE COURT: All right.

23 MS. MOORE: Nothing further.

24 THE COURT: Thank you. Yes.

25 MR. PHILLIPS: Nothing, Your Honor.

1 THE COURT: Okay. Thank you. You may
2 come down. Call your next witness, please. Yes,
3 ma'am, call your next witness, please.

4 MS. MOORE: No further witnesses at
5 this time.

6 THE COURT: Very well. Thank you. All
7 right. Yes, sir. First of all, are there any
8 motions?

9 MR. PHILLIPS: There are, Your Honor.

10 THE COURT: All right.

11 MR. PHILLIPS: So I would renew my
12 Motion to Dismiss for lack of jurisdiction because
13 of the way these are inextricably linked. I
14 understand your --

15 THE COURT: Sure.

16 MR. PHILLIPS: I'll be heard on it, but
17 I understand the Court has already heard it once
18 and so...

19 THE COURT: Yes. And I'm not inclined
20 to change my earlier ruling. I do believe that the
21 Court has subject matter jurisdiction over this
22 matter.

23 MR. PHILLIPS: Thank you, ma'am.
24 However, with regard to Rule 41(b), I don't believe
25 that the Plaintiff has established all of the

1 | elements of the issues that they've raised. And
2 | it's in two -- it's essentially two areas. As you
3 | know, Your Honor, limited the case to the first and
4 | third causes of action to kind of re-lump them
5 | altogether. Cause of action one is fraud. Cause
6 | of action three is breach of fiduciary duty,
7 | self-dealing, et cetera.

8 | With fraud, it is -- there has to be a
9 | representation of fact believed by the hearer with
10 | the intent that it would be relied on. As I think
11 | the testimony shows that there was no -- the
12 | damages and the complaints made now were never
13 | raised then. They were only raised after they
14 | learned of the transfer of the property. And they
15 | only -- and they -- the property was only
16 | transferred within a week of -- of mother's death.

17 | So it is -- to say that they were --
18 | there's a falsehood that my client somehow
19 | represented to her sisters that this property was
20 | available for you, you could sell it, and in the
21 | normal course get at least the tax value for it.
22 | That was never anything they pursued. I don't
23 | believe that was even anything that was possible.

24 | The estate had to go through with the
25 | creditor period. By their own actions, they filed

1 and contested the appointment of a personal
2 representative, so the estate was drawn out.

3 THE COURT: Well, they did that did
4 they not, Mr. Phillips, because in the will where
5 the mother talked about who she wished to be her
6 personal representatives, in the will itself it
7 indicates that she wished all three children to be
8 jointly their personal representatives. And that's
9 in the will.

10 MR. PHILLIPS: That's correct. It's in
11 the will. And the Court looked at the situation at
12 the time. Had looked at these documented
13 mishandling's of money and appointed my client.

14 THE COURT: I don't know why the Court
15 did what the Court did, but the Court for whatever
16 reason did what the Court did and that is I gather,
17 your client became the sole personal representative
18 of the estate; correct?

19 MR. PHILLIPS: Correct. At the end of
20 a three year process. And so, it is during that
21 time as the personal representative was being
22 contested there was no effort to fix the property
23 up, to get a tenant in there, to fix it, all the
24 things that could have been ordered by the probate
25 court. All of, you know, if the goal is my damages

1 are ascertained by the fact that if I had gotten a
2 hold of this property right away, I could have sold
3 it and then -- and here is the interest I could
4 have made on that money. It was not possible. It
5 was not sought. And, oh, yeah, by the way, there
6 was no representation of fact that was believed by
7 the hearer and that they relied on to their
8 detriment, three essential elements of a fraud
9 cause of action.

10 And so it was only learned after the
11 fact. And so I think for that reason, we don't
12 have the -- we don't have sufficient facts to find
13 -- to make a finding for damages under the fraud
14 cause of action.

15 THE COURT: Well, based on the
16 nonexistence of what element?

17 MR. PHILLIPS: What was the
18 representation.

19 THE COURT: Oh, the representation.
20 What was the representation, awe.

21 MR. PHILLIPS: And how was it relied on
22 by the Plaintiffs and what was their detriment. It
23 is -- the property right now is in front of the
24 probate court. If the goal is to sell it, they
25 have filed a petition with the probate court to

1 remove Ms. Reed as the personal representative, but
2 they haven't petitioned the court to get the
3 property back. They haven't petitioned the court
4 to put it on the market to sell it. They haven't
5 petitioned the court to partition it amongst it.
6 They had -- there was a mechanism for doing the
7 relief that they say they were denied now. They're
8 claiming now they couldn't do things that they
9 never tried to do. And making --

10 THE COURT: Well, that's why they filed
11 this suit here in circuit court; right? I mean,
12 that's why they sued her for forgery; right?
13 That's why they filed the causes of action here in
14 circuit court was to force your client to reform
15 the Deed; right?

16 MR. PHILLIPS: Correct.

17 THE COURT: Okay. And she did; right?

18 MR. PHILLIPS: She did, Your Honor.

19 THE COURT: Okay. So this litigation
20 was successful for them; right? From that
21 prospective; correct?

22 MR. PHILLIPS: It was -- well --

23 THE COURT: Yeah.

24 MR. PHILLIPS: It was successful to the
25 point that --

1 THE COURT: It took a while; right?

2 MR. PHILLIPS: Without any admission of
3 liability, the Deed was -- was -- I'm drawing a
4 blank on the name.

5 MS. MOORE: Reconveyed?

6 MR. PHILLIPS: Reconveyed to the
7 estate.

8 THE COURT: Yeah.

9 MR. PHILLIPS: It is -- my point is
10 that so the damages are -- in one proceeding where
11 you didn't ask for relief, you came here to this
12 court to ask for it and you're claiming that the
13 delay in not asking for it when they were in front
14 of a judge, this case was filed in 2018, they were
15 in front of the probate judge 2015, 2016, 2017.
16 Plenty of time if their desires were in fact to
17 sell the property, to get a tenant in there, to
18 transfer it to them.

19 THE COURT: Well, they didn't know
20 about it in 2015 and 2016. They did not -- the
21 testimony is, is that they were unaware that the
22 property had been removed from the estate -- from
23 the estate, what would have been the estate,
24 although, it wasn't in the estate. In other words,
25 it had been transferred from the mother until the

1 notice of appraisalment and that was -- that's dated
2 the 3rd day of April of 2018 --

3 MR. PHILLIPS: Correct, Your Honor.

4 THE COURT: -- right?

5 MR. PHILLIPS: They were unaware of
6 that. But, remember their damages are and their
7 testimony, we knew -- we knew about the will. Both
8 witnesses testified, we knew about the will. We
9 knew where the property was supposed to go.

10 THE COURT: Right.

11 MR. PHILLIPS: Okay. So if your
12 intention was really to sell it, then the fact that
13 it was misconveyed, you didn't ask. Because -- and
14 if that's what you wanted to do, you would have
15 discovered it earlier and in front of the Court to
16 do something about it, but they didn't and now
17 they're asking for damages for the delay.

18 So my argument would be that they
19 failed to meet the essential elements of fraud and,
20 therefore, no damages are entitled. But assuming
21 the Court would find that they did, then their
22 damages would be limited to what? The period of
23 time that they could have sold the property? Well,
24 they can sell it now. They could of sought it
25 being sold earlier, so I'm not sure how outside of

1 the probate context and the juggling of the various
2 liabilities and benefits that are available there,
3 I'm not sure how you do that now. So the damages
4 are too speculative to award with regard to fraud.

5 With regard to the third cause of
6 action, the second one that you're hearing, the
7 essence of a breach of a fiduciary duty or
8 self-dealing is this alleged -- this conveyance
9 occurred while mother was still alive. The duties
10 that were owed were owed to mother through the
11 power of attorney. Not to the contingent
12 beneficiaries under the will.

13 And so to have a breach of a duty, you
14 have to have the duty is owed. I don't think they
15 have standing to bring the Complaint at the time
16 that this transfer happened. Because the transfer
17 happened by the Deed that we've -- both of the
18 witnesses have read off the date 4 August, 2015,
19 Deed was executed in Augusta, Georgia. Mother
20 passed away a week or so after that.

21 So the duty at the time was owed to the
22 mother. They don't have standing to assert that,
23 the estate would, but not in this court. So for
24 those two reasons, Your Honor, I'd say that both
25 causes of action should be dismissed pursuant to

1 Rule 41(b) .

2 THE COURT: Thank you. Thank you.

3 Yes, ma'am.

4 MS. MOORE: May it please the Court.

5 THE COURT: Yes.

6 MS. MOORE: So my understanding of
7 opposing counsel's argument is that we failed to
8 meet fraud because she did this Deed and then
9 didn't tell anybody about it. So it was
10 discovered. She made a statement that conveyed a
11 piece of property. It was recorded. So she told
12 the recorder's office. She told the witnesses that
13 saw her sign it that it was signed by Theodocia
14 Reed. That is a false statement in front of people
15 that heard it. And, unfortunately, I'm at a loss
16 --

17 THE COURT: He says the elements you do
18 not have reliance. There was a statement that the
19 act which is what it would be here.

20 MS. MOORE: Right.

21 THE COURT: Was that you didn't rely on
22 it.

23 MS. MOORE: They were not given an --
24 okay. So my -- my --

25 THE COURT: Is reliance, I guess.

1 MS. MOORE: Reliance. So they weren't
2 given an opportunity to rely on it, but the county
3 relied on it. The recorders relied it. It was a
4 transfer of property. If it wasn't relied on, we
5 would not have had to do a warranty Deed back to
6 estate. It was relied on it. It conveyed that
7 property. That is why it had to be reconveyed.
8 There was reliance. It created a chain of title
9 that showed that she owned the property.

10 And to the extent that he's trying to
11 argue that our damages are speculative, we weren't
12 allowed on the property. We weren't allowed on the
13 property and I'm sure as Your Honor is aware, yes,
14 they were in front of the probate court contesting
15 probate matters. Those matters were about who was
16 going to be PR. I'm pretty sure that the value of
17 things was not before the Court at that time and
18 would not have been able to be before the Court at
19 that time because they didn't have a PR.

20 THE COURT: His position is that -- Mr.
21 Phillips' position is that you weren't suffering
22 any damages because by your own actions that you
23 clogged the works and kept the estate from
24 proceeding. And if you had not contested the
25 proceedings in the probate court, that the property

1 | could have been sold earlier and you could have
2 | realized the amount of money that -- that you're
3 | alleging. The problem is, is that -- is that you
4 | didn't own it.

5 | MS. MOORE: Right.

6 | THE COURT: So the period of time that
7 | you are contesting --

8 | MS. MOORE: We couldn't have made that
9 | demand because we didn't know.

10 | THE COURT: Right.

11 | MS. MOORE: Thank you, Your Honor.
12 | That's...

13 | THE COURT: Got it. Yes.

14 | MR. PHILLIPS: Your Honor, briefly?

15 | THE COURT: Sure. Yes, of course.

16 | MR. PHILLIPS: The -- so the *Beneficial*
17 | *verses Wyndham* case seems to come up a lot for
18 | listing the elements of fraud. It's a
19 | representation of fact.

20 | THE COURT: Your client is speaking to
21 | my law clerk and the Court is concerned because
22 | it's ex parte. She needs to speak with you.

23 | MR. PHILLIPS: I'm sorry, Your Honor.
24 | I'll just turn that off, Your Honor, how about
25 | that?

1 THE COURT: If she needs to speak with
2 you, you can run back there real quick.

3 MR. PHILLIPS: If you don't mind, two
4 minutes. I promise I will be brief.

5 THE COURT: That's okay.

6 (Off the record)

7 MR. PHILLIPS: I'm sorry, Your Honor,
8 she thought that we were concluding the proceeding.
9 I apologize for that.

10 THE COURT: No problem.

11 MR. PHILLIPS: So, again, *Wyndham*
12 verses -- *Beneficial verses Wyndham*, the elements
13 of representation of fact. What I heard counsel
14 say is that the representation was to the county,
15 was to -- well, okay, they're not suing my client.
16 Because it has to be a representation of fact that
17 was false that was relied on by the hearer. It has
18 to be believed by the hearer. I mean, that's
19 fraud; right? If I'm going to sell you something
20 that is going to cure your baldness and it doesn't,
21 it has to be a known falsity. It has to be
22 represented to you. You have to believe it. And
23 here you didn't know about it.

24 And then -- and, again, to talk about
25 well, we have to claim these damages because we

1 | couldn't get in the property to do an appraisal.
2 | Well, of course, you can do appraisals without
3 | getting access to the property, but there are
4 | mechanisms for the inspection of property in all
5 | civil cases. Probate has a similar procedure. So
6 | you could have done that. And so, again, relying
7 | on speculative damages, I don't think meets the
8 | elements. So, thank you, ma'am.

9 | THE COURT: All right. Thank you.
10 | Denied. Would you please call your first witness.

11 | MR. PHILLIPS: With fingers crossed,
12 | Your Honor, I'd like to put my client on the
13 | virtual stand. I'm concerned about feed back, so
14 | with the Court's permission, if I could ask
15 | questions from the podium and then that way you
16 | could watch the response if that's acceptable with
17 | --

18 | THE COURT: Sure. I can't see her, but
19 | it's fine.

20 | MR. PHILLIPS: Okay. Would it better
21 | to go back to the telephone and I sit it here,
22 | close to you?

23 | MS. SPIRES: That will be fine.

24 | THE COURT: It's fine with me.

25 | MR. PHILLIPS: I appreciate your being

1 cooperative, Your Honor.

2 (Calling Ms. Stewart and putting her on
3 speaker phone)

4 MR. PHILLIPS: We're going to conduct
5 your examination. Have you mute your computer so
6 there won't be any feedback.

7 MS. STEWART: Okay.

8 THE COURT: All right. Yes, ma'am,
9 would you identify yourself, please.

10 MS. STEWART: I'm Cyndy Reed Stewart.

11 THE COURT: All right.

12 CYNDY STEWART,
13 being first duly sworn, was examined and testified
14 as follows:

15 THE COURT: Thank you so much. Now,
16 Ms. Stewart, I'm going to have folks identify your
17 voice. Counsel, you can identify the voice you are
18 hearing that we are hearing as being Ms. Stewart?

19 MR. PHILLIPS: I would identify her as
20 my client, Cynthia Stewart -- Cynthia Reed Stewart.
21 I have not met her in person. I have had numerous
22 phone conversations with her. She has executed a
23 representation agreement and I've always spoken to
24 her on this number.

25 THE COURT: Thank you. Now, Counsel,

1 I'd like for you to consult with your clients to
2 ascertain whether or not the voice that they are
3 hearing they believe to be Ms. Stewart.

4 MS. MOORE: Yes, Your Honor.

5 THE COURT: And that was both ladies.
6 That was both of you, Ms. Reed and Ms. Gladden?

7 MS. Gladden: Yes.

8 MS. REED: Yes.

9 THE COURT: Thank you so much. Thank
10 you, you may proceed.

11 MR. PHILLIPS: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. PHILLIPS:

13 Q. Cyndy, if you could, briefly describe
14 your background to the Court.

15 A. I'm an educator. I've been in
16 education for over 20 years. Can you hear me?

17 MR. PHILLIPS: I can hear you. I just
18 turned the phone with the speaker towards the
19 reporter.

20 A. Okay. I graduated from South Carolina
21 State with my bachelor's. South Carolina State
22 with a master's in special ed. Went on to get my
23 PhD from Iowa State in higher education. And since
24 then I've been in this -- I've always been in
25 education. State departments and then as a

1 professor, and classroom teacher.

2 Q. And where did you get your bachelor
3 degree?

4 A. South Carolina State University in
5 Orangeburg.

6 Q. Okay. The -- could you tell me a
7 little bit about your kind of synopsis of your
8 history with your mother and her health care issues
9 starting in 2007?

10 A. Okay. Well, they start before that.
11 When -- in 2003, 2004, I noticed mom was just kind
12 of slipping a little bit. And I started -- when I
13 would come home I would accompany her to her
14 doctor's office and she was diagnosed with dementia
15 -- vascular dementia in 2005 in Denmark, matter of
16 fact. And she started a regimen of, I think it was
17 Namenda, about five milligrams. And, you know, she
18 was still driving. Mother was still driving.

19 And about 2008, you know, the Namenda
20 was good for her, you know. She would call me
21 probably, I'm going to say every three days or so I
22 would hear from her or I would check on her or she
23 would call me. And so she -- one day she got lost
24 going to church that she had been going to -- for
25 my daddy's church which is out in the country in

1 Bamberg County. Mom had gone to Union for over 40
2 years and she took the wrong turn and it bothered
3 her. And so we had a conversation about that. And
4 so that was about 2008. And then I decided when I
5 get a spring break I was going to go home to just
6 kind of check her out to see how things were going.
7 Because I was getting calls from neighbors who were
8 concerned about her as well.

9 So, anyway, so I went home in 2008 and
10 I said, mom, and at that time there was some issues
11 with Trish's son, I think, with mom. And she was
12 not happy about that. So she was calling me about
13 that. So I went home in 2008 and I said, mom, I
14 tell you what, why don't you just come and just
15 stay in Florida for the summer because it was my
16 spring break, you know, summer was right around the
17 corner, and we'll take it from there and I'll bring
18 you back home when you want to come back home.

19 Well, she came to Florida. She loved
20 it and she only wanted to go back to South Carolina
21 if I were with her. And I would tell momma, I
22 can't stay every time. But, you know, and during
23 that time there was some issues between my sisters
24 and I. And --

25 Q. And, Cyndy, let me get you just talk

1 | about what occurred rather than what your mother
2 | said, okay.

3 | A. Okay. What occurred. Okay. And so
4 | she came to live here and she lived with us for
5 | eight years. Mother lived with us here for eight
6 | years she lived in our home and we had -- we were
7 | involved in a lot of projects. We were involved in
8 | a national project that kind of tracks people with
9 | memory losses, Alzheimer's, dementia, something
10 | called ACTs (phonetic). It was a federal program.
11 | Mom and I participated in that for, I think, about
12 | two years we were in the initial group in
13 | Tallahassee.

14 | We connected with little -- this
15 | service called brain gym where she would go and
16 | they -- Florida has so many things for the elderly.
17 | She would go to elder day stay which is a day
18 | program for the elderly. She got involved in that.
19 | She got involved in SeniorSneakers which was a
20 | personal fitness program for senior citizens. She
21 | was just involved in a lot of things here. And
22 | then because I was still working, she was good. It
23 | was pretty easy to keep her the first two years.
24 | As mom -- and then mom was diagnosed with dementia
25 | here -- not dementia, with Parkinson's disease

1 | because she was just having some trouble standing
2 | and stepping and so I took her in to see her
3 | neurologist here and he diagnosed her with
4 | Parkinson's disease.

5 | Q. And when was that diagnosis?

6 | A. At the neurological center in
7 | Tallahassee.

8 | Q. No, when? What was the date?

9 | A. I don't remember the exact date. It
10 | was probably about 2010. Yeah, it's probably about
11 | 2010. I don't have the records in front of me. I
12 | can find them. It was probably about 2010.

13 | Q. Okay. So that diagnosis came after the
14 | litigation in Columbia?

15 | A. It could have been simultaneous to
16 | that. Like I say, I'm not sure of the date. It
17 | could have been 2009, 2010. I don't remember her
18 | having a diagnosis when we were in South Carolina,
19 | but I may not just remember it. But I know the
20 | Parkinson's came after the vascular dementia.
21 | Okay. And her neurologist told me at that time,
22 | Parkinson's --

23 | MS. MOORE: Objection. Hearsay.

24 | A. Okay. All right. Well, she was
25 | diagnosed with Parkinson's. Mom continued to be

1 | very active. She just needed assistance in the
2 | home. She needed assistance if I was working
3 | today, I would have sitters come into the home.
4 | And we did that for, I think, five or six years.
5 | And then in 2013, as -- when the Parkinson's --
6 | when she began to lose her mobility, she went into
7 | an assistant living facility. I need to make a
8 | distinction here. Florida does not -- Florida has
9 | a nursing home system and an assisted living.

10 | Assistant living facilities do go into
11 | when you need extra help. Assisted living
12 | facilities are not for people who have diminished
13 | capacity where they can't speak or a totally
14 | nursing home material and there's a criteria for
15 | the living facilities and there's one for nursing
16 | homes. So she went in assisted living centers, I
17 | think around 2013. And at that time, she would
18 | periodically go to -- well, let me back up.

19 | Q. Well, let me stop you there. So when
20 | she entered the assisted living, how was the
21 | assisted living facility, how was that paid for?

22 | A. With her funds and mine. Because those
23 | facilities are not nursing homes, so they're about
24 | 3,000 to \$3500 per month.

25 | Q. And when did she start incurring that

1 cost?

2 A. Around 2013.

3 Q. And that was after you -- after the
4 Court had ruled and put you in charge of her
5 finances?

6 A. Yes. Yes.

7 Q. Okay.

8 MS. MOORE: Your Honor, I would like to
9 object to -- on the grounds of relevancy. I'm not
10 sure what the cost of this has to do with anything.

11 MR. PHILLIPS: We've heard testimony
12 about mom's capacity over a period of time and so I
13 was just getting my client's prospective on that.
14 It also generated health care that involved funds,
15 with my client's funds, and funds belonging to
16 first mother and then her estate. And so that, you
17 know, to the extent there's damages in this case,
18 the money she's expended would be relevant for any
19 kind of a setoff to those damages.

20 MS. MOORE: Your Honor, I'm not sure
21 how that relates to her conveyance of the property.
22 I'm sorry.

23 MR. PHILLIPS: Well, again, Your Honor,
24 we've heard a lot of testimony about what her
25 capacity was at various times. She was mostly down

1 | in Florida, so my client has firsthand knowledge,
2 | personal knowledge and experience with her. And
3 | now I'd like to ask her about the property and how
4 | she -- how the conveyance was made.

5 | THE COURT: So now you're shifting
6 | gears?

7 | MR. PHILLIPS: Shifting gears, yes,
8 | ma'am.

9 | THE COURT: I don't know what relevance
10 | it has. Either she was adjudicated to be
11 | incompetent in 2010. This document was executed in
12 | August of 2015, a week before Ms. Theodocia Reed
13 | passed away. Yeah, but you're going to get to the
14 | Deed?

15 | MR. PHILLIPS: I am, Your Honor. And,
16 | again, I would just note for the -- in response to
17 | the Court's comments that it is -- there's been
18 | testimony that the mother went in -- had good and
19 | bad days in terms of being able to understand where
20 | she was.

21 | THE COURT: No, so she was adjudicated
22 | in 2010 to be incompetent.

23 | MR. PHILLIPS: I understand that, Your
24 | Honor. Thank you.

25 | THE COURT: Yes, sir.

1 Q. So, Cyndy, tell me about, you know,
2 briefly about your association with the house here
3 in Orangeburg.

4 A. Well, it's close. Mother loved that
5 house. I loved that house. I would regularly
6 visit the house and stay with my aunt when I was a
7 student at South Carolina State. The house is
8 walking distance from the campus. So my Aunt
9 Elafair who was elderly all my life was the only
10 resident in the house. She had beautiful neighbors
11 that took care of her. And, of course, when I
12 would go there, there would be doting neighbors and
13 some young person was around and I would take my
14 friends there.

15 You know, we would clean the yards. We
16 might -- we didn't have any lawnmowers. We'd clean
17 the yards. We might clean up the bathroom. Do
18 little odd things for her. You know, and every now
19 and then I would just spent the night overnight
20 because she would want me to. And mother -- mom,
21 would -- we call her momma now. Momma would come
22 up and we'd all -- when she came up to see me for
23 State, she'd always -- we'd always go see Aunt
24 Elafair or just the opposite. Aunt Elafair and mom
25 and me or mom and me and Aunt Elafair. Because

1 Orangeburg is only 18 miles to Denmark. So that
2 was her way to check on the house, check on Aunt
3 Elafair and to check on me.

4 Q. Okay. So --

5 A. So my relation to the house was always
6 close. And mom, you know, would share the history
7 of the house --

8 MS. MOORE: Objection.

9 THE COURT: Right. Be mindful, please,
10 Mr. Phillips, of hearsay and the Dead Man's
11 Statute.

12 MR. PHILLIPS: I understand.

13 Q. And, Cyndy, if you could pause every
14 once in a while so I could interpose another
15 question. So, tell me about your -- what financial
16 involvement did you have with the property, the
17 Orangeburg house?

18 A. I maintained that house, the upkeep,
19 the lawn care since probably 2003 or '05, before
20 mother even came to live with me. Because I was
21 helping her get somebody to cut the lawns. Okay.
22 Mom had someone in Denmark cutting her lawn. So
23 she had -- and so I would help her with the upkeep
24 of the property. If Aunt Elafair needed something
25 done to the house, mom would call me and typically

1 I would assist with that.

2 Q. All right. Thank you. So tell us
3 about as your mother's health declined, what was
4 your relationship to the property?

5 A. I took care of it as mom directed me
6 to. I took care of the taxes. I took care of the
7 upkeep. I took care of the inside and the outside.
8 There was a roof leak about three years ago, I took
9 care of that. As Jackie mentioned before, there
10 was a major --

11 MS. MOORE: Your Honor, as applied to
12 that roof leak three years ago, three years ago
13 that property was hers. So if she took care of a
14 roof leak, she was taking care of her own property.
15 I don't see how that's relevant at this time.

16 A. Well, it could have been for -- I don't
17 remember the exact time. But there was -- right.
18 So I took care of the property. Yes, I did take
19 care of the property, that's fine.

20 Q. So prior to your mother's death in
21 2015, were you caring for the property?

22 A. Yes, I was.

23 Q. Were you providing maintenance to the
24 property?

25 A. Yes, I kept gardeners employed, Dennis

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1 Brown and I now have a gardener employed to look
2 after the property, check on it, cut the lawn, and
3 they cut the lawns from about March until December.

4 Q. Okay. I appreciate that.

5 A. I had contact for the lawn cut and
6 that's been going on for over ten years.

7 Q. Who paid the property taxes for that
8 home prior to the -- prior to your mother moving
9 down to Florida?

10 MS. MOORE: Objection, Your Honor.

11 That's --

12 A. I assisted. I made sure --

13 MS. MOORE: That's not relevant.

14 A. I assisted mom.

15 THE COURT: I agree.

16 A. And she would sometimes tell me, Cyndy,
17 I need you to go and take care -- I need you to
18 take care of the property in Orangeburg. She would
19 -- mom would call me to ask me to take care of
20 taxes and things like that. And I did take care of
21 some taxes in Bamberg, but mom would always call me
22 -- well, I shouldn't say always, but she would
23 routinely call me about the Orangeburg property.
24 If something needed to be done that she saw that
25 didn't look right, a window was broken, she would

1 call me and I would get -- because I had people in
2 Orangeburg. And I had a connection to that house,
3 so she would call me to assist her with any upkeep
4 to that house. And I have kept that going since
5 mom moved with me and since her passing.

6 Q. All right. Thank you. So you heard
7 earlier there was questions and testimony regarding
8 \$82,000 and change from CD's in your mother's --
9 that were owned by your mother. Do you recall
10 hearing that testimony?

11 A. Yes, I do.

12 Q. Okay. Tell me your recollection of the
13 circumstances surrounding those monies and their
14 transfer from your mother and back to your mother.

15 A. Okay. Mother was not aware of that
16 transfer, neither was I. And at that time, I think
17 I was serving as mom's POA and mom still had mental
18 wherewith all. So, the bank called me about this
19 actually. South Carolina B&T called me about it.
20 I was looking over mom's account, but I didn't pay
21 attention to her CD's because, you know, she didn't
22 have electronic system where I could sign on to her
23 account, so they would typically send me
24 statements. But the bank, Cynthia, I think,
25 Cynthia, I can't remember her last name, she was

1 the manager in Denmark and, undoubtedly, it raised
2 -- something happened there and they called me to
3 say, hey, Ms. Stewart, are you aware --

4 MS. MOORE: Objection. Hearsay.

5 THE COURT: Hearsay.

6 A. Okay. The bank notified me --

7 Q. Okay. Stop. I know it's hard to hear,
8 but you need to listen for objections here in the
9 courtroom, okay?

10 A. Yeah. I'm sorry.

11 Q. So, let's try shorter answers.

12 A. Okay. The bank notified me that there
13 was \$80,000 missing out of mom's -- her CD had been
14 cashed out and did I have any information about
15 that and I did not.

16 Q. And when did that -- when did you
17 receive that notification?

18 A. In -- I don't know exactly, but
19 sometime in 2010. Probably around the summer of
20 2010. Because I can see from the document the bank
21 sent me, they faxed me this information, so, it's
22 dated June 21, 2010 --

23 MS. MOORE: Your Honor, I'm going to
24 object to a document that I don't even know what
25 she's referencing.

1 Q. Just testify to your personal knowledge
2 and not to items not in front of you, okay?

3 A. Okay.

4 Q. So, let me ask you about an item that
5 is in front of you. You've got the 2009 Order,
6 Plaintiff's Exhibit 3 that you've heard testified
7 about today?

8 A. Hold on. Not directly in front of me,
9 but hold on I'll pull it up.

10 Q. Let me ask you, are you familiar with
11 that document?

12 A. What is Exhibit 3?

13 Q. It is the Order from Judge Belton in
14 2009, December of 2009.

15 A. Yes, I'm somewhat -- yes, I am familiar
16 with it. Not verbatim, but I'm familiar with it.

17 Q. Did -- and that proceeding was to
18 appoint a guardian for your mother?

19 A. Yes, it was. And to challenge her
20 mental capacity.

21 Q. Did you retain counsel to represent you
22 in that action?

23 A. I had to, yes.

24 Q. Did you travel to Columbia to attend
25 hearings in that action?

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1 A. Yes, more than once.

2 Q. And to your understanding of what was
3 discussed at the hearing and what Judge Belton
4 ruled on, did she make any rulings about that
5 \$82,000?

6 A. Yes, that it should be returned.

7 Q. And in that proceeding, was it
8 identified where the money was transferred to?

9 A. Not that I remember --

10 THE COURT: In the Order, Mr. Phillips,
11 that's not correct. And this is nonjury, that's
12 not what the Order says.

13 A. Not that I remember. It was
14 transferred --

15 Q. Okay. Stop. Stop.

16 A. -- it was transferred to Jack and
17 Tricia's account.

18 THE COURT: No. That's not what the
19 Order says. What the Order says, Mr. Phillips, is
20 that it was -- the transaction was reversed by the
21 bank. That there were some sums that remained that
22 needed to be returned. And I don't recall whether
23 or not there was an accounting, but there was some
24 limited monies that would be repaid.

25 A. That's not exactly true. The

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1 | controller of the currency, the federal agency got
2 | involved because the theft was over \$50,000, so the
3 | bank just couldn't --

4 | MS. MOORE: Objection, Your Honor.

5 | Q. Well, Cyndy, hold on a second, please.

6 | A. Okay.

7 | MR. PHILLIPS: Your Honor, I think to
8 | the extent that she has personal knowledge of how
9 | this happened, the Order is what the Order is --

10 | THE COURT: Mr. Phillips, I don't think
11 | you want to begin to talk about conduct going
12 | beyond the civil ramp, okay. Let's don't do that.

13 | MR. PHILLIPS: Oh, no, Your Honor. I
14 | apologize, Your Honor, if I gave --

15 | THE COURT: Let's don't do that. Not
16 | in this circumstance, okay.

17 | MR. PHILLIPS: My understanding was it
18 | was a civil procedure, but I'm going to move on.
19 | And I apologize to the Court. I didn't mean to
20 | infer anything.

21 | THE COURT: Yes. I understand, but
22 | let's stay on point.

23 | MR. PHILLIPS: All right. Again,
24 | apologies, Your Honor, and that wasn't the intent.

25 | THE COURT: That's okay.

1 Q. Okay. So, eventually, funds were
2 returned to your mother as a result of Judge
3 Belton's Orders; correct?

4 A. Yes.

5 Q. Tell me what --

6 A. The federal funds were --

7 Q. Were you -- did you assist your mother
8 with those funds?

9 A. Yes, I did.

10 Q. Okay. So what ultimately happened to
11 those funds? Are they in the estate today?

12 A. No, they're not. Because when mother's
13 health was declining --

14 MS. MOORE: Your Honor, I object on
15 relevancy. We're not here about these funds.
16 We're here about Orangeburg property.

17 THE COURT: And all this really does go
18 to the probate, Mr. Phillips. But if it has some
19 relevancy about this Deed and --

20 MR. PHILLIPS: It does, Your Honor.
21 And, again, it goes to damages.

22 THE COURT: Okay.

23 MR. PHILLIPS: I apologize. I know
24 I've said that before, but that's --

25 THE COURT: Go ahead.

1 MR. PHILLIPS: All right.

2 Q. So, tell me the disposition of the
3 82,000.

4 A. The 82,000 was returned and part of
5 that was used to pay Bruce Holland's fees which
6 amounted to something like 15 -- it was -- he was
7 appointed as mom's DBL --

8 Q. And let me for purposes of time, let me
9 skip ahead and say the Order is in the record, so
10 don't need -- I know that funds were used to pay
11 various professionals. Not asking about that. I'm
12 asking about once the money was returned to your
13 mother by that Order, what happened to it?

14 A. Okay. After Bruce Holland's fees there
15 was about \$68,000 left in that account and I
16 distributed that money. Because as mom's health
17 was declining and it was a possibility that she
18 might go into a nursing home facility, I was
19 advised to -- you need to -- through the social
20 worker at one of the facilities she was in, you
21 know, you need to kind of spend from a estate
22 planner. That you need to get large sums of money
23 out of her name so that if she has to go into a
24 nursing home that she won't lose what she's worked
25 so hard to gain.

1 Q. Okay. So with regard --

2 A. So in 2011, I distributed \$21,000 to
3 each -- \$21,690 to each of my sisters.

4 Q. And when did that occur?

5 A. That occurred in February of 2013.

6 Q. Was there any agreement concerning the
7 uses of those funds?

8 A. Yes, there was.

9 MS. MOORE: Your Honor, objection. I
10 tried to give him a minute to -- relevance. What
11 does this have to do with her conveying a property
12 that was supposed to be in the estate and divided
13 three ways?

14 MR. PHILLIPS: It is -- to the extent
15 -- it's relevant, Your Honor. What's the relevancy
16 of the claims that, well, we didn't know where mom
17 was. We couldn't see mom. We couldn't do this
18 with the property. We wanted to sell it. We
19 didn't have a -- we didn't have a tenant in there.
20 I'm building a foundation as to the resources
21 available. And then what was asked for, what was
22 delivered. That's all. So I'm just building a bit
23 of a foundation.

24 THE COURT: Well, Counsel --

25 MR. PHILLIPS: Yes, ma'am.

1 THE COURT: -- let me ask y'all to
2 approach. Come all the way -- wear your masks and
3 come all around into my office.

4 (Off the record)

5 THE COURT: Mr. Phillips, I think I
6 understand this portion. I'm going to allow it.
7 Just wrap up with a leading question.

8 MR. PHILLIPS: All right. I will, Your
9 Honor. And, in fact, I believe -- I believe we've
10 touched on everything that we need to on that
11 subject, so I'll move on.

12 THE COURT: All right.

13 Q. So --

14 A. Attorney Phillips, I found my record.
15 I paid --

16 Q. That's okay. That's okay, Cyndy. And
17 I tell you, I know you're at a disadvantage, you're
18 on my cell phone, but, please, let's try for
19 shorter answers and then pause a bit so if there's
20 an objection or the Judge wants to make a comment,
21 so that we're not talking over each other, okay?

22 A. Okay. I just wanted to add, I paid for
23 that roof in 2009 in Orangeburg.

24 Q. I understand and I appreciate it. I
25 know this is difficult and I appreciate you being a

1 sport about it.

2 A. Okay.

3 Q. So tell me -- take me through your
4 relationship with the property and how you ended up
5 conveying it?

6 A. Well, mom told me and my husband --

7 MS. MOORE: Objection, Your Honor.

8 MR. PHILLIPS: I'm sorry.

9 Q. Cyndy --

10 A. I'm sorry.

11 Q. I need you to tell me what you did
12 without regard to what somebody told you, that's
13 the hearsay.

14 A. Okay. I maintained the property to
15 keep it as a legacy property.

16 Q. Let me stop you there. Explain what
17 you mean by -- why is it a legacy property? Is it
18 just a house in Orangeburg?

19 A. No, it's not. That house, my
20 great-grandfather, George Washington Scott Kennedy,
21 the oral history was an early educator after
22 slavery and he was located in Bamberg, South
23 Carolina and he has a prominent tombstone near
24 Honey Ford Baptist Church which is the church that
25 my mother went to as a child.

1 Q. Okay. So tell me then why does that
2 legacy, how does that play in your treatment of the
3 property?

4 A. Well, he moved to -- he moved to
5 Orangeburg because Orangeburg was a city. And
6 because there were few people -- few places where
7 black ministers when they would have revivals,
8 whatever, to stay -- that house is like a mansion.
9 It has five bedrooms. It's not modern now, but
10 it's an old colonial house. It has huge pillars.
11 It has a double porch. It's white, it's a
12 beautiful, beautiful property.

13 Q. And I understand it's been since its
14 construction it's been in your family; correct?

15 A. I'm not sure. I know they acquired it
16 probably in the 1930s. I don't know if they built
17 it or what, but they acquired it I think in the
18 1930s. And then my great-grandfather owned it and
19 then when he passed, his wife --

20 Q. We've already heard testimony about the
21 ownership of it. So now, tell me based on what
22 you've said about its legacy, tell me how -- from
23 that, how did you end up conveying it on 4th
24 August, 2015?

25 A. I was on my way to see mom. Trish

1 called, mom had been there, I think less than a
2 month. She was not doing well and I had started
3 the proceedings back in July, but I never completed
4 it. And I thought, well, this would be something I
5 can do to kind of boost her. I didn't know the
6 condition mom was in. Mom left me talking when I
7 transferred her to Trish in July for a wedding in
8 South Carolina.

9 So -- so when I was on my way when
10 Trish -- the way she sounded, I knew and I could
11 just feel that mom was not in a good place. So I
12 thought, well, maybe I know it was something mom
13 wanted me to do and I kept --

14 MS. MOORE: Objection, Your Honor.

15 THE COURT: Yes, sustained.

16 Q. Cyndy?

17 A. Okay. I'm sorry. I'm sorry.

18 Q. Again, please, just tell --

19 A. So I --

20 Q. No, listen. Listen. Tell me what --
21 tell me why you did what you did without reference
22 to what other people told you, just what you did.

23 A. Okay. I was on my way to see mom. I
24 had the quitclaim Deed done prior to that. And my
25 customary route is to stop in Augusta to see Portia

1 and Earnest and then go on in to South Carolina.
2 And that's what I did. I stopped there. I wanted
3 to get it notarized before I saw mom. Because I
4 knew I would be in that area, in the Orangeburg
5 area, so I stopped by Portia's and Earnest. And
6 then that morning I got up and asked them to come
7 and -- because I needed to get that notarized and I
8 got it notarized. I signed as I was instructed to
9 sign and that's -- that was it. And then I
10 registered it in Orangeburg when I got the
11 opportunity to do that.

12 Q. Okay. So let me ask you, who drafted
13 the Deed before it was signed? Who typed it up?

14 A. I got the document off LegalZoom.

15 Q. Okay. And why did you prepare a Deed?

16 A. Because I was following my mother's --

17 MS. MOORE: Objection, Your Honor.

18 THE COURT: Sustained.

19 A. Because I wanted to maintain that -- I
20 wanted to --

21 Q. Let me -- there was an objection, so
22 let me ask the question again and remind you, you
23 can't talk about what someone told you. Okay. Or
24 what your mother, you know, any observation of your
25 mother.

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1 A. Okay.

2 Q. So why did you have that -- why did
3 you, Cyndy Stewart, have that Deed prepared?

4 A. To protect the legacy of the property.

5 Q. And that's the legacy you testified to
6 earlier?

7 A. Yes. Yes.

8 Q. All right. When did you prepare that
9 Deed? When did you prepare it?

10 A. In July of that year. I probably had
11 it before that. But July of that year, 2015.

12 Q. Okay. How long had it been your
13 intention to transfer that property?

14 A. Oh, my goodness. Five or six years. I
15 just never got around to doing it.

16 Q. Had you discussed that with anyone
17 else? And don't tell me what they said, but did
18 you discuss it with anybody else?

19 A. Yes, several times.

20 Q. All right. Did you discuss it with
21 your sisters? The Plaintiffs in this case?

22 A. Discuss the maintenance of the house, I
23 don't think discussed --

24 Q. Discussed the ownership of the
25 property?

1 A. No. No, I did not.

2 Q. Okay. Did you discuss it with anyone
3 beside your sisters?

4 A. Yes, relatives. Other cousins. Yes.

5 Q. Did you discuss it with your mother?

6 A. Oh, yes.

7 Q. All right. Don't tell me what you
8 said, but --

9 A. Yes, my mother. For years I discussed
10 it with mother.

11 Q. Okay. And why -- you said it's a
12 legacy property, what's the significance of that
13 with regard to the Deed process?

14 A. To keep it as a legacy home so it will
15 never be sold. And because it's a historical
16 monument in many ways to our family's legacy, the
17 hard work that they put into that. The fact that
18 through all of the history of African Americans in
19 the south that my great-grandfather was able to
20 amass this beautiful home and keep it for over one
21 hundred years. So the house has significant -- has
22 significant value to my mother in terms of not its
23 property value, but in terms of its legacy. And I
24 shared that value system about the house.

25 Q. So when you drafted -- when you drafted

1 | that -- well, let me -- I apologize. Let me ask
2 | another question. Had you signed on behalf of your
3 | mother using their POA prior to executing the
4 | August 4, 2015 Deed?

5 | A. Yes. Yes, I had.

6 | Q. Did you make any notation on the Deed
7 | that you prepared of your capacity as a power of
8 | attorney?

9 | A. Ask me that again.

10 | Q. In drafting the Deed, did you make any
11 | reference to your capacity as a power of attorney
12 | holder on the face of the Deed -- in the text of
13 | the Deed that you prepared?

14 | A. Yes, I did. I prepared Cyndy Reed
15 | Stewart as POA. Yes, I did.

16 | Q. Did you sign on behalf of your mother
17 | on that August 4th Deed?

18 | A. Yes, I did. And in a normal signature
19 | like you can see how I signed. Yes, I did.

20 | Q. Had you ever signed her name the way
21 | you did on the Deed in your capacity of a power of
22 | attorney?

23 | A. I'm not sure. I think if I had been
24 | instructed to do that through an official by the
25 | medical facility or something, I would put POA

1 | under it. But I signed as I was instructed to do.

2 | Q. Okay. And there was no lawyer or other
3 | real estate professional involved in the
4 | preparation or execution of this Deed?

5 | A. No. There was -- I went to Wells Fargo
6 | who does all my notaries. I went to a Wells Fargo
7 | in Richmond County. Because that's where I was
8 | staying when I came up. I stayed with Portia
9 | Hopper and then I got this done and then I went on
10 | to see mother.

11 | Q. Okay. At anytime has -- when was --
12 | strike that. When was the last time your mother
13 | permitted someone to be a tenant in that property?

14 | A. Probably, I think, in 2003. 2003 --
15 | 2003, 2004, I'd have to go back and figure.

16 | Q. So --

17 | A. Yes. When I charted stay, there was a
18 | young lady, a grad student and she needed a place
19 | to stay. And I allowed her to live in the house --
20 | well, I left that summer and so from August until,
21 | I think, May and then I wanted her out. So it was
22 | not -- she just was not able to -- she didn't
23 | maintain the property like I thought. I mean, she
24 | kept it okay, but she just had an animal that
25 | didn't belong in the house.

1 Q. Okay. So let me ask you. So I believe
2 you testified earlier that this house is within
3 walking distance of the University?

4 A. Oh, yes, it is.

5 Q. And you stayed there part of the time
6 when you went to school, you had a grad student as
7 a tenant, why didn't the property always have a
8 student as a tenant?

9 A. Because mom really didn't want anyone
10 staying in the house long term.

11 Q. So --

12 A. I know that's hearsay. But it was my
13 belief that she did not want anybody living in the
14 house long term.

15 Q. Did anyone --

16 A. Because the house still had antiques in
17 it.

18 Q. Okay. At anytime since your mother has
19 passed away, has anyone asked you to put a tenant
20 in that house?

21 A. No. No.

22 Q. Is -- if -- and I understand you don't
23 want to, but if you were to put that house on the
24 market as it is today, what do you believe a fair
25 market price for it would be?

CYNTHIA STEWART - DIRECT EXAMINATION BY MR. PHILLIPS

1 A. Probably 50,000. Because the house is
2 in -- and I was seeking to get the house in a
3 historical preservation, but that's a long arduous
4 process. And I did reach out to the South Carolina
5 Historical Society, I think they're in Charleston
6 or somewhere, and it took -- it just takes a lot of
7 documentation. But I was trying to get some funds
8 to re-have the house right before this court
9 proceeding, this started to at least renovate it.

10 But the house is in a dilapidated area.
11 That area, and I was going through the small
12 business administration, that area where that house
13 is located has been declared an urban renewal area
14 which means most of the houses in that area are --
15 needs to be brought up to code.

16 Q. Okay.

17 A. So it is not -- it is in one of the
18 lower income housing areas in Orangeburg. But
19 because that house is in a historical area, there
20 are funds available to help people at least bring
21 the houses up to code. Many of the houses right
22 around that property have been torn down because
23 they're unfit to live in. The two houses that were
24 right across the street from -- the houses have
25 been torn down in the last four years.

CYNTHIA STEWART - DIRECT EXAMINATION BY MR. PHILLIPS

1 Q. Let me ask you a different question.
2 And I apologize if you here a beep, that's my
3 phone.

4 A. You asked me the value. I would say
5 the value is about 40,000.

6 Q. Okay. I'm sorry. In your view, what
7 is the fair market price of the property?

8 A. Because the property sits around
9 state's college --

10 MS. MOORE: Your Honor, I would just to
11 preserve the record, I object. He objected when my
12 client was testifying to market value --

13 THE COURT: And I'm going to overrule
14 it on the same basis.

15 MS. MOORE: Yes, Your Honor.

16 THE COURT: You may proceed.

17 A. Okay.

18 Q. You may answer the question.

19 A. Okay. In the state, about 40,000 would
20 be, I think, how I would sell on the market if it
21 were appraised.

22 Q. All right. Since you've been appointed
23 as the personal representative, have you -- have
24 you maintained as I understand it your mother has
25 two houses, one in Bamberg, one in Orangeburg;

1 correct?

2 A. Yes.

3 Q. Okay. Have you as personal
4 representative, have you done anything to maintain
5 the Bamberg house?

6 A. Oh, yes. I pay all the taxes and all
7 the upkeep and all the repairs. I do the same
8 thing in the Orangeburg property. I maintain all
9 the taxes, the lawn care, and the repairs out of my
10 personal funds. Because the estate has no funds.
11 I say very limited funds.

12 MS. MOORE: I do have an objection.
13 I'm not sure why we're taking about the Bamberg
14 property again because it's not relevant and
15 neither is the probate. We made that clear. Also,
16 I would like to Court to take notice an objection
17 on how she paid the taxes. She owned the house,
18 that's the responsibility of a homeowner. So to
19 the extent that she has testified, I do object.

20 THE COURT: Okay.

21 A. Well, I didn't own the house in 2008.
22 I have been paying the taxes since 2008.

23 MR. PHILLIPS: I'm sorry, Your Honor.
24 If you ruled, I didn't hear. Okay. Moving on.

25 A. Can I answer that?

1 Q. No, that's okay. So, Cyndy, as
2 personal representative, there -- a document came
3 into evidence earlier today, an inventory document
4 prepared for the Bamberg probate court. Are you
5 familiar with that document?

6 A. Yes, I am. I don't have it in front of
7 me, but, yes, I am.

8 Q. Okay. Did you prepare that document?

9 A. Yes, I think I did. Yes.

10 Q. Did that document list the Orangeburg
11 house on it?

12 A. No, it does not.

13 Q. Did you prepare any other inventories,
14 calculations, any other documents pertaining to the
15 assets of the estate?

16 A. Other than that one?

17 Q. Other than that one.

18 A. I've done some recent documentation to
19 Vanessa's firm.

20 Q. So have you ever executed a document on
21 behalf of the probate proceeding where you listed
22 the Orangeburg house as an asset of the estate?

23 A. No, I have not. No, I have not.

24 Q. Okay. I understand that right now that
25 your being a personal representative is being

1 | challenged. So, is it your intention to add the
2 | Orangeburg house to the probate court inventory if
3 | you get the opportunity to do so?

4 | A. I need to seek legal counsel. Let me
5 | tell you --

6 | Q. That's okay. I don't want to hear
7 | about -- I know the estate has separate counsel.

8 | A. And I'll do what is within the law to
9 | do. I do want to preserve that house.

10 | Q. Okay. I appreciate it.

11 | A. So, no, I don't want to liquidate that
12 | house. No, never.

13 | Q. The -- have -- who has the keys to the
14 | Orangeburg house?

15 | A. There's a key -- there's a key in mom's
16 | house and both my sisters have keys to mom's house.
17 | There's a key to the house in mom's house and I
18 | keep a key. And I think Dennis keeps a key because
19 | he goes in the house to check on it. And I think
20 | my cousin Theron has a key to the house. Because
21 | he lives in Orangeburg and I have him check on the
22 | house.

23 | Q. So all those people who have keys, have
24 | you ever denied any of them access with their keys?

25 | A. No, never. Well, I have not denied

1 | them access. I did get a message from Ms. Moore
2 | asking me about access and I didn't respond to
3 | that. But not for my sisters, no. No, they never
4 | asked me for the keys to that house.

5 | Q. All right. Thank you. The -- do you
6 | understand the nature of the two causes of action
7 | that we're trying here against you today, fraud and
8 | breach of fiduciary duty?

9 | A. I'm not an attorney, I understand the
10 | essence of what they are seeking to do. Yes.

11 | Q. Okay. With regard to fraud, do you
12 | understand that it involves a misrepresentation?

13 | A. Yes.

14 | Q. Okay. And you understand that the
15 | allegation is that by signing your mother's name
16 | where you did on that Deed that that was a
17 | misrepresentation?

18 | A. That was not a misrepresentation in my
19 | view. I was following the POA I had in place. I
20 | was following the wishes to preserve the house.
21 | And I signed as the notary told me to sign.
22 | Because she -- I guess I can't say hearsay. I
23 | signed as I was directed to sign.

24 | Q. All right. And so with regard to your
25 | -- the POA. The POA was executed in Florida?

CYNTHIA STEWART - DIRECT EXAMINATION BY MR. PHILLIPS

1 A. Yes.

2 Q. Tell me about the circumstances giving
3 rise to that -- the execution of that Florida POA?

4 A. Yes. I think mom had -- she was -- I
5 can't remember if she came from -- she was having
6 some trouble with her -- mom had a feeding tube.
7 She was having a little congestion, so we took her
8 to see her doctor and he put her in the hospice so
9 they could just do some x-rays and do a thorough --
10 and in Florida, the way it works when your -- you
11 got underlying health conditions like mom had a
12 feeding tube, like mom had Parkinson's, when you go
13 into the hospital for let's say chest tube to be
14 checked out for pneumonia or whatever, they don't
15 release you back home. They release you to a rehab
16 center and make sure, you know -- you know, because
17 mom needed to -- they were building her strength,
18 they were making sure she was, you know, aspirating
19 right.

20 So it was at a time she was at, I think
21 it was Covenant. Covenant which is one of the
22 better rehab places here. She was in the hospital
23 to Covenant and the social worker at Covenant was
24 telling -- was, you know --

25 Q. Don't tell me what -- don't tell me

1 | what the social worker said --

2 | A. The social worker advised that I needed
3 | to get a POA in Florida. And also a
4 | do-not-resuscitate order any health care directive
5 | to get all of that now while mom was still able to
6 | make decisions. Because mom was mentally sharp --
7 | not sharp, she had dementia, but mom could make
8 | decisions and mom could share her feelings about
9 | things. Because when we did the order for
10 | resuscitation, the doctor -- hearsay again. They
11 | asked the patient -- however, and mom signed --

12 | Q. Okay. That's fine. Let's not talk
13 | about what the doctor said. But it is -- this --
14 | in addition to your mother, have you had any
15 | personal experiences with these rehabilitation
16 | centers that elderly people are transferred to
17 | after a hospital stay?

18 | A. Yeah. Because we took care of my
19 | father-in-law too. We had mom. We had an 80-year
20 | old for eight years and then we had a 90-year old.
21 | So we had my father-in-law too at the same time --
22 | well, two years after mom came and he had diabetes.
23 | And he --

24 | Q. I understand. So based on that
25 | personal experience with a father-in-law and your

1 mother, is it your understanding that the
2 do-not-resuscitate order and the power of attorney
3 that you testified to, are they routinely
4 recommended by staff?

5 A. Yes. When you go into those facilities
6 in Florida, they give you this whole packet about
7 health care directives. I guess I don't need to
8 lead, but I've got several of them. Because when
9 you go into those facilities that's the first thing
10 they give you to make sure you're aware of your
11 power of attorney, that you have that in place or
12 your living will, I guess that's what they call it
13 also. And you have your health care directives.
14 So I guess they can care for you and whatever needs
15 to happen. If you can't sign for the care you need
16 that there's somebody in charge. And that's why I
17 need my sisters' name and my names. I leave all
18 the families names for them to be in contact with
19 in case they can't reach me. And they have.

20 Q. Okay. So let me ask you about that
21 then. So is it your understanding that the Florida
22 health care power of attorney that's at issue in
23 this case was executed in a routine manner for the
24 facility where your mom was at the time?

25 A. Yes, because the social worker signed

1 it.

2 Q. Okay. So it is -- what is your
3 understanding as to the effectiveness of that
4 Florida power of attorney here in South Carolina?

5 A. I understand through legal gentlemen --
6 legal references that power of attorney stands
7 across state lines. It's to be honored. Because
8 it is your wishes. And if it meets the
9 requirements from what I understand from South
10 Carolina which it does, then -- and it has to be --
11 it doesn't have to be from in South Carolina, but
12 if it meets the terms and it's out-of-state, I was
13 told legally advising, you should have it recorded
14 in South Carolina. So I don't know -- I can't
15 remember what attorney told me that. But they told
16 me I need to get it recorded in South Carolina as
17 well and that's what I did.

18 Q. And where did you have that health care
19 power of attorney recorded?

20 A. In Bamberg County where mom's residence
21 -- main residence and property is.

22 Q. And this transfer occurred -- this
23 property transfer of the Orangeburg house occurred
24 in Orangeburg County; correct?

25 A. Yes.

1 Q. And you've seen the document where it
2 was also filed in Orangeburg. Can you tell me why
3 it was filed here in Orangeburg?

4 A. The power of attorney?

5 Q. The Florida power of attorney, yes.

6 A. Oh, probably because of the quitclaim
7 Deed.

8 Q. I couldn't understand you.

9 A. I said probably because of the
10 quitclaim Deed when I did the -- when I registered
11 with the court as POA, they probably -- I don't
12 know, someone probably advised me to make sure they
13 have a copy of that also and so I filed it.

14 Q. So by filing the POA and the Deed, was
15 it your intention to deceive anybody about the
16 ownership of the Orangeburg property?

17 A. No. It was my intention to follow -- I
18 thought I was following the law under the POA and I
19 was following the directives of the clerks in that
20 office when I had to file the quitclaim Deed. I
21 knew you had to file it. And so I was following
22 the directives given.

23 Q. And you're aware, you've seen a copy of
24 your mother's will that has been entered in this
25 case?

CYNTHIA STEWART - DIRECT EXAMINATION BY MR. PHILLIPS

1 A. Yes, I have.

2 Q. Okay. And with regard to Plaintiff's
3 Exhibit Number -- I believe it's 3, it's a letter
4 from Attorney Linda Knapp?

5 A. Yes.

6 Q. Can you tell me who Linda Knapp is?

7 A. Yes. Linda Knapp was mom's attorney.
8 She was mom's attorney in Barnwell, South Carolina.

9 Q. For how long did she represent your
10 mom?

11 A. Oh, my goodness, for about four --
12 until they brought the action in 2009. They just
13 kind of muted her.

14 Q. Okay. So --

15 A. She was mom's attorney until that
16 action. So from 2008 until 2009, I guess. '09 or
17 '10.

18 Q. And the letter that's an exhibit that
19 you reviewed last night for me as we were
20 completing the request to admit, do you remember
21 that document I sent to you?

22 A. Yes.

23 Q. Do you remember seeing that document?

24 A. Yes, I do.

25 Q. Prior to me showing it to you?

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 A. I think prior to your showing it to me
2 I saw that document. You mean the one from Linda
3 Knapp?

4 Q. Yes.

5 A. Yes.

6 Q. Okay. So last night you didn't recall
7 seeing it. So is it your testimony now that you
8 did?

9 A. Was this the one talking about how you
10 need to sign?

11 Q. Yes.

12 A. Okay. Then, no, I don't quite remember
13 it. I'm sure it was shared, but I don't remember
14 seeing it. I don't remember taking that in.

15 Q. But you read it last night along with
16 its recommendation about how to sign as POA?

17 A. Yes. And I knew when I signed as --
18 signed mother's name or my name, I had to put -- I
19 was supposed to put POA. But I also -- I'm not an
20 attorney, so I did not know if the notary -- I
21 thought a notary had -- anyway, if a professional
22 who notarizes and does just like a lawyer telling
23 me to sign something --

24 Q. Let me not have you testify --

25 A. -- the correct thing. So I didn't

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 | intentionally sign trying to deceive anyone?

2 | Q. All right. Let me ask you this. So in
3 | executing the August 4, 2015 Deed, did you rely on
4 | the advice of others as to how to sign it?

5 | A. Yes, I did. And if you look at my
6 | signature, my signature is the same as it is on my
7 | signature. So I didn't try to disguise -- because
8 | mom has a distinct signature. I didn't try to
9 | disguise my signature that looks like mom, I signed
10 | it as me. But I put at the top and I thought
11 | because at the top it had power of attorney that I
12 | would be -- that that would be fine and undoubtedly
13 | the other authority did too.

14 | Q. All right. Thank you, Cyndy. I'm done
15 | with my direct examination. Please answer
16 | questions for opposing counsel.

17 | A. Okay.

18 | THE COURT: Cross examination?

19 | CROSS EXAMINATION BY MS. MOORE:

20 | Q. Good afternoon, Ms. Stewart. How are
21 | you doing today?

22 | A. I'm fine. Thank you.

23 | Q. All right. So very briefly. This
24 | Florida power of attorney, there was already a
25 | power of attorney that had been executed prior;

1 correct?

2 A. Yes, there was.

3 Q. In 2010; right?

4 A. Right. By Bruce Holland, yes.

5 Q. And it was executed -- do you have it
6 in front of you?

7 A. No, I do not have it in front of me.
8 But I do -- I know I have it somewhere, but I don't
9 have it in front of me.

10 Q. Okay. Well, I had Ms. Gladden read it
11 out yesterday.

12 A. I couldn't hear her yesterday. I
13 couldn't hear her testimony yesterday.

14 Q. Okay. So --

15 A. If you give me a moment --

16 Q. Absolutely.

17 A. -- I might can put my hands on it. You
18 want to give me a moment to see if I can find it?
19 Let me see if I can find it. Is it in your
20 exhibits? I have your packet. Is it in your
21 exhibits?

22 Q. Yes, ma'am. Exhibit 4.

23 A. Then I should have it.

24 MR. PHILLIPS: I believe 4 -- I don't
25 think 4 is the Florida power.

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 MS. MOORE: No, I'm looking at her
2 2010.

3 MR. PHILLIPS: I'm sorry.

4 MS. MOORE: That's okay.

5 A. I don't the entire thing, I just have
6 the last page.

7 Q. Well, if it's all right, I'll read to
8 you the statement of intent. "By this instrument,
9 I intend to create a durable power of attorney
10 under the law of the State of South Carolina. It
11 is also intended that this durable power of
12 attorney be valid in the State of Florida as well.
13 Since I do plan to visit extensively with my agent,
14 Cynthia Stewart, who is one of my three daughters
15 and a current resident of Florida."

16 Do you recall that being in this power
17 of attorney?

18 A. I think so.

19 Q. Okay. So you had a power of attorney
20 that was fully usable in Florida already prior to
21 --

22 A. The terms of that power of attorney I
23 questioned since it was even -- the inception of
24 it. Because that happened under the auspicious of
25 my sisters. Jackie had taken mom and then putting

1 her in that situation. So, no, there's a lot of
2 terms on that power of attorney that I frankly did
3 not trust. Okay.

4 Q. Well, didn't you take your mother to
5 get a will done?

6 A. Yes, but we all three of us were there.
7 We were all there. And I invited Trish and Jackie
8 to Ms. Knapp's office when we had that will done.
9 Okay.

10 Q. Okay. I would like you to look --
11 okay. Let's look at Exhibit 2.

12 A. Okay.

13 Q. That PS, would you read it for me?

14 A. PS?

15 Q. The PS on page 2 of that letter from
16 Ms. Knapp.

17 A. I guess I don't have Ms. Knapp's letter
18 in front of me.

19 Q. Well, I can read it for you, ma'am.

20 A. Hold on. Hold on. Because Ms. Knapp
21 also did a power of attorney in, you know, in 2007
22 that this 2009 one overrode. So I guess because
23 you have one power of attorney does not mean it's
24 just insignificant. Because in 2008 Ms. Knapp did
25 a power of attorney and she appointed me as mom's

1 power of attorney.

2 Q. Ma'am, the question was -- the question
3 was, you had a Florida power of -- or power of
4 attorney that was fully usable in Florida, that was
5 the question.

6 A. Well, I don't know if it was fully
7 usable in Florida. I assumed it could be.

8 Q. Do you want me to read that sentence to
9 you again, ma'am?

10 A. But I think I went with the advice of
11 an agent who was there looking after mom's overall
12 health care. And I guess health care matters. To
13 make sure that she was covered.

14 Q. Is a health care --

15 A. I was going to make decisions for her.

16 Q. Ms. Stewart, is a health care
17 professional an attorney?

18 A. No, but they have a lot of -- they have
19 a lot of -- how can I put it, experience working
20 with the elderly in Florida, yes, because she was
21 at a health care facility.

22 Q. Did you disclose to that health care
23 facility that you already had a power of attorney
24 that granted you powers in Florida to take care of
25 Ms. Reed?

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 A. It was not necessary. That's why we
2 didn't have health care directives from South
3 Carolina either. And she didn't have a
4 do-not-resuscitate order from Florida --

5 Q. I'm not asking about the
6 do-not-resuscitate, Ms. Stewart.

7 A. -- in her making sure she had all she
8 needed and I had all I needed to make good health
9 care decisions for her.

10 Q. Okay. So we're --

11 A. It wasn't executed out of contempt for
12 the POA that Bruce Holland had put together. But,
13 frankly, you know, I -- we didn't have any input to
14 that. You know, he did that and I don't think -- I
15 don't know if maybe Jac and Trish were there, I
16 wasn't there.

17 Q. So -- okay. So, is your statement that
18 a power of attorney that is issued to you and
19 signed by your mom doesn't have an effect if you
20 don't have input on it?

21 MR. PHILLIPS: Objection, Your Honor.
22 I don't think that's a fair characterization of her
23 testimony.

24 A. No, it's not.

25 THE COURT: Well, she can -- it's cross

1 examination, she can certainly say it's not.

2 Q. All right. Then what specifically
3 about this power of attorney that you agree existed
4 at the time you executed the Florida power of
5 attorney was wrong?

6 A. I don't know if anything was exactly
7 wrong with it. I just thought because we were
8 having to update everything we were going to update
9 mom's power of attorney since it was suggested.

10 Q. All right.

11 A. And so I executed it.

12 Q. All right. In this previous power of
13 attorney, there was a restriction on your ability
14 to sell property and dispose of property, wasn't
15 there?

16 A. If you -- if you say so. If it's in
17 there. I don't have it in front of me like I told
18 you. But if you say that's in there --

19 Q. Well, I can read it for you, Ms.
20 Stewart. On page 6, Article 6, Section 2, sale of
21 property prohibited by agent. "My agent may not
22 sell, mortgage, dispose of any of my property" --

23 THE COURT: Slow down.

24 MS. MOORE: Oh, sorry.

25 Q. -- "dispose of any of my properties

1 unless I give my written consent or by order of the
2 court of a competent jurisdiction. Since I plan to
3 retain my South Carolina residency status, a court
4 of competent jurisdiction must be in South Carolina
5 and not Florida where I will be visiting
6 extensively." That's a prohibition against sell of
7 property.

8 A. Well, in the earlier power of attorney
9 that mom had with Ms. Ness, it doesn't have those
10 inclusions, so.

11 Q. I understand that, but we're not
12 talking about the earlier power of attorney. We're
13 talking about --

14 A. I didn't pay attention to that
15 statement in particular as you're trying to
16 suggest. I just updated things because mom was in
17 a facility and the social worker thought it was
18 time to make sure everything is updated so there's
19 no hindrance to making any decisions that affects
20 mom's health. And mom was living with me at that
21 time. She may have visited South Carolina every
22 now and then, but mom was my full responsibility 90
23 percent of the time. And so I needed to be able to
24 take care of her as I did to the best of my
25 abilities to speak for her and with her and on

1 | behalf of her. And so that's why I executed it.

2 | Q. Ms. Stewart, are you familiar with the
3 | duties and responsibilities --

4 | A. But clearly they want you to have
5 | things that are updated. And I didn't know all of
6 | South Carolina -- anyway. I just told you why I
7 | did it.

8 | Q. Ms. Stewart, are you familiar with your
9 | duties as a power of attorney?

10 | A. Yes, I am in general. Yes.

11 | Q. All right. Is one of those duties not
12 | to interfere with the estate plan in place as far
13 | as -- as far as you are aware at the time of your
14 | power of attorney?

15 | A. Repeat that.

16 | Q. Is one of your duties as a power of
17 | attorney, and I apologize for the complexity of the
18 | way this is stated, this is the way the statute was
19 | written, not by me. Is it your duty as a power of
20 | attorney not to interfere with the estate plan of
21 | your principal to the extent that you know what
22 | that estate plan is?

23 | A. Okay. Well, I knew the estate plan for
24 | my mother was to preserve that property. So, I
25 | don't know --

1 Q. All right. So let's go into that.
2 What tragic thing was going to happen to this
3 property if it transferred to the estate?

4 A. Well, at that point, it wasn't in the
5 estate. I was just trying to preserve the
6 property.

7 Q. Why wasn't it -- why wouldn't it have
8 been preserved without that conveyance? That's
9 what I'm asking you. What was it being preserved
10 that caused you to need to convey it five days a
11 week before she died?

12 A. To make sure it was taken care of
13 properly. You know, I was expending my personal
14 monies to keep up with that property. And so to
15 have it in the registry, you can't go through an
16 estate as far as I understand. You have to
17 preserve it through a body. And that house has
18 always been owned from, I guess hearsay, has always
19 been owned by one person to preserve and protect
20 and maintain it and that's what was passed down to
21 me.

22 Q. So you're saying that it can't pass
23 through an estate?

24 A. It was -- this property was not in the
25 estate. It's property estate now, but at that time

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 | it was not in the estate. And --

2 | Q. Ms. Stewart?

3 | A. -- that intentionally --

4 | Q. Ms. Stewart, I am asking you if you are
5 | saying that in Order for it to preserve the legacy
6 | --

7 | MR. PHILLIPS: Your Honor, I believe
8 | she was pretty clear on what she said. So I think
9 | she's a little bit badgering the witness.

10 | THE COURT: Okay. Thank you. It's
11 | cross examination. You may proceed.

12 | Q. I'm asking you, you said that you
13 | didn't believe that a legacy property could be
14 | passed through an estate. I am asking you if that
15 | is your --

16 | A. I'm not sure. I'm still not sure how
17 | you do that. But I know it needed to be preserved
18 | and not sold off.

19 | Q. Okay. How did your mother inherit --

20 | A. I wanted to preserve that legacy.

21 | Q. How did your mother get the estate --
22 | or get that property?

23 | A. Through her aunt who only gave it to
24 | her. And that's what -- that was the legacy on
25 | that property. One owner to preserve and protect

1 and maintain it. And that has been the historical
2 legacy since it was -- since my great-grandfather
3 had it. One owner on that property --

4 Q. Ms. Stewart, did your mother --

5 A. -- and my mother had several brothers
6 and sisters also, but my aunt just left it to mom.

7 Q. Ms. Stewart, did your aunt convey it
8 through a Deed or was it conveyed through a will?

9 A. I think it was conveyed through her
10 will.

11 Q. So my question --

12 A. She named it specifically. Mom did not
13 name this property specifically and I think that
14 was intentional.

15 Q. So you don't think that in your
16 mother's will where it says that all real property
17 is to be equally divided between the three of you
18 that does not include the Orangeburg property?

19 A. That's correct. I do not think she
20 wanted that property to be divided because you
21 can't divide it. And she needed to it to be
22 maintained and she knew that I would maintain it as
23 I always -- as I had a history of maintaining and
24 protecting and looking out for that property. So
25 she knew it would be in good hands.

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 Q. Then why did she not specifically -- if
2 you're saying that she knew this in her will, why
3 did she not specifically say that you were to get
4 that property in her will?

5 A. I don't know, but she told me. I don't
6 know. I don't know. I --

7 Q. All right. All right. So --

8 A. I can't answer that.

9 Q. So let's get to the Deed. So you --
10 you admit to signing her name?

11 A. Yes, I did.

12 Q. Is a notary an attorney?

13 A. It's an official that's registered by
14 the state. So usually when a notary tells me to
15 sign when I closed my mortgage, I sign where the
16 notary tells me to sign as a notary tells me to
17 sign. When I go to the bank, the notary tells me
18 how to sign and I sign. I don't typically question
19 a notary. So I assumed she -- I had at the top of
20 it power of attorney. She knew I was coming in as
21 power of attorney because I showed her my power of
22 attorney. Okay. So I didn't deceive her, come in
23 with this quitclaim Deed and say sign, you know,
24 the notaries are scrupulous in terms of do you have
25 your documents? Do I have your ID? Do you have

1 | this? I had all of the paperwork I needed to have
2 | to have it done. So, no, I didn't come in there
3 | without my power of attorney.

4 | Q. All right. So is being prepared by a
5 | power of attorney the same as being signed by a
6 | power of attorney to you?

7 | A. Is being prepared --

8 | Q. Right. You said that you put --

9 | A. I guess it shows to the notary that I'm
10 | the one that's orchestrating, I'm the author of it.
11 | So if I'm the author of it and I sign my book, I'm
12 | still the author of the book. So, yes, I would
13 | think a notary would recognize that. And like I
14 | said, I gave her my power of attorney, so that was
15 | something that she needed to have. I also gave her
16 | a copy of the old Deed because she -- okay, not
17 | supposed to say she said. But there were things --
18 | items I needed to bring in to have it properly
19 | notarized and I did that.

20 | Q. All right. So you think that saying
21 | that the Deed was prepared by you is the same as
22 | indicating that a signature was done by a POA?
23 | That is what your statement is today?

24 | A. I am saying that my intent was not to
25 | deceive and not let her know because the notary

1 | happened to be a female that I was the one
2 | authoring this. I didn't deceive her to say, oh,
3 | I'm going to sign for my mom as -- and not going to
4 | tell you I'm signing for my mom. She knew I was
5 | signing for my mom. Okay --

6 | Q. Would anybody --

7 | A. And I brought in my POA for my mother.
8 | So, I mean, notaries to me -- notaries I've found
9 | are pretty savvy about looking at names and
10 | signatures and lines and dates. All the ones I
11 | know that's their -- that's what they horn in on.
12 | And so I had the documentation. I had the Deed to
13 | the property the way it was titled and then I had
14 | my POA. I had my license and I had the quitclaim
15 | Deed. And we went from there.

16 | Q. Would anyone outside that room that day
17 | know that you signed it as a power of attorney just
18 | looking at the document?

19 | A. I don't know if they looked at the
20 | document they would have seen it at the top.
21 | Portia -- Reverend Portia Harper was with me.
22 | She's a honorable retired teacher. Her husband
23 | Earnest was with me. Earnest is a former Marine
24 | and executive at John Deere, so, yeah, they were --
25 | they're not going to sign anything they don't read.

1 So, yes, I'm sure -- like I said, this is hearsay
2 again. Yes, they looked at the document. They're
3 not going to sign anything that --

4 Q. I'm not talking about the people that
5 witnessed the document. I'm saying if someone
6 pulled the Deed out of Orangeburg County and saw
7 that signature, would anybody know that anybody
8 other than Ms. Reed signed that document? Based on
9 just the signature?

10 A. That's a hypothetical. I can't answer
11 that. If they thoroughly see at the top and they
12 see power of attorney and they see my name and they
13 see my name on the signature page, I think common
14 sense would say, oh, yes, she prepared it. She
15 signed for her mother as a POA. But, you know, so
16 I would think common sense, yes. If somebody is
17 looking through the document they would notice
18 that.

19 Q. All right. And just real quick. Ms.
20 Hopper and Mr. Hopper are close friends, aren't
21 they?

22 A. They're husband and wife.

23 Q. Yeah, but they're close friends to you?

24 A. Oh, yes, they are.

25 Q. Okay. So what about the 2009 Order

1 specifically and you've had it read into court,
2 page 8, paragraph 9 where there was prohibition on
3 selling any property. Was that ever lifted?

4 A. No. I thought -- didn't we just talk
5 about that? You talking about the POA again?

6 Q. No. I'm talking about the Order from
7 the first hearing in 2009 that was filed December
8 of 2009 --

9 A. Also gave mom competency to make
10 decisions.

11 Q. Yes. That's not the question. The
12 question is, was there a prohibition on selling
13 property?

14 A. To me that was, you know, mom still had
15 decision making capability regardless of what you
16 might think. Mom still could make decisions. She
17 did have dementia. She would get confused. She
18 knew where her home was which she thought was here.
19 She knew where her home was in Denmark. She knew
20 who her children were and she knew that she
21 respected Judge Belton who she wanted to take care
22 of her affairs. She said the same thing to Linda
23 Knapp. So mom knew who she was, okay. And so mom
24 made decisions after Judge Belton --

25 Q. Ms. Stewart --

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 A. -- and I honored those.

2 THE COURT: Ms. Stewart?

3 A. Yes.

4 THE COURT: I need you to please listen
5 to the question and try to answer the question,
6 please.

7 A. Okay. I'm trying.

8 THE COURT: Thank you so much.

9 Q. Does the 2009 Order have a prohibition
10 against selling property? Any property owned by
11 mom?

12 A. Are you asking me that, does it?

13 Q. Yes, ma'am.

14 A. Okay. If you're reading it, it does.
15 Are you asking me did I pay attention to that?

16 Q. I just asked you if that's what the
17 Order said.

18 A. If you're reading it then what can I
19 say, but, yes, if that's what the Order says. I'm
20 not reading that. I'm not reading that Order. But
21 I believe you --

22 Q. Okay.

23 A. I believe you wouldn't lie, so, yeah, I
24 believe --

25 Q. All right. Was that ever overturned by

1 a Court Order?

2 A. It was overturned by mom's current
3 POA's, yes. I believe so, yes.

4 Q. All right. So let's talk about the
5 POA. In 2010, did you provide testimony to a court
6 that your mom was incompetent or incapacitated?

7 Excuse me.

8 A. No, I did not. And, yeah, I'm glad you
9 raised that. No, I did not. Because incapacitated
10 probably legally is not how I interpreted what they
11 were saying. And then when I saw that, so, no, I
12 would never have said that mom was incapacitated
13 physically because she had Parkinson's and she had
14 -- I don't think she had Parkinson's then, but she
15 had dementia. She had vascular dementia. So,
16 yeah, she had some incapacities, but she wasn't
17 incapacitated --

18 Q. Would a more --

19 A. -- because she could not move because
20 mom walked into court, sat down and spoke clearly
21 to the judge.

22 Q. Would a more fair statement be that you
23 testified that her capacity had diminished?

24 A. Yes. Yes, I would say that.

25 Q. Okay.

1 A. That happens with dementia.

2 Q. So you talked about the diagnosis of
3 dementia and Parkinson's. Those are progressive
4 diseases, aren't they?

5 A. Yes, they are. And Parkinson's is more
6 progressive than dementia. And people can have
7 dementia for 20 years and be fine and be
8 functional. But Parkinson's, no, it don't work
9 like that. From what the medical doctors have told
10 me about it.

11 Q. All right. And so --and both affect
12 the mind. Was she ever going to get better?

13 A. Well, no, Parkinson's you don't get
14 better. You can be maintained though, however,
15 because who that -- Michael Fox has Parkinson's
16 disease and he's still acting and making a living
17 for himself and his mind is as sharp as ever and he
18 can't do other things. Because that's what
19 Parkinson's does, it takes your muscles away. It
20 takes your movement away. It gives you tremor.
21 So, yeah, Parkinson's destroys your body.

22 Vascular dementia means there was a
23 part of mom's brain that had been affected, not her
24 entire brain. I don't know what her executive
25 functions may have been. We know in terms of her

1 short term memory, she couldn't remember what she
2 ate, you know, ten minutes ago. But she can
3 remember her house in Orangeburg. She could
4 remember that she went to South Carolina State.
5 She could remember her girlfriends. She could
6 remember her sorority sisters. She could remember,
7 you know, there was a lot of things that were in
8 tact for mom depending on how well she was cared
9 for and how you maintain her.

10 That's why we had her involved in
11 things. We didn't have her just sitting around,
12 lying around. Mom was active here. And she was
13 active in the assisted living facility because it
14 was part of their program. They get you active.
15 They get you up. They get you moving. They get
16 your mind and your body moving. You just don't sit
17 there and waste away like you would in a typical
18 nursing home.

19 Q. All right. Final couple of questions.
20 Why did you wait until momma was on her death bed
21 to do this Deed?

22 MR. PHILLIPS: Objection, Your Honor.
23 I object to the medical characterization of the
24 mother's condition.

25 THE COURT: Sustained.

CYNTHIA STEWART - CROSS EXAMINATION BY MS. MOORE

1 MS. MOORE: All right. Let me re-ask
2 that question.

3 Q. Why did you wait until momma's
4 condition had deteriorated so far to execute that
5 Deed?

6 A. Well, first of all, I didn't know mom
7 had deteriorated that fast. Because when she left
8 me, mom went to church Mother's Day with friends.
9 With myself and some friends and mom was
10 celebrating in church and happy. She could not
11 walk. She was in a wheelchair, so the guys had to
12 come and pick her up and she just was tickled by
13 that. So she didn't leave me, she never left me in
14 the condition she came back in. So it was my
15 intent to get mom to bring her back home. Okay.

16 I knew she was declining because that
17 happens at her age. But I had no idea mom would be
18 unable to speak with me when I saw her. But that
19 goes to how she was cared for. Okay. Not mom's
20 just declined because that's just what happens.

21 Q. Okay.

22 A. So, no, I didn't expect mom to die in
23 South Carolina, I was going on. And I was doing it
24 then because I knew -- because I procrastinated to
25 be honest and I just wanted to kind of give her

CYNTHIA STEWART - REDIRECT EXAMINATION BY MR. PHILLIPS

1 something I thought to boost her. Like, mom I did
2 and I think I said that. I think Trish heard that,
3 but she probably wouldn't admit that, when I saw
4 her --

5 MS. MOORE: Objection to that.

6 A. -- and I know mom --

7 THE COURT: Yes, ma'am. Ms. Stewart?

8 MR. PHILLIPS: Ms. Stewart?

9 (She is continuing to talk)

10 MR. PHILLIPS: Cyndy?

11 A. Yes.

12 MR. PHILLIPS: Pause for a second.

13 THE COURT: Yes, ma'am. This is Judge
14 Goodstein, you are not being responsive. I'm going
15 to ask you to please respond to the question that
16 is asked, okay?

17 A. Okay.

18 THE COURT: All right.

19 Q. If momma was -- if you were contending
20 that momma was fully capable in your care, my
21 question is, why didn't you execute the Deed when
22 she was fully capable of signing it herself, why
23 did you wait until she was incapable to execute
24 that Deed?

25 A. First, I didn't know she was incapable.

CYNTHIA STEWART - REDIRECT EXAMINATION BY MR. PHILLIPS

1 And, second, I just procrastinated. You're right,
2 I should have had it done ten years ago.

3 MS. MOORE: Nothing further, Your
4 Honor.

5 THE COURT: Very well. Redirect?

6 MR. PHILLIPS: Briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. PHILLIPS:

8 Q. Ms. Stewart?

9 A. Yeah.

10 Q. Have you purchased property, real
11 property, houses, land in Florida?

12 A. Yes, I have.

13 Q. Have you purchased property here in
14 South Carolina?

15 A. No, I have not.

16 Q. Okay. In South Carolina there's a
17 requirement that property purchases are closed by
18 an attorney. Do you know whether Florida has a
19 similar rule?

20 A. No, I don't think they do. Because we
21 purchased property, we didn't have an attorney
22 involved.

23 Q. Was a notary involved?

24 A. Yes, the notary was involved.

25 Q. Does a notary oversee the land purchase

1 proceeding?

2 A. Yes -- well, you know, they always --
3 they do a title search and I think the title search
4 company does all the Deed and title search. And
5 then when we close, they send a notary. That's
6 exactly how we do it. Even when I refinanced, we
7 never had an attorney involved. And we've been --
8 we bought this house in, goodness, 1998 or -- yeah,
9 2000.

10 Q. Okay. So --

11 A. And we have refinanced once and we've
12 never had an attorney. We always just have the
13 notary comes and we sign the paperwork and that's
14 it.

15 Q. Thank you for that. So let me skip --
16 with regard to these POA's, lawyers tend to use a
17 word executed. It is -- and I understand that
18 there have been people involved, a Court, the
19 guardian, you know, Attorney Knapp drafted it for
20 you, but did your mother interact in the Florida
21 care facility? Did she interact with the process
22 of creating the Florida power of attorney or did
23 you interact with them?

24 A. We both did. Because as I remember,
25 the -- mom and -- the facility has an office suite.

1 And so when we got to -- when they wanted me to
2 update these documents, they brought mom in.
3 Because like I said, the order of resuscitation was
4 done that day too. And so the social worker was
5 kind of leading us and we just signed the
6 documents. And then that was it.

7 And, yeah, they asked mom questions.
8 Did she know what was going on? Do you know that
9 your daughter is going to be in charge of your
10 affairs? And she agreed to that like she had
11 before. So mom was fully aware, yeah. But I
12 wouldn't say fully aware, she obviously had
13 dementia now. So she wasn't as sharp as she was 20
14 years ago, but she knew the essence of what was
15 going on.

16 Q. Did your mother -- was your mother
17 aware that she had a will at the time she executed
18 the Florida power of attorney?

19 A. Yes -- I can't say. I can't speak to
20 that. I knew she had a will and there was nothing
21 I was going to do to upset that will.

22 Q. And I appreciate that. And did the --
23 is it her signature on that document? The Florida
24 power of attorney?

25 A. I'm not sure.

1 Q. Did you not witness your mother sign
2 the Florida power of attorney?

3 A. I think. I'm not sure. I don't want
4 to say -- I don't have it in front of me. I just
5 know mom was there and I'm assuming they would have
6 had her sign if her signature is needed.

7 Q. Do you recall the episode when this was
8 created?

9 A. Yes. I know -- hold on.

10 Q. Did you sign -- when you were present,
11 did you sign for your mother?

12 A. No, I wouldn't sign for her if she was
13 there.

14 Q. Okay. So do you have any reason to
15 believe that anyone other than your mother signed
16 the Florida power of attorney?

17 A. No. Because like I said, it was mom,
18 myself, and the social worker.

19 Q. All right. Thank you, ma'am.

20 MR. PHILLIPS: No further questions,
21 Your Honor.

22 THE COURT: All right. Recross?

23 MS. MOORE: No, thank you, ma'am.

24 THE COURT: All right. Very well.

25 Call your next witness, please.

1 MR. PHILLIPS: Your Honor, I believe
2 the Defendant rests.

3 THE COURT: Okay. Very well. Would
4 there be any reply or rebuttal?

5 MS. MOORE: No, Your Honor.

6 THE COURT: All right. Very well.
7 Okay. I'm going to ask for proposed orders --

8 MR. PHILLIPS: Yes, Your Honor.

9 THE COURT: -- from you both. I'm
10 going to ask for them within 30 days. But if you
11 need longer, y'all get together if you need an
12 extension, if you need longer, and just get
13 together and just let me know, let my staff know
14 that you need longer. Because we do keep up with
15 when we should get things. But I have no problem
16 -- well, I know lawyer's lives can change quickly.

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: So oftentimes you are going
19 to need additional times. If you do, fine, just
20 get together and y'all agree to the time and let me
21 know. I think I'd like to meet with the two of you
22 for just a few moments if you have a few moments
23 for me. I know time is late, I won't take a long
24 time, but let's go into the jury room which is
25 through that door. Ms. Jamison will show you the

1 way. Because I just want to chat with you just a
2 second.

3 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 20th of April, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 6, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter