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Jun 26 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2019-001827

DAVID J. MATTOX,

v.

LISA JO BARE MATTOX,

RECORD ON APPEAL

Michael L. Brown, Jr.
Zachary M. Merritt
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803 328-8822

John Martin Foster
Post Office Box 106
Rock Hill, S. C.29731
803 324-8100
Attorneys for Appellant

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

CASE FILE NO. 2017-01827-4601230-40

COUNTY OF YORK

CAROLYN W. ROGERS
JUDGE OF PROBATE
YORK COUNTY, SC

IN THE MATTER OF JONATHAN MATTOX

JUDGMENT

DAVID J. MATTOX

LISA JO BARE MATTOX

PETITIONER(S)

RESPONDENT(S)

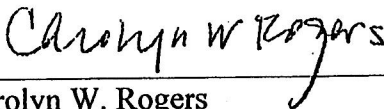
CHECK ONE:

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

ACTION DISMISSED _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of judgment by the court.

Dated at York, South Carolina, this 26th day of September, 2017.



Carolyn W. Rogers
Judge of Probate

This judgment was entered on the 26th day of September, 2017, and a copy mailed first class this 27th day of September, 2017 to attorneys of record or to parties (when appearing *pro se*) as follows:

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, SC 29732

John P. Gettys, Jr.
Post Office Box 707
Rock Hill, SC 29731

Attorney(s) for the Petitioner(s)

Attorney(s) for the Respondent(s)

FILED RECEIVED

STATE OF SOUTH CAROLINA)
2017 SEP 26 PM 4:07)
COUNTY OF YORK)
CAROLYN W. ROGERS)
JUDGE OF PROBATE)
IN RE: Estate of Jonathan Mattox,)
YORK COUNTY, SC)
David J. Mattox,)
PETITIONER)
Vs.)
Lisa Jo Bare Mattox,)
RESPONDENT)

IN THE PROBATE COURT
Case No: 2016-ES-46-01230

ORDER

The within matter came on for hearing August 9, 2017, on the Summons and Petition for Formal Appointment filed by David J. Mattox (hereinafter referred to as the Petitioner), represented by attorney Stephen D. Schusterman. Present were the Petitioner and his attorney; Lisa Jo Bare Mattox (hereinafter referred to as the Respondent), and her attorney, John P. Gettys Jr. The Petitioner and the Respondent were the only witnesses to provide testimony at trial.

PLEADINGS FILED IN ACTION

1. This matter was initiated by the filing of a Summon and Petition for Formal Appointment on April 28, 2017.
2. A Notice of Hearing was mailed on June 19, 2017 with Proof of Delivery evidencing service upon the appropriate parties.
3. Proof of Service of the Summons, Petition and Notice of Hearing are in the Court's file.

Based on the pleadings, testimony and evidence presented at trial, I

#1 of 4 *cwr*
Mattox Order Page 1 of 4
2016-ES-46-01230

CERTIFIED TRUE COPY
Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

make the following:

FINDINGS OF FACT

1. Jonathan Mattox (hereinafter referred to as the Decedent) was a resident of York County and passed away on October 1, 2016.

2. The Respondent is a resident of Lake Wylie, York County, South Carolina and is the surviving spouse of the Decedent.

3. The Court has jurisdiction pursuant to S. C. Code §62-1-302 and York County is the proper venue for this matter.

4. The Decedent signed a Last Will and Testament (hereinafter referred to as the Will) in 2005 in Gwinnett County, Georgia, a copy of which was submitted into evidence at the hearing.

5. The Decedent met his wife, the Respondent, in 2006 and they were wed in 2011.

6. The Respondent filed an informal application for appointment on October 13, 2016, indicating the Decedent died without a Will.

7. The Respondent was appointed Personal Representative of the estate on October 13, 2016.

8. No original Will has been presented to the Court.

9. The Petitioner's attorney has spent much time and research attempting to locate the original Will but has been unsuccessful.

10. The Petitioner testified that he had no knowledge of where the Decedent kept the original Will and had not seen or discussed the Will since 2005, but he understood the Decedent kept it in a safe place.

11. The Respondent testified she had no knowledge the Decedent had a Will, and his important papers were kept in his safe and neither a copy nor the original Will had been found.

#2 of 4 CWR

Mattox Order Page 2 of 4
2016-ES-46-01230

CONCLUSIONS OF LAW

Based on the record, the findings above, testimony and evidence provided at the hearing, the court concludes:

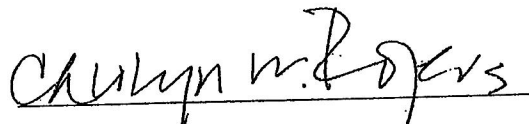
- A. Jurisdiction of this Court is properly established and venue is properly laid in York County, South Carolina, and all parties were timely served with the Summons, Petition and Notice of Hearing.
- B. It is well settled law in South Carolina that when a testator takes possession of his Will and it cannot be found after his death, a presumption arises that it was deliberately destroyed. Davis et al. v. Davis et al., 52 SE2d 192 (1949).
- C. If the original Will cannot be found there is a presumption it was intentionally destroyed. Golini v. Bolton, 482 SE2d 784 (Ct. App. 1997).
- D. The Petitioner presented no credible evidence to the court to rebut the presumption of intentional revocation, nor any evidence the Will was accidentally destroyed or unintentionally revoked as is required to be proven by clear and convincing evidence in order to rebut the presumption defined in the Golini case.
- E. The Petitioner presented no evidence of the 2005 Will being inadvertently lost or destroyed nor any evidence to rebut the presumption said Will was intentionally revoked.
- F. The Decedent died without a Will and had no children, and the Petitioner is his sole heir.
- G. The Decedent's intestacy renders moot the Respondent's petition for the omitted spouse share.
- H. Even if the Court were to rule on the omitted spouse issue there was no credible evidence presented to the Court that the Decedent provided for his spouse outside of the Will or in lieu of a testamentary disposition.

#3 of 4 *cwr*

I. There being no evidence presented by the Petitioner as to the unintentional revocation of the 2005 Will and no evidence the Decedent provided for his wife in lieu of a testamentary disposition and outside of the Will should one exist, I find that the Petitioner qualifies for relief under S. C. Code Ann. 62-1-111 which allows the court to award attorney's fees and costs as justice and equity may require, including reasonable attorney's fees.

J. The Petitioner shall pay one-half (\$3,750.00) of the attorney's fees of Respondent (one-half of \$7,500.00) as a result of Petitioner's failure to provide any credible proof of his allegations.

IT IS HEREBY ORDERED that the Decedent died intestate without children, leaving his spouse as his sole heir. Petitioner's request to restrain the Personal Representative from exercising her powers and the Petition for appointment as Personal Representative are denied. The Petitioner is ordered to remit the sum of \$3,750.00 to the Respondent as payment of one-half (1/2) of the attorney's fees incurred in this matter.



Carolyn W. Rogers
Judge of Probate, York County, SC

York, South Carolina
September 26, 2017.

#4 of 4 CWR

Mattox Order Page 4 of 4
2016-ES-46-01230

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE PROBATE COURT
CASE FILE NO.: 2016ES4601230

IN THE MATTER OF JONATHAN MATTOX

JUDGMENT

David J. Mattox

Lisa Jo Bare Mattox

PETITIONER(S)

RESPONDENT(S)

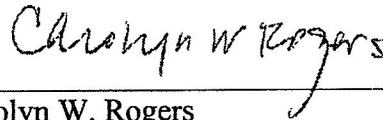
CHECK ONE:

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

ACTION DISMISSED _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of judgment by the court.

Dated at York, South Carolina, this 21 day of November, 2018.



Carolyn W. Rogers
Judge of Probate

This judgment was entered on the 21st day of November, 2018, and a copy mailed first class this 21st day of November, 2018, to attorneys of record or to parties (when appearing *pro se*) as follows:

John Martin Foster, Esquire
Post Office Box 106
Rock Hill, SC 29731

John P. Gettys, Jr., Esquire
Post Office Box 707
Rock Hill, SC 29731

Zachary M. Merritt, Esquire
Post Office Box 1025
Rock Hill, SC 29731

J. Nathaniel Pierce, Esquire
Post Office Box 707
Rock Hill, SC 29731

FILED RECEIVED
2018 NOV 21 AM 10:00
CAROLYN W. ROGERS
JUDGE OF PROBATE
YORK COUNTY, SC

NOV 26 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
IN RE: Estate of Jonathan Mattox)
)
David J. Mattox,)

IN THE PROBATE COURT
Case No: 2016-ES-46-01230

PETITIONER
vs.
Lisa Jo Bare Mattox,
RESPONDENT

ORDER ON
OMITTED SPOUSE CLAIM

FILED RECEIVED
2018 NOV 21 AM 9:29
CAROLYN W. ROBERTS
JUDGE OF PROBATE
YORK COUNTY, SC

The within matter came before the Court on October 5, 2018 pursuant to the Notice, Motion and Petition for Relief from Judgment filed by David J. Mattox ("Petitioner"), represented by John Martin Foster and Zach Merritt. Present for the hearing were the Petitioner and his attorneys; and the Respondent, Lisa Jo Bare Mattox, and her attorneys, John P. Gettys, Jr. and J. Nathaniel Pierce.

The hearing was initiated upon the filing of a Summons, Notice, Motion and Petition for Relief from Judgment and for Stay of Enforcement on July 13, 2018. A Notice of Hearing was mailed on September 7, 2018, with Proof of Delivery evidencing service upon the appropriate parties. Proof of Service of the Summons, Petition and Notice of Hearing are in the Court's file.

I have reviewed the evidence and case law presented at the October 5, 2018, hearing, as well as the recording of the testimony given in the hearing held on August 9, 2017, and I make the following:

FINDINGS OF FACT

1. Jonathan Mattox (hereinafter referred to as the Decedent) was a

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#1074
CWK

resident of York County and passed away on October 1, 2016.

2. The Decedent met his wife, now widow, Lisa Mattox, in 2006 and they were wed in 2011.

3. The Respondent filed an informal application for appointment on October 13, 2016, indicating the Decedent had died without a Will.

4. The Respondent was appointed Personal Representative of the estate on October 13, 2016.

5. Petitioner filed a Summons, Complaint and Petition for Formal Appointment on April 28, 2017.

6. Petitioner offered for probate a copy of a Will signed in Gwinnett County, Georgia, in 2005 by the Decedent, but was unable to produce the original Will.

7. A hearing was held on August 9, 2017.

8. At the August 9 hearing, both the Petitioner and Respondent had the opportunity to address the omitted spouse issue and the issue was thoroughly addressed.

9. The Court issued an order on September 26, 2017 denying Petitioner's application to be appointed Personal Representative of the Estate (the "Order").

10. The Order further states in paragraph G that the question of the omitted spouse share was rendered moot because Jonathan Mattox died intestate, and further states in paragraph H that there was no credible evidence presented to the Court that Jonathan Mattox provided for his surviving spouse outside of the Will or in lieu of a testamentary disposition.

11. Subsequently, the purported original Will was found in Decedent's mother's house in Pawley's Island, South Carolina.

12. Petitioner testified at the hearing held on August 9, 2017, that he lived with his mother in Pawley's Island where the Will was discovered.

#2 of 4
CWR

CONCLUSIONS OF LAW

1. Jurisdiction of this Court in the above matter is properly established and venue is properly laid in York County, South Carolina, and all parties were timely served with the Summons, Petition and Notice of Hearing.

2. For the following reasons, Petitioner did not exercise due diligence in discovering the original Will and is not entitled to relief under South Carolina Rule of Civil Procedure 60:

- a. Petitioner testified at the August 2017 hearing that he lived with his Mother in Pawley's Island, which is where the original Will was discovered;
- b. The original Will was discovered in a safe in the Mother's residence – a natural and obvious place for important papers to be placed; and
- c. Petitioner submitted an affidavit from his mother in which she affirms she knew the original Will existed.

3. It is well settled law in South Carolina that when a testator fails to provide by Will for his surviving spouse who married the testator after the execution of the Will, the omitted spouse shall receive the same share of the estate she would have received if the decedent left no Will. See *In Re Timmerman*, 331 S.C. 455, 502 S.E. 2d 920 (1998).

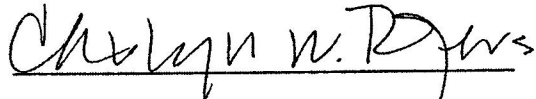
4. The Petitioner presented no credible evidence to the Court that the Decedent was contemplating marriage when the Will was executed in 2005. See *In Re Miles*, 440 S.E. 2d 882, 312 S.C. 408 (1994).

5. Because the Respondent established her entitlement to an omitted spouse share pursuant to S.C. Code Ann. § 62-3-301 in that she proved (1) the omission was not intentional as Mr. Mattox and Respondent did not know each other when the Will was executed, and (2) Mr. Mattox made no in-lieu provisions

for her, the discovery and probate of Mr. Mattox's original Will would not change the outcome of the 2017 proceeding. See *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008).

6. All of the elements of *res judicata* as to the omitted spouse issue are satisfied – (1) the identity of the parties, (2) identity of the subject matter, and (3) a previous adjudication. See *Plum Creek Development Co., Inc. v. City of Conway*, 334 S.C. 30, 512 S.E.2d (1999).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decedent died intestate without children, leaving his spouse as his sole heir pursuant to S.C. Code Ann. § 62-2-301 (1986, as amended). Petitioner's Notice, Motion and Petition for Relief from Judgment and For Stay of Enforcement is denied.



Carolyn W. Rogers
Judge of Probate, York County, SC

York, South Carolina
November 21, 2018.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
David J. Mattox,)
)
Appellant)
v.)
)
Lisa Jo Bare Mattox, LLC,)
)
Respondent.)
_____)

**IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**

Case No.: 2018-CP-46-03672

ORDER AFFIRMING PROBATE COURT

PRESIDING JUDGE: The Honorable William A. McKinnon
DATE OF HEARING: July 31, 2019
APPELLANTS’S ATTORNEY: Michael L. Brown Jr.; John M. Foster;
Zachary M. Merritt;
RESPONDENT’S ATTORNEY: John P. Gettys, Jr.; J. Nathaniel Pierce

This matter came before the Court on appeal after the Probate Court denied the Appellant’s Motion for relief under South Carolina Rule of Civil Procedure 60. For the reasons set forth below, the judgment of the Probate Court is AFFIRMED.

Facts on Appeal:

This underlying matter in this appeal began on October 1, 2016 with the death of Jonathan Mattox (“Decedent”). Decedent had signed a valid Last Will and Testament (“will”) in 2005, appointing his brother, David J. Mattox, as personal representative. After the signing of the will, Decedent then married Lisa Jo Bare Mattox (“Respondent”), but purportedly failed to execute another will. Additionally, the original 2005 will could not be located at the time of the Decedent’s death. The Probate Court determined that the inability to locate the will indicated it had been intentionally revoked. As a result, the Probate Court found that the Decedent had died intestate and without children, leaving the Respondent as his sole heir. The Respondent was awarded the entirety of the Decedent’s estate.

According to a July 12, 2018 affidavit filed by Peggy Mattox (the mother), the original will was discovered in her safe on or about October 2017. The affidavit also states both Decedent and Decedent's brother (the appellant) David Mattox knew of the safe and had access to the combination. On July 13, 2018, approximately nine months after discovery of the alleged original will, Appellant filed a Motion and Petition for Relief from Judgment and Stay of Enforcement under South Carolina Rule of Civil Procedure 60. Appellant argued that he had obtained newly discovered evidence in the form of the original will, requiring that the Decedent's assets be redistributed according to that will. The bases for the "Notice, Motion and Petition" were: SCRCF 60(b)(1), (2), and (5) and S.C. Code. Ann. § 62-3-412(1). The "Notice, Motion and Petition" was also alleged to be an "independent action in equity." On November 21, 2018 Judge Rogers issued an order denying the Appellant's Motion. This appeal followed.

Standard on Appeal:

An appeal from the probate court is governed by the provisions of the South Carolina Probate Code. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). The probate code provides that a final order or decree of the probate court may be appealed to the circuit court, and the circuit court must hear and determine the appeal "according to the rules of law." S.C. Code Ann. § 62-1-308 (1987). This phrase means according to the rules governing appeals. *Howard*, 315 S.C. at 360, 434 S.E.2d at 257. On appeal from the final order of the probate court, the circuit court should apply the same standard of review as the Court of Appeals. *Golini v. Bolton*, 326 S.C. 333, 338, 482 S.E.2d 784, 786-87 (Ct. App. 1997). The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Smith v. Fedor*, 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017) (citing *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d

793, 795 (Ct. App. 2007)). An abuse of discretion arises where the order was controlled by an error of law or based on factual conclusions that are without evidentiary support. *Id.*

Discussion:

- I. There is evidence that the Appellant did not act with due diligence in his attempt to locate the will of the Deceased, as it was found in his mother’s safe, such that a Motion under Rule 60(b)(2) cannot be sustained.

Under SCRCP 60(b)(2) a court may relieve a party from a judgment on the basis of newly discovered evidence. SCRCP 60(b)(2): “On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons...(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).”

A five part test is used to determine whether the evidence offered satisfies Rule 60(b)(2): (1) the evidence will probably change the result if a new trial is granted; (2) it has been discovered since the trial; (3) it could not have been discovered before the trial; (4) it is material to the issue; and (5) it is not merely cumulative or impeaching. *Jamison*, at 272, 644 S.E.2d at 767 (citing *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct.App.2005)). The movant has the burden of presenting evidence proving the facts essential to secure relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991). To satisfy Rule 60(b)(2), and the third factor of the test, “newly discovered evidence” must be evidence which could not have been discovered with due diligence in time to move for a new trial under Rule 59(b). *Jamison v. Ford Motor Co.*, 373 S.C. 248, 272, 644 S.E.2d 755, 767 (Ct. App. 2007). “Due diligence” is defined as the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.” *Jamison* at 272, 644 S.E.2d at 767 (citing *Black’s Law Dictionary*.)

When evidence is misplaced, a party must make a specifically targeted search to find the missing evidence in order for due diligence to be satisfied. *Lanier* at 220, 612 S.E.2d at 460. Additionally, in order for evidence to be newly discovered, it must not have been known to the parties or discovered by the parties at the time of the trial court's decision. See *Fassett v. Evans*, 364 S.C. 42, 50, 610 S.E.2d 841, 845 (Ct. App. 2005); *Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct.App.2004) (where a party could have discovered the "new" evidence prior to trial, the party is not entitled to relief under Rule 60(b)(2).)

Here, the factors as they are set out in *Jamison* and *Lanier* are not met. The evidence shows Appellant did not act with due diligence in searching for the original will. Due diligence requires that a movant act with the diligence reasonably expected of a party seeking to fulfil a legal obligation, and that the movant make a targeted effort to locate missing evidence. The Appellant has offered no evidence to suggest that a targeted search for the will occurred, even though he was aware of its existence. The fact the will was discovered in the Appellant and Decedent's mother's safe, is, in fact, evidence of a lack of due diligence. Appellant argues that because the will was not found in his own residence, but his mother's residence under which he had no control, that he had no duty to attempt to search for the will there. However, His mother's own affidavit established that Appellant had access to his mother's safe and knew the combination to that safe. Further, a safe would be among the most likely places to store an important legal document. Because of the lack of due diligence in searching for the safe, the Probate Court correctly denied relief under Rule 60(b)(2).

II. There is no basis for a 60(b)(1) Motion.

Under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, a court may relieve a party from any final judgment, order, or proceeding if the party shows there has been "mistake,

inadvertence, surprise, or excusable neglect.” SCRCP 60(b)(1). This rule is intended to allow relief from errors by counsel. As Wright and Miller write regarding the analogous Federal Rule: “[C]ourts have held that a party should not be deprived of the opportunity to present the merits of the claim because of a technical error or slight mistake by the party's attorney.” §2858 Mistake, Inadvertence, Surprise, or Excusable Neglect, 11 Fed. Prac. & Proc. Civ. § 2858 (3d ed.). There is no mistake by counsel here.

Further, it is inappropriate to allow the “excusable neglect” provision to apply when there are specific rules to the contrary – or else the “excusable neglect” exception would swallow the whole of the Rules. The “excusable neglect” in question in this matter is failure to discover the original will – and that is covered by Rule 60(b)(2), not Rule 60 (b)(1). “[I]t would be a perversion of [Rule 60(b)(1)] and its purpose to permit it to be used to circumvent another rule.” §2858 Mistake, Inadvertence, Surprise, or Excusable Neglect, 11 Fed. Prac. & Proc. Civ. § 2858 (3d ed.) (citing *Edwards v. Velvac, Inc.*, 19 F.R.D. 504 (E.D. Wis. 1956)). Rule 60(b)(1) has no application here.

III. There is no basis for a 60(b)(5) Motion.

Under Rule 60(b)(5) of the South Carolina Rules of Civil Procedure, a judgment may be set aside if it has been “satisfied, released, discharged, or a prior judgment upon which the judgment is based is reversed or vacated, or it is no longer equitable that the judgment should have prospective application.” This Rule has no application here, either. Rule 60(b)(5) only applies to judgments which have prospective application, such as a paternity order or an injunction. Executed orders, such as those which determine the ownership of property, are beyond the ambit of Rule 60(b)(5). See *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 49, 590 S.E.2d 502, 505 (Ct. App. 2003) (orders which “mandate a one-time change in the ownership of property are “ wholly outside the scope of Rule 60(b)(5)”).

IV. Section 62-3-412(1) does not apply because the judgment below was one of intestacy.

S.C. Code. Ann. § 62-3-412(1) is an exception to the finality of probate proceedings. It provides: “The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication” (emphasis added). It is clear from this language (“later-offered will” and “another will”) that this provision applies when the probate court distributed property to a will. Intestate distributions, such as the instant one, are governed by S.C. Code. Ann. § 62-3-412(2). S.C. Code. Ann. § 62-3-412(1) has no bearing on this matter.

V. Appellant cannot obtain relief as an “independent action”

Finally, Appellant asserts an “independent action” in equity. Such action are permitted in the case of a fraud on the court, or “rare, special, exceptional or unusual circumstances that may warrant equitable relief.” Mr. T v. Ms. T, 378 S.C. 127, 135, 662 S.E.2d 413, 417 (Ct. App. 2008). No such fraud or “rare or unusual” issue is present here – this matter is an issue of after-acquired evidence, which is properly handled pursuant to Rule 60 (b)(2).

Conclusion:

For the reasons set forth above, the judgment of the Probate Court is AFFIRMED.

JUDGMENT AFFIRMED. IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2019.

THE HONORABLE WILLIAM A. MCKINNON



York Common Pleas

Case Caption: David J Mattox VS Lisa Jo Bare Mattox
Case Number: 2018CP4603672
Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2019-09-03 10:07:24 page 7 of 7

Court Reporter:

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

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York Common Pleas

Case Caption: David J Mattox VS Lisa Jo Bare Mattox

Case Number: 2018CP4603672

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2019-10-02 11:35:01 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: YORK

INVENTORY AND APPRAISEMENT: PROBATE PROPERTY

FILED RECEIVED

ORIGINAL

SUPPLEMENTARY, AMENDED OR CORRECTED #

(must restate the unchanged information from the original inventory)

IN THE MATTER OF:
JONATHAN RAY MATTOX

2017 FEB 22 AM 11:57

CASE NUMBER: 2016ES4801230

(Decedent)

CAROLYN W. ROGERS
JUDGE OF PROBATE

File the original inventory and Appraisal with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. A Supplementary, Amended, or Corrected inventory should be utilized for correcting, adjusting or adding to an original inventory, and must restate the unchanged information from the original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

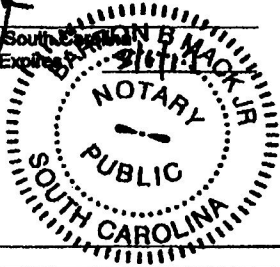
RECAPITULATION

Schedule A - Real Estate	.....	\$ 2,274,900.00
Schedule B - Stocks and Bonds	.....
Schedule C - Notes Due Decedent and Cash	.....	2283.65
Schedule D - Insurance of Decedent's Life Payable to the Estate	.....
Schedule E - Jointly Owned Property	.....
Schedule F - Other Miscellaneous Assets	.....	72125.00
Schedule G - Transfers during Decedent's Life Payable to the Estate	.....
Schedule H - Powers of Appointment Payable to the Estate	.....
Schedule I - Annuities and Retirement Accounts Payable to the Estate	.....
TOTAL GROSS VALUE OF DECEDENT'S ESTATE	.....	\$ 2,349,308.65

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all probate real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 14th day of February 2017

Notary Public for South Carolina
My Commission Expires 2/16/18



Attorney:
Address:
E-Mail:
Telephone:

Personal Representative
Signature: *Lisa J. Mattox*
Print Name: LISA J. MATTOX
Address: 321 RIVER POINT RD.
LAKE WYLIE, SC 29710
E-Mail:
Telephone (Work):
(Home): 704-756-7937
(Cell):
(Email):

Co-Personal Representative
Signature
Name:
Address:
E-Mail:
Telephone (Work):
(Home):
(Cell):
(Email):

(If none, so state)

A. REAL ESTATE in Decedent's name alone or tenants in common (not as joint with right of survivorship). Describe each property by listing its full address, tax map number, deed book and page and description consistently (house, lot, buildings, acreage). Also list oil / mineral rights and time shares, if it is real property. If the property is encumbered, list the full fair market value of the property here and the encumbrance on Encumbrance section below	% Owned by Decedent	Fair Value of Decedent's Interest
1. 26.055 ACRES, CHARLOTTE HWY, LAKE WYLIE, SC MAP#575-00-00-016	100%	\$2,274,900.00
2.		
3.		
B. STOCKS, BONDS in Decedent's name alone or tenants in common (not as joint with right of survivorship). List each type of security and number of shares.		
1.		
2.		
3.		
C. CASH, BANK ACCOUNTS, NOTES RECEIVABLES in Decedent's name alone or as tenants in common. List each separate account type and institution and the last two digits of each account. List all bank accounts owned by Decedent alone or as tenants in common (checking, savings, CDs, money market, brokerage, employment bonus, cash award, final paycheck etc.), cash on hand, notes payable to Decedent, and survival action proceeds.		
1. FAMILY TRUST FEDERAL CREDIT UNION (CHECKING)	100%	1,259.67
2. FAMILY TRUST FEDERAL CREDIT UNION (SAVINGS)	100%	1,025.98
3.		
D. LIFE INSURANCE payable to the Decedent's estate.		
1.		
2.		
E. JOINTLY OWNED PROPERTY - REPORTING IS NOT REQUIRED		N/A
F. ALL OTHER MISCELLANEOUS PERSONAL PROPERTY in Decedent's name alone or as tenants in common. List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled, airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets		
1. 2015 DODGE RAM TRUCK	100%	26,000.00
2. 2016 HARLEY DAVIDSON	100%	27,325.00
3. 2004 BOAT AND MOTOR	100%	18,800.00
4.		
G. TRANSFERS DURING DECEDENT'S LIFE PAYABLE TO ESTATE ONLY Any transfers intended to take effect at death if payable to the Estate shall be reported. A trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc.		
1.		
2.		
H. POWERS OF APPOINTMENT PAYABLE TO THE ESTATE ONLY List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate.		
1.		

(If none, so state)

I. **ANNUITIES AND IRA, ETC. PAYABLE TO THE ESTATE ONLY** List any annuities or retirement accounts owned by the Decedent and payable to the Estate.

- 1. _____
- 2. _____

TOTAL PROBATE ESTATE VALUE \$ _____

ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above schedule and describe the debt and the specific asset encumbered.

- 1. TRUCK 32,080.35
- 2. MOTORCYCLE 20,657.52
- 3. Boat 2004 Sea Ray 20,337.17

TOTAL ENCUMBRANCES \$ 89,075.04

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STATE OF SOUTH CAROLINA)

2017 APR 28 PM 1:30 THE PROBATE COURT

COUNTY OF YORK)

CAROLYN W. ROGER Case No.: 2017-
JUDGE OF PROBATE 2016ES4601230
YORK COUNTY, SC)

DAVID J. MATTOX)

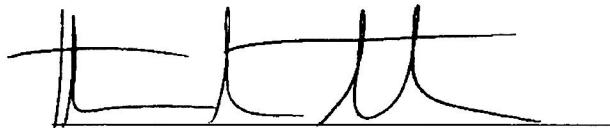
SUMMONS

Petitioner,)

vs.)

Lisa Jo Bare Mattox, David A. Mattox)
Respondents.)

YOU ARE HEREBY SUMMONED and required to answer the Summons and Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Summons and Complaint on the subscribed at his office at 541 E. Main Street, Rock Hill, SC 29730, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Summons and Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.



Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, PA
PO Box 4211
Rock Hill, South Carolina 29732
Telephone: (803) 325-7788
Facsimile: (803) 325-7889

ATTORNEY FOR PETITIONER

April 28 2017

FILED RECEIVED

STATE OF SOUTH CAROLINA)	
	)	2017 APR 28 PM 1: 59
COUNTY OF YORK	)	THE PROBATE COURT
)	
IN RE THE MATTER OF:	)	CAROLYN W. ROGE Case No.: 2017- 2016 ES4601230
Jonathon Ray Mattox	)	JUDGE OF PROBATE
(Decedent)	)	YORK COUNTY, SC
)	
DAVID J. MATTOX)	
	)	COMPLAINT
)	
Petitioner,)	
)	
vs.)	
)	
Lisa Jo Bare Mattox,)	
Respondent.)	

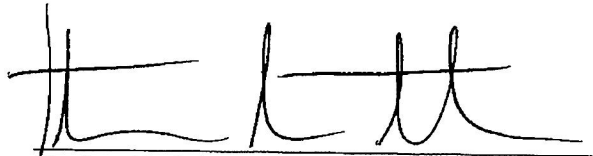
NOW COMES the Petitioner, above-named, does allege and show unto this Honorable Court as follows:

1. The Petitioner is a resident of Pawleys Island, Georgetown County, South Carolina and is the brother of the Decedent and is an interested party in this matter as he is named as a beneficiary in the Decedent's Last Will and Testament.
2. The Respondent, Lisa Jo Bare Mattox is a resident of Lake Wylie, York County, South Carolina and is the surviving spouse of the Decedent.
3. The Decedent, Jonathon Ray Mattox, was a resident of Lake Wylie, York County, South Carolina at the time of his death.
4. This Court has jurisdiction of this matter pursuant to S. C. Code §62-1-302 and York County is the proper venue of this matter.
5. The Decedent died on October 1, 2016 of natural causes in Georgetown County, South Carolina. (Copy of Death Certificate is attached hereto and incorporated herein by reference).

-
6. Respondent, Lisa Mattox is the surviving spouse of the Decedent. The parties were married on June 11, 2011.
 7. Based upon information and belief, this Court has not been notified by any party regarding the death of the Decedent.
 8. Based upon information and belief, the Respondent, Lisa Mattox has not brought any informal probate proceed, either intestacy or testacy.
 9. Based upon information and belief, no personal representative has been appointed on behalf of the Decedent.
 10. The Last Will and Testament was executed by the Decedent on February 17, 2005 in Gwinnett County, Georgia. A copy of this Last Will and Testament is attached hereto and incorporated herein by reference.
 11. The Decedent provided Petitioner with a copy of his Last Will and Testament.
Subsequent to the death of the Decedent, the Petitioner, upon going through his briefcase in January, 2017, located the copy of the Will that was provided to him by the Decedent.
 12. Since discovering the copy of Decendent's Will, the Petitioner has contacted the law firm that was responsible for drafting the Will and they were not cooperative in providing any information over the telephone.
 13. Pursuant to the terms of the Last Will and Testament, all real and personal property of the Decedent was bequeathed and devised to the Petitioner in fee simple and forever *per stirpes*. The Respondent, Mark Anthony Mattox was intentionally omitted from said Last Will and Testament due to personal reasons.
 14. Pursuant to the terms of the Last Will and Testament, in the event the Petitioner did not predecease the Decedent, and left no lineal descendants, then the rest and remainder of

the all property was bequeathed and devised to Decedents mother, Peggy Yvonne Mattox.

15. Pursuant to the terms of the Last Will and Testament, all the rest, residue and remainder of Decedent's estate would be given to the persons so entitled under the Laws of Georgia as if the Decedent had died intestate.
16. The Petitioner has been unable to locate the original Last Will and Testament of the Decedent despite due diligence in doing so.
17. The Petitioner seeks an Order of this Court declaring the Last Will and Testament of the Decedent, dated February 15, 2005 as a valid Last Will and Testament and that the Decedent died testate and to administer Decedent's estate pursuant to said Last Will and Testament.
18. In the event an informal proceeding has been commenced, the Petitioner seeks an Order suspending the informal proceeding pending the adjudication of this matter.
19. In the event a personal representative has been appointed, the Petitioner seeks an Order restraining such personal representative from exercising any powers granted to him/her to make any distributions from the estate.
20. Subsequent to the death of the Decedent, the Respondent has sold a piece of Decedents property and received all the proceeds from that sale. The Petitioner requests a full accounting of all funds disbursed from that property and seeks an Order restraining the Petitioner from disposing any funds that may still be in existence or in the alternative, upon disposition of the Decedent's estate, Respondent's share would be diminished by any funds she has received or any property she has disposed of.



Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, PA
PO Box 4211
Rock Hill, South Carolina 29732
Telephone: (803) 325-7788
Facsimile: (803) 325-7889

ATTORNEY FOR PETITIONER

April 28, 2017

STATE OF SOUTH CAROLINA]
]
COUNTY OF YORK]

IN THE PROBATE COURT
PROBATE CASE FILE No. 2016-ES-46-01230

In the Matter of JONATHAN MATTOX,]
]
DAVID J. MATTOX,]
]
]
Petitioner,]
vs.]
]
LISA JO BARE MATTOX,]
]
Respondent.]

NOTICE, MOTION and PETITION:
FOR RELIEF FROM JUDGMENT
and FOR STAY OF ENFORCEMENT

Pursuant to:
S.C. Code § 62-3-412,
RULE 60(b)(1) and (2), S.C.R.C.P.,
and RULE 62(b) and (c), S.C.R.C.P.

To: The Respondent above named and
John P. Gettys, Jr.
Morton & Gettys, LLC
Post Office Box 707
Rock Hill, South Carolina 29731

FILED RECEIVED
2018 JUL 13 PM 4:54
CAROLYN W. ROBERTS
JUDGE OF PROBATE
YORK COUNTY, SC

You or your attorney should appear before this Court to present evidence or arguments if any you have, relating to the Motion and Petition herein, as follows:

DATE AND TIME: To be set by the Judge or Clerk of the Probate Court, or as soon thereafter as counsel may be heard.

PLACE: The Probate Court
York County Courthouse
1 South Congress Street
York, South Carolina 29745,
or at such other place as the Court may designate

Pursuant to Rule 60(b), S.C.R.C.P., the Petitioner DAVID J. MATTOX, by and through his attorneys, moves this Court for an Order:

- 1) Relieving the Movant from the Order filed September 26, 2017 in the above-captioned action in the Probate Cased indicated; a copy of the said Order is attached hereto and incorporated herein as Exhibit "A".

Or, in the alternative,

- 2) To treat this Motion and Petition and its requested relief as an independent action to

relieve the said person from the above-referenced judgment, order or proceeding;

And, in either event,

- 3) Staying any execution of, or any proceedings to enforce, the said judgment of this Court,
 - a) pending the disposition of Movant's Motion and Petition for Relief from the said judgment, order or proceeding made pursuant to Rule 60(b), S.C.R.C.P., now pending in this Court, and
 - b) permanently; and
- 4) For such other and further relief as this Court may deem just and proper.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movant are under no duty, prior to filing this Motion and Petition, to consult with opposing Counsel or to attempt in good faith to resolve the matter contained in this Motion and Petition due to the conclusory nature hereof. Counsel for the Movant further certify that such consultation would serve no useful purpose, as defined by the said Rule.

This Motion and Petition is based upon the applicable law, the matter set out herein below in this Motion and Petition by way of affidavits and other attachments hereto, and on the files, papers and pleadings in this Probate action.

1. By its Order of September 26, 2017, this Court determined that the late JONATHAN RAY MATTOX signed a Last Will and Testament in 2005 in Gwinett County, Georgia, a copy of which was entered into evidence at the hearing of this matter on June 19, 2017. [Finding of Fact 4.]
2. The said Order further found that both the Petitioner DAVID J. MATTOX and the Respondent LISA JO BARE MATTOX testified to their lack of knowledge as to where the original Will of the deceased was kept. [Findings of Fact 10. and 11.]
3. The said Order further found that no original will had been located [Finding of Fact 11. and generally], and concluded that there was no evidence that the original will had been inadvertently lost or destroyed. [Conclusion of Law No. D.]
4. The said Order concluded that in the absence of evidence that the Will had been inadvertently lost or destroyed, the legal presumption was that the Will had been intentionally revoked. [Conclusion of Law E.]

5. In light of that legal presumption, the decedent was found to be intestate without children, leaving his wife, the Respondent as his sole heir. [Conclusion of Law F. and the Order proper]
6. The original Will, conforming in all respects to the copy submitted as evidence, has lately been discovered in the possession of Mrs. Peggy M. Mattox. A copy of the said Will, as placed in evidence at the hearing on August 9, 2017, is attached hereto and incorporated herein as Exhibit "B".
7. Simultaneously with this Motion and Petition, the original Will is filed with this Court.
8. Mrs. Mattox has executed an Affidavit setting out the circumstances of her finding the original Will. This Affidavit is attached hereto and incorporated herein, unmarked but referenced as Exhibit "C".
9. This Motion under Rule 60, S.C.R.C.P., and Petition under S.C. Code § 62-3-412, is filed within one year after the judgment contained in the said Order filed September 26, 2017.
10. A *Lis Pendens* relating to the real property of the Estate of JONATHAN RAY MATTOX has been filed on behalf of the Petitioner as 2018-LP-46-00407. A copy thereof is attached hereto and incorporated herein as Exhibit "D".
11. On knowledge and information, the facts alleged herein, and the reasonable inferences thereof, allow this Court to entertain a Petition for modification or vacation of its order filed September 26, 2017 in that the proponent of the original Will of JONATHAN RAY MATTOX was unaware of its existence at the time of the earlier proceeding, as defined under S.C. Code § 62-3-412(1).
12. On knowledge and information, the facts alleged herein, and the reasonable inferences thereof, constitute mistake, inadvertence, surprise, or excusable neglect on the part of Petitioner, as defined by Rule 60(b)(1), S.C.R.C.P.
13. On knowledge and information, the facts alleged herein, and the reasonable inferences thereof, constitute newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), S.C.R.C.P., as defined by Rule 60(b)(2), S.C.R.C.P.
14. On knowledge and information, the facts alleged herein, and the reasonable inferences thereof, show that it is no longer equitable that the judgment should have prospective application, as defined by Rule 60(b)(5), S.C.R.C.P.
15. On knowledge and information, the facts alleged herein, and the reasonable inferences thereof, show that the Petitioner herein is entitled to stay the execution or any proceedings to enforce any judgment, order or proceeding resulting in, or represented by, the civil action and

judgment herein, pending the disposition of his Motion and Petition for relief made pursuant to Rule 60(b), S.C.R.C.P.

16. On knowledge and information, the facts alleged herein, considered as an Independent Action in Equity, and the reasonable inferences thereof, constitute a good, meritorious, and sufficient defense to the judgment, order or proceeding complained of, to the extent the same is required pursuant to Rule 60(b), S.C.R.C.P.

Michael L. Brown, Jr.
SC Bar No. 943
Zachary M. Merritt
SC Bar No. 102079

403 East White Street
Post Office Box 1025
Rock Hill, S.C. 29731


803 328-8822
803328-0523: Fax
lynn@mlblaw.com
zachmer@gmail.com

John Martin Foster
SC Bar No. 2086

The Guardian Building
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, S. C. 29731

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Attorneys for Petitioner

By:  _____

July 13, 2018

Rock Hill, South Carolina

FILED RECEIVED

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF YORK

CASE FILE NO. 2017-08-01-00000040

IN THE MATTER OF JONATHAN MATTOX

CAROLYN W. ROGERS
JUDGE OF PROBATE
YORK COUNTY, SC

JUDGMENT

DAVID J. MATTOX

LISA JO BARE MATTOX

PETITIONER(S)

RESPONDENT(S)

CHECK ONE:

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

ACTION DISMISSED _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of judgment by the court.

Dated at York, South Carolina, this 26th day of September, 2017.

Carolyn W. Rogers

Carolyn W. Rogers
Judge of Probate

This judgment was entered on the 26th day of September, 2017, and a copy mailed first class this 27th day of September, 2017 to attorneys of record or to parties (when appearing *pro se*) as follows:

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, SC 29732

John P. Gettys, Jr.
Post Office Box 707
Rock Hill, SC 29731

Attorney(s) for the Petitioner(s)

Attorney(s) for the Respondent(s)

make the following:

FINDINGS OF FACT

1. Jonathan Mattox (hereinafter referred to as the Decedent) was a resident of York County and passed away on October 1, 2016.
2. The Respondent is a resident of Lake Wylie, York County, South Carolina and is the surviving spouse of the Decedent.
3. The Court has jurisdiction pursuant to S. C. Code §62-1-302 and York County is the proper venue for this matter.
4. The Decedent signed a Last Will and Testament (hereinafter referred to as the Will) in 2005 in Gwinnett County, Georgia, a copy of which was submitted into evidence at the hearing.
5. The Decedent met his wife, the Respondent, in 2006 and they were wed in 2011.
6. The Respondent filed an informal application for appointment on October 13, 2016, indicating the Decedent died without a Will.
7. The Respondent was appointed Personal Representative of the estate on October 13, 2016.
8. No original Will has been presented to the Court.
9. The Petitioner's attorney has spent much time and research attempting to locate the original Will but has been unsuccessful.
10. The Petitioner testified that he had no knowledge of where the Decedent kept the original Will and had not seen or discussed the Will since 2005, but he understood the Decedent kept it in a safe place.
11. The Respondent testified she had no knowledge the Decedent had a Will, and his important papers were kept in his safe and neither a copy nor the original Will had been found.

#2 of 4 CWR

Mattox Order Page 2 of 4
2016-ES-46-01230

CONCLUSIONS OF LAW

Based on the record, the findings above, testimony and evidence provided at the hearing, the court concludes:

- A. Jurisdiction of this Court is properly established and venue is properly laid in York County, South Carolina, and all parties were timely served with the Summons, Petition and Notice of Hearing.
- B. It is well settled law in South Carolina that when a testator takes possession of his Will and it cannot be found after his death, a presumption arises that it was deliberately destroyed. Davis et al. v. Davis et al., 52 SE2d 192 (1949).
- C. If the original Will cannot be found there is a presumption it was intentionally destroyed. Golini v. Bolton, 482 SE2d 784 (Ct. App. 1997).
- D. The Petitioner presented no credible evidence to the court to rebut the presumption of intentional revocation, nor any evidence the Will was accidentally destroyed or unintentionally revoked as is required to be proven by clear and convincing evidence in order to rebut the presumption defined in the Golini case.
- E. The Petitioner presented no evidence of the 2005 Will being inadvertently lost or destroyed nor any evidence to rebut the presumption said Will was intentionally revoked.
- F. The Decedent died without a Will and had no children, and the Petitioner is his sole heir.
- G. The Decedent's intestacy renders moot the Respondent's petition for the omitted spouse share.
- H. Even if the Court were to rule on the omitted spouse issue there was no credible evidence presented to the Court that the Decedent provided for his spouse outside of the Will or in lieu of a testamentary disposition.

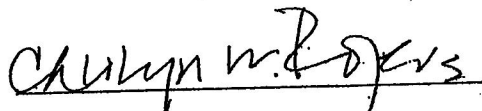
#3 of 4 *cwr*

Mattox Order Page 3 of 4
2016-ES-46-01230

I. There being no evidence presented by the Petitioner as to the unintentional revocation of the 2005 Will and no evidence the Decedent provided for his wife in lieu of a testamentary disposition and outside of the Will should one exist, I find that the Petitioner qualifies for relief under S. C. Code Ann. 62-1-111 which allows the court to award attorney's fees and costs as justice and equity may require, including reasonable attorney's fees.

J. The Petitioner shall pay one-half (\$3,750.00) of the attorney's fees of Respondent (one-half of \$7,500.00) as a result of Petitioner's failure to provide any credible proof of his allegations.

IT IS HEREBY ORDERED that the Decedent died intestate without children, leaving his spouse as his sole heir. Petitioner's request to restrain the Personal Representative from exercising her powers and the Petition for appointment as Personal Representative are denied. The Petitioner is ordered to remit the sum of \$3,750.00 to the Respondent as payment of one-half (1/2) of the attorney's fees incurred in this matter.



Carolyn W. Rogers
Judge of Probate, York County, SC

York, South Carolina
September 26, 2017.

#4 of 4 CWR

Mattox Order Page 4 of 4
2016-ES-46-01230

LAST WILL AND TESTAMENT

OF

JONATHAN RAY MATTOX

**STATE OF GEORGIA:
COUNTY OF GWINNETT**

I, **JONATHAN RAY MATTOX**, of the said county and state, being of sound and disposing mind and memory, do hereby make and publish this my Last Will and Testament, hereby revoking all other Wills and Codicils heretofore made by me.

ITEM I

I wish my body buried in a suitable manner and a suitable memorial erected and the costs thereof paid out of my estate.

I direct that all of my legal debts be paid out of my estate as soon as practicable.

ITEM II

I give, bequeath and devise all of my property, both real and personal, of whatever kind and wherever situated to my brother, **DAVID JAMES MATTOX**, in fee simple and forever, *per stirpes*. As for my brother, **MARK ANTHONY MATTOX**, I have intentionally made no provision for said brother hereunder and I purposefully exclude him as a beneficiary hereunder for personal reasons.

ITEM III

Should my brother, **DAVID JAMES MATTOX**, predecease me leaving no lineal descendants, then I give, bequeath and devise all the rest and remainder of my property of whatever kind and wherever situated to my mother, **PEGGY YVONNE MATTOX**, in fee simple and forever *per stirpes*.


Initials

ITEM IV

I give, bequeath and devise all the rest, residue and remainder of my property of every kind and description, and wherever located, including any lapsed or void legacy or devise to the persons who would have been entitled thereto under the laws of descent and distribution of the State of Georgia if I had died intestate at that time owning such property in fee simple.

ITEM V

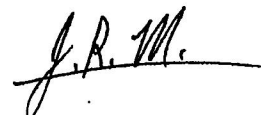
I hereby constitute and appoint my mother, **PEGGY YVONNE MATTOX**, as Executor of this Will, relieving her of the necessity of making returns or giving bond to any court, and I specifically empower her to sell any and all of my property, at public or private sale, with or without notice, and without order of any court, for the purpose of paying debts of my estate or carrying out the provisions of this Will.

ITEM VI

In the event my mother, **PEGGY YVONNE MATTOX**, shall predecease me or fail to serve as Executrix of this Will, then and in that event I name and appoint my brother, **DAVID JAMES MATTOX**, as Executor of this Will.

ITEM VII

In the management, care and disposition of my estate and any trust created hereunder, I confer upon the Executrix and the survivors and successors in office, the power to do all things in each instance as may be, in the sole discretion of my Executrix, necessary, proper or advisable, including the powers contained in *O.C.G.A.*, § 53-12-232, as they now exist, that is, as such powers may have been amended up to and through the date of execution of this Will, which powers are expressly incorporated into this Will by reference, with the same effect as though such language were set forth verbatim herein.



IN WITNESS HEREOF, I have hereunto set my hand and affixed my seal to this my Last Will and Testament consisting of 3 pages, including this page, identifiable by my signature or initials.

Jonathan Ray Mattox
JONATHAN RAY MATTOX

Stacey Brown
Witness

Justin Skaggs
Witness

Sworn to and subscribed before me by JONATHAN RAY MATTOX, and sworn to and subscribed before me by *Stacey Brown* and *Justin Skaggs*, witnesses, this *17th* day of *February*, 2005.

Carali Knight
NOTARY PUBLIC

My Commission Expires:
10-22-07

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared JONATHAN RAY MATTOX, Stacey Brown and Justin Skaggs, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn. JONATHAN RAY MATTOX, declared to me and to the said witnesses in my presence and that said instrument is his Last Will and Testament and that he had willingly made and executed it as his free act and deed for the purpose therein expressed. The witnesses, each on his or her oath, stated to me in the presence and hearing of the Testator that the Testator had declared to them that the instrument is his Last Will and Testament and that he executed same as such and wanted each of them to sign it as a witness; and upon his or her oath each witness stated further that he or she did sign the same as a witness in the presence of the Testator and at his request; that he or she was at that time fourteen (14) years of age or over and was of sound mind; and that each of said witnesses was then at least fourteen (14) years of age.

Stacey Brown
Witness

JONATHAN RAY MATTOX
JONATHAN RAY MATTOX

Justin Skaggs
Witness

Sworn to and subscribed before me by JONATHAN RAY MATTOX, and sworn to and subscribed before me by Stacey Brown and Justin Skaggs, witnesses, this 17th day of February, 2005.

Carolin Knight
NOTARY PUBLIC

My Commission Expires:
10-22-07

Testimony

~((and))~

Statement

~((of))~

JONATHAN RAY MATTOX

NELSON H. TURNER

ATTORNEY AT LAW

FIVE HURRICANE SHOALS ROAD
LAWRENCEVILLE, GEORGIA 30045
(770) 962-8111

STATE OF SOUTH CAROLINA }
 }
COUNTY OF YORK }

IN THE PROBATE COURT
PROBATE CASE FILE No. 2016-ES-46-01230

In the Matter of JONATHAN MATTOX, }
 }
DAVID J. MATTOX, }
 }
 }
Petitioner, }
 }
vs. }
 }
LISA JO BARE MATTOX, }
 }
 }
Respondent. }

AFFIDAVIT
IN SUPPORT OF MOTION

PERSONALLY appeared before me, a notary public, the undersigned affiant, who being duly sworn, deposes and says that:

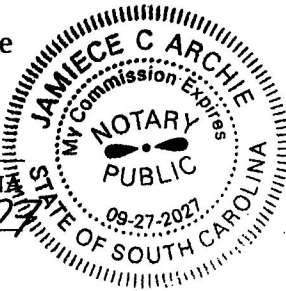
1. I am Peggy M. Mattox. I am the mother of the late JONATHAN RAY MATTOX and of DAVID J. MATTOX. I live at 218 Shore Line Drive, Town of Pawley's Island in Georgetown County, South Carolina.
2. I knew my son JONATHAN RAY MATTOX had executed a will; I saw it in his truck the day it was executed. I did not see it again until the events described below.
3. During the litigation between DAVID J. MATTOX and LISA JO BARE MATTOX above, no one contacted me about the location of JONATHAN RAY MATTOX' will. Had anyone done so, I would have had no information to give them.
4. In or about October, 2017, I bought a new car. I then looked into selling my old car, which was then 17 years old.
5. I went into my safe to find the title to the old car. While looking for the title, I found the original will of JONATHAN RAY MATTOX in my safe.
6. Until I found this document, I had no knowledge of its presence in my safe. I very seldom use my safe or go into it.
7. JONATHAN RAY MATTOX, DAVID J. MATTOX and I know the location of the combination to my safe. I can only speculate that JONATHAN RAY MATTOX placed it there because the will named me as Personal Representative.
8. No one had told me the will had been placed in the safe.

9. Upon discovering the will, I contacted my son DAVID J. MATTOX and gave the original to him.

Peggy M. Mattox
PEGGY M. MATTOX

SWORN TO and subscribed before me
this day of July 12, 2018.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 9-27-2021



STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

In the Matter of JONATHAN MATTOX,]
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LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Probate Court upon the Complaint and Motion of the above-named Petitioner against the above-named Respondent to probate the newly-located original will of JONATHAN RAY MATTOX, and regarding the below-described real estate under the following, respectively:

Being all of Tract 1 as shown on the Mattox Subdivision Survey by Tony B. Sanders, Survey & Mapping Control, Inc., dated March 5, 2013, and recorded in Plat Book E 195 at Page 10, in the Office of the Clerk of Court for York County, South Carolina, to which reference is made for a more complete description.

Being a portion of that real property described in the Hayes/Mattox Subdivision Survey by Tony B. Sanders, Survey & Mapping Control, Inc., dated September 24, 2007 and in that certain deed recorded in Record Book 6269 at Page 216 in the Office of the Clerk of Court for York County, South Carolina, consisting of 26.55 acres, more or less.

Derivation: Being the identical real property conveyed to Jonathan R. Mattox by deed from Phillip W. Hegg, Trustee of the Nancy Mildred Hayes Revocable Trust U/A dated October 12, 2012 and recorded in Record Book 14633 at Page 233 in the Office of the Clerk of Court for York County, South Carolina; and

Conveyed to Lisa J. Mattox by Deed of Distribution from the Estate of Jonathan Ray Mattox (also known as Jonathan Mattox), the same having died on October 1, 2016, by Lisa J. Mattox, Personal Representative, the said deed being dated October 24, 2016 and recorded November 4, 2016 in Record Book 16044 at Page 61 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map No. 575-00-00-016
Street Address: 26.055 acres
Highway 49
Lake Wylie, S.C. 29710
and

All that certain tract of land situate in Bethel Township, York County, State of South Carolina, on Lake Wylie, being shown and designated as Lot 5 on plat of River Point

property of Jimmie Hayes Mattox dated August 10, 1978; and recorded on September 28, 1978 in Plat Book 56, Page 41, in the Office of the Clerk of Court for York County, South Carolina, said plat being incorporated herein and made a part hereof for the metes and bounds shown thereon, and being a portion of that certain tract of land described in the deed of Crescent Land & Timber Corp., to Jimmie Hayes Mattox and Peggy M. Mattox dated July 24, 1978, and recorded in Deed Book 476, Page 807 in the Office of the Clerk of Court for York County, South Carolina.

Derivation: Being the identical real property conveyed to Jonathan R. Mattox and Lisa Mattox by deed from Phillip W. Hegg, Trustee of the Nancy Mildred Hayes Revocable Trust U/A dated December 16, 2014 and recorded in Record Book 146977 at Page 287 in the Office of the Clerk of Court for York County, South Carolina; and

Conveyed to Lisa J. Mattox by Deed of Distribution from the Estate of Jonathan Ray Mattox (also known as Jonathan Mattox), the same having died on October 1, 2016, by Lisa J. Mattox, Personal Representative, the said deed being dated October 24, 2016 and recorded November 4, 2016 in Record Book 16044 at Page 61 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map No. 576-00-00-070

Street Address: 321 Riverpointe Road
Lake Wylie, S.C. 29710

Michael L. Brown, Jr.
SC Bar No. 943
Zachary M. Merritt
SC Bar No. 102079

403 East White Street
Post Office Box 1025
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Attorneys for Petitioner

By: /s/ John Martin Foster

July 11, 2018

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

IN THE PROBATE COURT
PROBATE CASE FILE No. 2016-ES-46-01230

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DAVID J. MATTOX,]
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Respondent.]

CERTIFICATE OF SERVICE

FILED RECEIVED
2018 JUL 13 PM 4:56
CAROLYN W. ROGERS
JUDGE OF PROBATE
YORK COUNTY, S.C.

The undersigned certifies that he has served the following pleadings or documents in the above-captioned and numbered civil action:

- Notice, Motion and Petition for Relief from Judgment, pursuant to Rule 60(b)(1) and (2), S.C.R.C.P., and for Stay of Enforcement, pursuant to Rule 62(b) and (c), S.C.R.C.P.;
- and
- This Certificate of Service

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

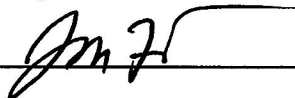
by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 6(b), S.C.R.C.P.

John P. Gettys, Jr.
Morton & Gettys, LLC
Post Office Box 707
Rock Hill, South Carolina 29731

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Attorneys for Petitioner

By: 

July 13, 2018

Rock Hill, South Carolina

3. As to the allegations found in paragraphs 1, 2, 3, 4, 5, 7, 8, 9 of the Petition for Relief from Judgment and for Stay of Enforcement dated July 13, 2018, Respondent shall admit same.

4. As to the allegations found in paragraph 6 of the Petition for Relief from Judgment and for Stay of Enforcement dated July 13, 2018, Respondent shall admit the original will has been filed with the Court of Probate. As to the allegations related to the timing of discovery of such original will, Respondent has no knowledge as to same, and therefore, denies such allegation and demands strict proof thereof.

5. As to the allegations found in paragraph 10 of Petitioner's Notice, Motion and Petition for Relief from Judgment and for Stay of Enforcement dated July 13, 2018, Respondent admits same has been filed but disputes such filing is proper and appropriate pursuant to the statutory and case law of this State.

6. As to the allegations found in paragraph 11 of the Petition for Relief from Judgment and for Stay of Enforcement dated July 13, 2018, Respondent has no information or belief as to such allegations and, therefore, denies same and demands strict proof thereof.

7. As to the allegations found in paragraph 12, 13, 14, 15 and 16 of the Petition for Relief from Judgment and for Stay of Enforcement dated July 13, 2018, Respondent denies the allegations of same and demands strict proof thereof.

RESPONDENT'S MOTION TO CANCEL LIS PENDENS

8. The filing of a notice of lis pendens is "an extraordinary privilege granted by statute, and strict compliance with the statutory provisions is required." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002).

9. The filing of a lis pendens is only permitted when the action "affect[s] the title to real property." *Id.* at 18; S.C. Code Ann. § 15-11-10 (2005). When an action does not affect the title to real property, the filing of a lis pendens is not authorized by the statute and it should be cancelled. *Id.*

10. A notice of lis pendens may be filed in an action affecting the title to real property to protect an interested party's ownership interest in the property subject to the litigation. S.C.Code Ann. § 15-11-10 (2005). *Pond Place Partners*, 567 S.E.2d at 889.

11. As noted by the Court of Appeals, actions that support filing a lis pendens include: (1) actions attempting to set aside a fraudulent conveyance of real property; (2) actions to establish a constructive trust over real estate; (3) actions to quiet title; (4) actions to establish the existence of an easement; (5) actions to reform deeds to resolve a boundary dispute; (6) actions for specific performance; and (7) actions for mortgage foreclosure. 567 S.E.2d at 889-90 (citations omitted).

12. The Petitioner has filed lis pendens against two separate properties owned by Respondent. The first is a 26.055-acre lot located on Highway 49 in Lake