

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

3-16-23

In the Matter of the Estate of Thomas G. Moore:

Michael Dennis Moore, Appellant,

RECEIVED

v.

MAR 17 2023

Thomas Paul Moore, Francine Laura Lawhon, Estate of
Linda Kaye Moore, and Phillip Frederick Moore,
Respondents.

SC Court of Appeals

Appellate Case No. 2018-001144

Dear Ms. Kitchens,

Please give this letter to the 3 Judges that presided and ruled on this case. Judge Conrette has disregarded your decision on Appeal III and also the Remitter sent back to Florence S.C. I am totally angry, upset, hurt and devastated towards Judge Conrette disregarding all the Judges Orders in the Past on Appeal III to close this 9 year Probate. His actions as a Judge March 14, 2023 was wrong and totally Un-Fair. How can Judge Conrette legally disregard these Orders. Enclosed?

STATEMENT OF ISSUES ON APPEAL

This Issue has been completed and settled.

I. Did the court err in ruling that a separate envelope containing a document with instructions devising a piece of the Testator's estate, should be integrated into the Testator's separate will when the separate document was not connected to the Testator's will, was not referenced in the said will, and was not properly executed according to the laws of the State of South Carolina?

This Issue has been completed and settled.

II. Did the court err in ruling that the joint tenancy with a right of survivorship between the Testator and the Appellant was defeated at the time of the purchase agreement to sell the property, where only the Appellant signed a contract to sell the joint tenancy property, and the Testator died before the closing of the said property?

Judge Conrette III has refused to settle this issue March 14, 2023 Hearing. He has refused to settle this issue by the Past Judges Orders

III. Did the court err in ruling that the Appellant failed to (1) pursue payment for loans made by the Decedent to Tammy Jackson; (2) account for funds received for the repossession and sale of the 2004 Jaguar; and (3) account for loans to Moore's Car LLC; based on the fact that the evidence allowed to be submitted in support of this judgment was untimely brought to the attention of the parties minutes before the hearing began, which in turn prejudiced the Appellant making him unable to provide a proper defense or counter to the improperly submitted evidence?

STATEMENT OF ISSUES ON APPEAL

3-16-23

- III. Did the court err in ruling that the Appellant failed to (1) pursue payment for loans made by the Decedent to Tammy Jackson; (2) account for funds received for the repossession and sale of the 2004 Jaguar; and (3) account for loans to Moore's Car LLC; based on the fact that the evidence allowed to be submitted in support of this judgment was untimely brought to the attention of the parties minutes before the hearing began, which in turn prejudiced the Appellant making him unable to provide a proper defense or counter to the improperly submitted evidence?**

Enclosed I have documents filed Dec. 13, 2022 requesting a Hearing to settle the Appeal III Issue to close this 9 year Probate. The Order (Enclosed) was given by Judge Scott in Lower Probate Court in Florence, S.C. Nov. 29, 2016 on this issue. This Probate case has been through Lower Probate Court Florence, S.C., Circuit Court Florence, S.C. Lastly, the South Carolina Court of Appeal Columbia S.C. and the Remitter back to Probate Court Florence S.C. to be closed, all these Courts did NOT disturb or change the Order Nov. 29, 2016 Judge Scott issued on the above III Issue. This Order on the III Issue given by Judge Scott still stands today March 14, 2023. I was given a Hearing March 14, 2023 with Judge Cartrette presiding. I had with me documents and cancelled checks that I retrieved from my deceased Father's Bank statements to show Judge Cartrette. These documents, cancelled checks and evidence submitted to Judge Scott in Court in the Hearings convinced Judge Scott to give his Order on Issue III above. I never had a chance March 14, 2023 to show Judge Cartrette the Proof and evidence submitted in Court to Judge Scott that persuaded him to give his Order on the III Issue above. This Hearing March 14, 2023 was a Total Disaster. I never was given a chance to Prove why I requested this Hearing. The fact is Judge Cartrette allowed P. R. Michael Pennis Moore to talk the entire Hearing trying to persuade Judge Cartrette not to carry out the Appeal III Order against him given by Judge Scott Nov. 29, 2016. I can't believe what P. R. Pennis Moore stated in the Hearing I requested March 14, 2023 to persuade Judge Cartrette to disregard the Order given by Judge Scott Nov. 29, 2016. In my opinion Judge Cartrette had no legal authority to disregard Judge Scott's

Order causing more pain and suffering after 9 years in the Probate also, Judge Cortrette allowed Dennis Moore to bring his Nephew Mark Lawton to speak several times through-out this Hearing helping him as a witness to persuade Judge Cortrette not to carry out this Order III given by Judge Scott Nov. 29, 2016. Michael Dennis Moore and his Nephew Mark Lawton told Judge Cortrette several lies and false statements through-out this Hearing. The question I would like to ask is Why did Judge Cortrette allow Mark Lawton at this Hearing that Alternate Personal Representative Phillip F. Moore requested? Mark Lawton is NOT a Heir. He has never been present or been involved in this Probate in the Past 9 years. The 1st time he has been present was this Hearing March 14, 2023 Phillip Moore requested Judge Cortrette knows nothing about our family. What Judge Cortrette don't know Mark Lawton was with P.R. Michael Dennis Moore the day Before ALL the Heirs met at my father's house after his funeral. The remaining Heirs know for a fact it was Mark Lawton and P.R. Michael Dennis Moore that broke into our Parents safe and stole thousand of dollars (Real Transcript). Judge Cortrette was total wrong to allow Mark Lawton to be present for the 1st time March 14, 2023 as a witness for P.R. Michael Dennis Moore. The next day March 15, 2023 I, Alternate Personal Representative Phillip F. Moore went back to the Probate Court to ask Judge Cortrette why was I mis-treated yesterday in Court when I was the Heir that requested the Hearing. Judge Cortrette was Not in his office. Associate Probate Judge Michelle Hochman was in the Court room during this Hearing March 14, 2023. I went in her Office to get answers why Judge Cortrette treated me the way I was treated when I requested the Hearing that was filed. Judge Hochman stated the reason Judge Cortrette did what he did at this Hearing was to get the family back together. I, Phillip F. Moore Alternate Personal Representative Did Not request this Hearing for Judge Cortrette

to get this family back together. Read the Transcript in this Hearing. I stated to Judge Cartrette I was not going to sit here and listen to the lies and false statements given by P.R. Michael Dennis Moore and his Nephew Mark Loufan when I knew for a fact they were telling lies and false statements. I wanted to get up and leave but, was denied. Judge Scott realized P.R. Michael Dennis Moore was a thief and a liar due to the fact P.R. Michael Dennis Moore was awarded \$50,000 in Judge Scott's Order for his duty as Personal Representative. Judge Cartrette stated at the end of this Hearing he would Not enforce the III Issue and gave P.R. Michael Dennis Moore 30 days to Close the Probate. My Constitutional Rights has been violated by Judge Cartrette denying the remaining Heirs to receive Justice. If Judge Cartrette wants to see the Proof and evidence why Judge Scott made his Order Nov. 29, 2016 on the III Issue then Judge Cartrette and Associate Probate Judge Hochman should do their Job what they are required to do and should look through the Probate File in his office. I am 67 years old and Retired. I myself has paid \$20,000.00 for attorney fees in Florence, S.C. and \$15,000.00 to James Snell to represent me in the S.C. Court of Appeals. This money come from my Retirement account I was saving. The remaining Heirs will make their Pleas for Judge Cartrette or any other Probate Judge to settle the Issue III with Judge Scott's Order and close this 9 year Probate case. We have had pain and suffering for 9 years and what Judge Cartrette allowed to happen at this Hearing March 14, 2023 has made it worst. If the III Issue is not settled by Judge Scott's Order Nov. 29, 2016, I will warn all my friends and neighbors what will happen in their Probate case if Probate Judge Cartrette is the Presiding Judge. I have pictures of the signs P.R. Michael Dennis Moore has around his office concerning Judge Cartrette as a Probate Judge. These signs will have a effect on Judge Cartrette as a Probate Judge. To warn the Public I am tempted to do the same all around my resident. We will ask the higher courts to legally close this Probate.

Alternate Personal Rep.
Heirs Phillip F. Moore Jr.

STATE OF SOUTH CAROLINA

FILED

IN THE PROBATE COURT

COUNTY OF: FLORENCE

PROOF OF DELIVERY

IN THE MATTER OF:
THOMAS G MOORE

2022 DEC 13 AM 9:49

CASE NUMBER: 2014ES2100134

(Decedent)

JESSE S. CANTREITE, JR
JUDGE OF PROBATE COURT
FLORENCE COUNTY, SC

On the 13 day of DECEMBER, 2022, I mailed or delivered the following document(s):

Enforcement of Order and for Rule to Show Cause for Contempt

- A copy of which is attached hereto and incorporated herein, or
- The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- personal delivery
- certified mail
- commercial delivery
- ordinary first-class mail
- registered mail
- electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Phillip F. Moore	1504 Damon Drive, Florence, SC 29505
Francine L. Lawhon, Individually and as PR of the Estate of K. Moore	2005 Third Loop Rd., Florence, SC 29501
Michael Dennis Moore	2129 Kristens Channel, Florence, SC 29501
S. Potter Stewart, II, Esq.	McGowan, Rogers, Stewart & Hiller, PA P.O. Box 1461, Florence, SC 29503
Thomas P. Moore	228 White Palm Court, Florence, SC 29506
Turner Padgett Graham & Baney, PA - Campbell	P.O. Box 5478, Florence, SC 29502

HAND DELIVERY

HAND DELIVERY

SWORN to before me this 13th day of December, 2022
Sibby Padgett
 Notary Public for South Carolina
 My Commission Expires: May 5, 2032

Signature: Phillip F. Moore Jr.
 Print Name: PHILLIP F. MOORE
 Address: 1504 DAMON DRIVE
Florence, S.C. 29505
 Telephone (Work): _____
 (Home): 843-601-3347
 Cell: 843-601-3347
 Email: NONE
 Relationship to Decedent/Estate: SON

Signature: _____
 Print Name: _____
 Address: _____
 Telephone (Work): _____
 (Home): _____
 Cell: _____
 Email: _____
 Relationship to Decedent/Estate: _____

FILED

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: FLORENCE

2022 DEC 12 PM 3:37

NOTICE OF HEARING

IN THE MATTER OF:
THOMAS G MOORE
(Decedent)

JESSE S. CARTRETTE, JR.
JUDGE OF PROBATE COURT
CASE NUMBER: 2014ES2100134
FLORENCE COUNTY, SC

DATE: To be determined by Probate Court

TIME: _____

PLACE: _____

PURPOSE: Enforce Court Orders Enclosed and Enforce Contempt against Michael Dennis Moore
This Probate case should be closed by the Lower Probate original Order dated Nov. 29, 2016, Circuit's Order dated May 8, 2018 and the South Carolina Court of Appeals Order dated May 4, 2022 Remitted to Lower Court Florence, S.C. These Orders Enclosed should be enforced. The P. R. Michael Dennis Moore has refused to take the necessary actions to close this Probate denying the Judges Order. This Court should enforce the Contempt towards the P. R. Michael Dennis Moore. Enclosed are transcripts stating the 1st Hearing June 24, 2014 in this Probate by Judge Scott concerning the Furniture and Personal Assets. Judge Scott has stated to P. R. Michael Dennis Moore to submit Pictures of the Furniture to match the Pictures of the other Heirs. Executed this 9th day of December, 2022.

Signature: Phillip F. Moore Sr. - Heir
Print Name: PHILLIP F. MOORE SR.
Address: 1504 DAMON DRIVE
FLORENCE, S.C. 29505
Telephone (Work): RETIRED
(Home): 843-601-3347
(Cell): 843-601-3347
E-mail: NONE
Relationship to Decedent/Estate: SON

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE MATTER OF THE ESTATE)
OF: THOMAS G. MOORE)

IN THE PROBATE COURT
CASE NO. 2014-ES-21-00134

ORDER

J. MUNFORD SCOTT, JR.
JUDGE PROBATE CT.
FLORENCE COUNTY, S.C.

2016 NOV 29 PM 2:47

FILED

The Decedent in this matter Thomas G. Moore died on December 20, 2013. He left a will dated September 27, 1999 in which he named his son Michael Dennis Moore as Personal Representative. This will was admitted to probate in the Florence County Probate Court on February 20, 2014 and Michael D. Moore was appointed Personal Representative on that date. The Decedent was survived by three sons, Thomas Paul Moore, Phillip Fredrick Moore and Michael Dennis Moore and two daughters Francine Laura Lawhon and Linda Kaye Moore. The Original Inventory and Appraisalment for this Estate was filed on April 24, 2014. On April 8, 2015 the Personal Representative was informed by this Court that nine months has elapsed since his appointment and that it was necessary for him to file an accounting with this Court. A date of April 20, 2015 was set for the Personal Representative to come in with his accounting. The Personal Representative did not respond in any way to the Court.

①
MS

This matter came before the Court with the consent of all interested parties for a hearing to approve Estate closing documents on December 22, 2015, and subsequently on July 27, 2016. Extensive testimony and documentary evidence was received. A number of matters were raised in these hearings including determining: (1) whether a separate writing found with the Decedent's Last Will and Testament should be integrated into the Will to address issues related to certain real property located in Richland County (here in after the "Church Property"); (2) whether any of the heirs are entitled to an additional one-sixth share of the Estate pursuant to the caretaking clause in the Last Will and Testament of the Decedent; (3) whether the proceeds from

MERCEDES

The evidence presented showed that Dennis Moore, the Personal Representative, converted to his own use cash funds belonging to Thomas P. Moore just before his death. Dennis Moore physically conducted a transaction to purchase a Mercedes automobile using one of the Decedent's personal checks. Subsequently, title to the Mercedes was put into Dennis Moore's name individually using DMV forms prepared by Dennis Moore. Dennis Moore then sold the vehicle; however the Estate has yet to realize any proceeds from the sale of the Mercedes, which was paid for using the Decedent's funds. There was no satisfactory evidence presented that the Mercedes was a gift to Dennis Moore.

A constructive trust is a means by which the court may compel the conveyance of a property interest from one who holds the title unfairly to another to whom it rightly belongs.²⁰

"A constructive trust arises when the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title."²¹ "A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust."²² A constructive trust may be imposed when "...one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy."²³

²⁰ See *Chapman v. Citizens & S. Nat'l Bank of S.C.*, 302 S.C. 469, 395 S.E.2d 446 (1990).
²¹ *Halbersberg v. Berry*, 302 S.C. 97, 106, 394 S.E.2d 7, 13 (Cl. App. 1990).
²² *Chapman*, 302 S.C. 469, 480, 395 S.E.2d 446, 453 (Cl. App. 1990).
²³ *Halbersberg*, 302 S.C. at 106, 394 S.E.2d at 13 (Cl. App. 1990).

9

10

"The abuse of a confidential relationship is recognized by our Supreme Court as the basis of the imposition of a constructive trust by a court of equity."²⁴ Notably, a fiduciary relationship exists between each heir or beneficiary of a Decedent's estate and the Personal Representative.²⁵ "In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between parties."²⁶ Actual fraud is not required to establish a constructive trust.²⁷ In the context of constructive trusts, "fraud" means generally reprehensible conduct rather than a misrepresentation of fact.²⁸

To impose a constructive trust, it is not necessary to establish legal wrongdoing or a wrongful or malicious intent on the part of the unjustly enriched party.²⁹ "Rather, the touchstone for imposition of a constructive trust is injustice or unfairness, which may take the form or be the product of fraud (actual or constructive), abuse of a fiduciary or confidential relationship, undue influence, or unjust enrichment."³⁰ "[T]he constructive trust is a fluid, flexible device which may be employed to remedy many different types of injustice."³¹

A confidential relationship existed between Dennis Moore and the beneficiaries of the Decedent's estate because of his position as Personal Representative. The evidence was clear that funds belonging to the Decedent purchased the Mercedes at issue. There was great debate at the hearing over the use of the term "bought," as to whether that meant who was physically at an

²⁴ *Chapman*, 302 S.C. at 479, 395 S.E.2d at 453 (Ct. App. 1990).

²⁵ *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (2009); see also S.C. CODE ANN. §62-3-703 (2016).

²⁶ *Chapman*, 302 S.C. at 476, 395 S.E.2d at 450 (Ct. App. 1990).

²⁷ *Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 529, 520 S.E.2d 339, 352 (Ct. App. 1999).

²⁸ *Chapman*, 302 S.C. at 479, 395 S.E.2d at 452 (Ct. App. 1990).

²⁹ See *Sharp v. Kosmalki*, 40 N.Y.2d 119, 121, 351 N.E.2d 721 (1976) (holding a constructive trust was appropriate to remedy the unfair outcome despite the fact that the property transferred was a gift from the plaintiff and there was no evidence of fraud or a promise on the part of the defendant).

³⁰ *Brown v. Brown*, 152 S.W.3d 911, 918 (Mo. Ct. App. 2005); See also *Chapman*, 302 S.C. at 479, 395 S.E.2d at 446 (Ct. App. 1990) (Abuse of a confidential relationship is recognized as a basis for imposition of constructive trusts by courts of equity).

³¹ *Brown*, 152 S.W.3d at 918 (Mo. Ct. App. 2005).

10
10

auction or whose funds actually paid for the transaction. However, it is undisputed that the funds involved in the transaction originated with the Decedent. It is also undisputed that the title to the vehicle, through several successive documents, filed with the South Carolina Department of Motor Vehicles, methodically transferred title into the name of Dennis Moore, individually. Dennis Moore subsequently sold the Mercedes for \$63,000.00. Because the funds purchasing the vehicle belonged to the Decedent, such a transfer to Dennis Moore either had to be a gift from the Decedent or Dennis Moore took the vehicle improperly. No sufficient evidence has ever been presented that this transaction was a gift. Thus, Dennis Moore violated his fiduciary duty, abused his confidential relationship, and was unjustly enriched when he used funds out of the Estate of the Decedent to purchase the Mercedes for himself. Therefore, the Estate has a right to the proceeds of the sale, which have been held by Dennis Moore in a constructive trust.

I find that the Personal Representative used the Decedent's funds to purchase the Mercedes, ultimately titled in his own name. The Personal Representative was unjustly enriched. For these reasons, this Court imposes a constructive trust on the proceeds of the sale of the Mercedes in favor of the Estate. It is ordered that the \$63,000.00 value of the Mercedes at issue be paid by the Personal Representative into the Estate and should be added to the funds held in trust by Porter Stewart within ten days of the date of this order.

CYPRESS AVENUE HOUSE

The Decedent and Personal Representative Dennis Moore owned the property located on Cypress Avenue in Garden City as joint tenants with right-of-survivorship. This property was purchased long before the Decedent's death. The evidence is undisputed that a contract to sell this property for \$324,500 was entered into in November 2013, well before the death of the Decedent. The actual closing occurred December 27, 2013, seven days after the Decedent's

property in favor of the purchaser by entering into an enforceable contract to purchase.³⁴ As such, the Decedent's estate is entitled to one-half of the proceeds because the contract had been entered into and was simply waiting for the closing to be completed at the time of death.

Dennis Moore is ordered to pay \$162,500.00 (reduced by one-half of any documented closing costs of the seller) to the estate to be distributed to the beneficiaries, pursuant to the will. The funds should be paid to Porter Stewart's trust account within ten days of the date of this order.

PERSONAL REPRESENTATIVE COMMISSION

South Carolina Code Section 62-3-719(a) provides:

Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

The five percent commission for personal representatives is not a fixed amount rather it is a maximum commission. The only fixed commission is the \$50 minimum commission provided by the statute. The amount of commissions due to a personal representative is within the discretion of the probate court based on the care in the execution of his duties demonstrated by the personal representative.

Throughout the probate of the Decedent's estate, the beneficiaries repeatedly requested bank checks and statements, bank records, bank statements of the estate account, and other financial records of the estate and Decedent. The Personal Representative, Dennis Moore, informed the beneficiaries that they would need to get a lawyer if they wanted any of the

³⁴ *Id.*

requested records. Two of the beneficiaries did in fact retain attorneys. The Personal Representative has caused disputes that required court intervention. Additionally, there was undisputed testimony that the Personal Representative neglected to list or collect two debts owed to Decedent's estate.

13
JMS

Finally, it is undisputed that the Personal Representative failed to carry out orders of the court costing the beneficiaries substantial sums in attorneys' fees to enforce the court orders. The Personal Representative failed to provide the beneficiaries with a list of all personal property in the estate, in direct violation of a court order to do so. As a result, the beneficiaries had to create the list themselves. Additionally, the Personal Representative himself testified that he failed to provide the beneficiaries with bank statements, which was mandated in a court order. The beneficiaries had to hire attorneys to subpoena those records. The Personal Representative has made a claim for a full commission of five percent.

Pursuant to the South Carolina Code, "a Personal Representative is a fiduciary who shall observe the standards of care described by Section 62-7-804."³⁵ The duties of the Personal Representative include: (1) a duty to settle and distribute the estate of the Decedent in accordance with the terms of a probated and effective will and this code, and (2) to do so as expeditiously and efficiently as is consistent with the best interests of the estate.³⁶ The Personal representative must use the authority conferred upon him by the South Carolina Code, the terms of the Decedent's will, and any court order for the best interests of successors to the estate.³⁷

This Court finds that the Personal Representative was derelict in his duties of notifying heirs and carrying out orders of this court, and in timely fulfilling the statutory requirements of that office.

³⁵ S.C. CODE ANN. § 62-3-703 (2016).

³⁶ *Id.*

³⁷ *Id.*

The Personal Representative's commission is reduced to \$50 due to the Personal Representative's failure to properly marshal and safeguard the assets of the estate, failure to inform beneficiaries of various requested information, failure to provide bank statements as needed, failure to collect on two outstanding loans of the estate, failure to properly account for personal property as directed by the court, and for causing disputes and necessitating enforcement of court orders. The attorneys for Thomas P. Moore and Philip Moore submitted affidavits of their legal fees for services rendered to complete certain tasks that the Personal Representative should have completed. As such, those should have been estate expenses. Porter Stewart shall issue checks from the Estate funds in his trust account to the attorney for Thomas P. Moore for \$2,774.50 and the attorney for Philip Moore for \$3,042.02. These amounts shall be paid within ten days of the date of this order and before the division of the estate into five shares.

CASH IN SAFE

The Personal Representative of the estate testified that the amount of cash in the safe at the time of the Decedent's death was approximately fourteen thousand dollars and no/100 (\$14,000.00). This is the same amount reported when the Personal Representative was first appointed. The Personal Representative stated that \$5,618.65 was used to pay estate related expenses, leaving \$8,381.35 to be deposited in the estate. Testimony by the Personal Representative was that instead of only depositing the \$8,381.35, he deposited an even \$8,400 into the estate's account.

Petitioners testified that at the time of Decedent's death, there had to be more cash in the safe, because while Decedent was still alive they had each seen what appeared to be more cash in the safe than fourteen thousand dollars and no/100 (\$14,000.00). Petitioner Phillip Moore also testified that his view of the contents occurred when the safe was opened by the Decedent,

between March and May of 2012, least one (1) year and seven (7) months before the Decedent's death. Petitioner Thomas Moore stated on the recorded that there appeared to be more than \$14,000.00 in the safe but did not know exactly how much was in the safe.

Testimony was also heard stating that a money bag with an accounting of more than twenty five thousand dollars and no/100 (\$25,000.00) cash was in the safe. This accounting was done by the Decedent at some point before his death. It is impossible for the Court to be certain that the amount listed on the money bag was still in the safe at the time of the Decedent's death. Finally, the Court is unable to be certain that any other individual who had access to the home did not remove cash from the safe prior to the Personal Representative retrieving and accounting of the items in the safe.

15
17

Generally, in order for damages to be recoverable, evidence should be such as to enable court or jury to determine the amount thereof with reasonable certainty or accuracy.³⁸ Neither the existence, causation, nor amount of damages can be left to conjecture, guess, or speculation.³⁹ No sufficient proof has been provided to show how much, if any additional cash was in the Decedent's safe above the amount specified by the Personal Representative. The testimony and evidence submitted provided nothing more than speculation as to the amount of cash in the safe at the time of the Decedent's death. Therefore, this Court finds that the amount of cash in the safe when the Personal Representative opened the safe after the Decedent's death was \$14,000.00, as initially represented by the Personal Representative.

³⁸See *Whisenant v. James Island Corps.*, 277 S.C. 10 281 S.E. 794 (1981)

³⁹See *Gray v. Southern Facilities, Inc.* 256 S.C. 558, 183 S.E.2d 438 (1971)

DISPOSITIONS OF CHECKS

Decedent's son, Phillip Moore, contends the Personal Representative failed to account to the Court for all of the assets owned by the Decedent at the time of his death. First, Phillip Moore alleges that the Decedent made multiple personal loans to Tammy Jackson ("Jackson"). However, the Personal Representative failed to disclose the loans on the Inventory or account to the Court for monies received when a vehicle purchased with Decedent's money was sold after Dennis Moore repossessed it due to Jackson's failure to pay the loan owed to Decedent. Phillip Moore also contends the Decedent loaned money to Dennis Moore and Dennis Moore's business, Moore's Cars, LLC. These loans were not disclosed to the Probate Court nor has Dennis Moore accounted for or repaid the loans. Lastly, Phillip Moore questions whether Dennis Moore has properly and fully accounted for monies held in the last bank account opened by Decedent before his death. The Court will address these allegations in turn.

On August 19, 2013, approximately four months before Decedent's death, Decedent wrote a check for \$6,500.00 to Dennis Moore. The reference line notes "04 Gray Jaguar." Phillip Moore testified that the money was a loan to Jackson to assist in the purchase of the Jaguar and was used by Dennis Moore to purchase the car. According to Phillip Moore, the vehicle was purchased and delivered to Jackson. Jackson, however, never made payments on the loan. As a result of her failure to make payments, Dennis Moore repossessed the Jaguar and sold it. None of the proceeds of the sale of the vehicle were ever accounted for and deposited in the Estate account. Beginning July 5, 2012, the Decedent made other loans to Jackson as reflected by copies of seven checks produced by Phillip Moore. Each check is payable directly to Jackson and on each check, the Decedent specifically noted the monies were a loan. One of the checks,

dated May 18, 2012, was a loan for \$5,000.00 with the notation stating "[t]his check was loaned-
to Tammy Jackson -to buy 2003 Honda Blue - vin#016077 - Moore's Cars- Thomas G. Moore
Lien put on title. According to Philip Moore, Jackson still has possession of this vehicle but there
is no evidence that any payments for the loan were received by Decedent before his death. Nor,
has the Estate received any payment for the loan. The Personal Representative has failed to
account for any of the loan proceeds or pursue repossession of the vehicle. Based upon the
uncontested evidence presented to the Court, it is clear that the Estate assets should include these
funds. Based upon the undisputed value of the checks, the total sum that the Estate has lost as a
result of Personal Representative's actions or failure to act is at least \$19,838.00. Philip Moore
testified that in 2003, the Decedent closed down Moore's Cars, LLC. Dennis Moore then
incorporated a new entity under the name Moore's Car, LLC. The owner of Moore's Cars, LLC,
from that time up until the death of the Decedent was Dennis Moore. According to Philip
Moore, although the Decedent no longer owned the business, he still maintained an account in
the pseudonym of Moore's Cars, LLC, and still bought and sold cars under the dealer license of
Dennis Moore. Decedent was continuing this practice as recently as May, 2011. Philip Moore
admitted ten checks which he contends evidences monies provided to Dennis Moore or his LLC
to purchase cars. On each of the checks, Decedent made a note that the funds were a "loan" for
Moore's Cars, LLC. Even more compelling is the Decedent's notes on checks dated January 18,
2012 and August 8, 2012. On these particular checks, the Decedent wrote "[m]oney put in
Anderson Bank for Moore's Cars, LLC - buy cars" and "[l]oan Moore's cars to buy cars -
Aycock Auction - Dennis." It is clear to the Court that the Decedent was loaning his personal
funds to Dennis Moore to purchase cars for his LLC. The Court finds that these references to a
loan to Moore's Cars, LLC, demonstrate loans to Dennis Moore as owner of Moore's Cars, LLC.

18

ms

19
8/4

Dennis Moore argues that most of these checks are merely the Decedent moving money from one of his bank accounts to another of his bank accounts. The problem with this argument is that the only bank account in the Decedent's name listed on the Estate inventory is a First Citizens checking account containing \$37,052.25. Although no cash is listed on the inventory filed by the Personal Representative testimony revealed that there was \$14,000 of cash in the Decedent's safe at his death. These two assets fall far short of the total of the amount of checks written by the Decedent and do not support Dennis Moore's theory. No evidence has been presented to demonstrate that any of these funds have been repaid to the Decedent or to his Estate. Based on the evidence presented, the Court holds that for the period of May 10, 2011, through June 11, 2013, Dennis Moore, as the owner of Moore's Cars, LLC, received funds totaling \$454,640.00 from the Decedent.

Finally, on April 5, 2013, the Decedent opened an account at First Bank. It is undisputed that the First Bank account was solely owned by Decedent with no other person or persons depositing any funds into the account. From April 5, 2013, until the date of Decedent's death on December 20, 2013, the Decedent deposited \$217,875.00 into this account. Each deposit represented proceeds from the sale of a car. However, there is no accounting for these funds and Philip Moore contends these funds should be included in the assets of the account. Philip Moore also offered an exhibit he prepared that offered scenarios of possible explanations as to where the money was spent. However, there is insufficient evidence for the Court to determine with certainty whether the Personal Representative has failed to properly account for the funds deposited into the First Bank account.

Based upon the foregoing, the Court finds that Personal Representative has failed to report and account for a substantial sum of money in the following instances: (1) failure to

pursue payment for loans made by Decedent to Tammy Jackson; (2) failure to account for funds received for the repossession and sale of the 2004 Jaguar; and (3) failure to account for loans to Moore's Cars, LLC. Accordingly, the Court finds that Dennis Moore is indebted to the estate in the amount of \$473,838.00.

CONCLUSION

20
DMS
It appears that the amounts ordered for Dennis Moore to repay the Estate exceed the one-fifth share which Dennis Moore would otherwise be entitled to receive. As such, the 1/5 share of the estate that would otherwise be payable to Dennis Moore shall be subtracted from the amount he is obligated to repay and he shall pay the difference. The other four beneficiaries would then split the Estate four ways. The Personal Representative is ordered to present new estate closing documents that comply with this order within thirty days of the date of this order. The only other appropriate estate attorneys' fees are those to be paid to S. Porter Stewart's as attorney for the estate. Any fees due to David M. Smith, Esq. shall be paid by Dennis Moore and not by Estate funds.

ORDER

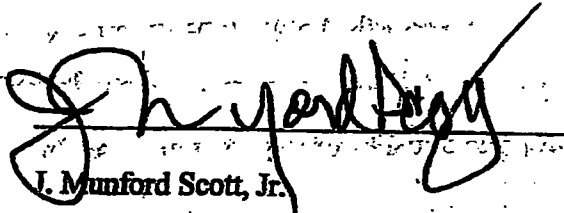
It is therefore ***ordered and decreed*** as follows:

1. Porter Stewart, as attorney for the Estate, shall adjust the closing documents of the estate by preparing a deed of distribution for the Richland County Church Property to Thomas P. Moore.
2. No additional share of the estate shall be provided to any party for live in care of the Decedent.
3. Porter Stewart, as attorney for the estate, shall add to the assets of the estate an amount due from Dennis Moore of Sixty Three Thousand (\$63,000.00) Dollars which represents the proceeds from the sale of a Mercedes automobile purchased with the Decedent's funds.
4. Porter Stewart, as attorney for the estate, shall add to the estate assets an amount due from Dennis Moore of One Hundred Sixty Two Thousand Five Hundred (\$162,500.00) Dollars less one half (1/2) of the closing costs for this sale of the property located on Cyprus Ave. in Garden City South Carolina.
5. Porter Stewart, as attorney for the estate, shall amend the final accounting to show a Personal Representative commission due of Fifty (\$50.00) Dollars.
6. Porter Stewart, as attorney for the estate, shall not adjust the amount of cash nor the jewelry reported by the Personal Representative.
7. Porter Stewart, as attorney for the estate, shall add to the assets of the estate an amount due from Dennis Moore of Four Hundred Seventy Three Thousand Eight Hundred and Thirty Eight (\$473,838) dollars representing loans made by the Decedent to Dennis Moore or his LLC.

8. Porter Stewart as attorney for the estate shall issue checks from the Estate funds in his trust account to the attorney for Thomas P. Moore for \$2,774.50 and the attorney for Philip Moore for \$3,042.02. These amounts shall be paid within ten days of the date of this order and before the division of the estate into five shares.

9. Dennis Moore shall repay to the Estate the sum of Six Hundred Ninety Nine Thousand Three Hundred Thirty Eight (\$699,388.00) Dollars less one half of the closing cost associated with the sale of the Cyprus Ave. property and less the one fifth (1/5) share of the estate to which he would otherwise be entitled within thirty days of this order.

Executed this 28th day of November



J. Munford Scott, Jr.
Florence County Probate Judge

22




The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 05, 2022

Michael Dennis Moore
2129 Kristens Channel
Florence SC 29501

Mr. C. Pierce Campbell, Esquire
PO Box 5478
Florence SC 29502

Mr. James Ross Snell, Jr., Esquire
123 Harmon Street
Lexington SC 29072

Ms. Vicki D Koutsogiannis, Esquire
123 Harmon Street
Lexington SC 29072

Francine Laura Lawhon
2005 Third Loop Rd.
Florence SC 29501

Re: In the Matter of the Estate of: Thomas G. Moore
Appellate Case No. 2018-001144

Dear Mr. Moore, Ms. Lawhon and Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

STATEMENT OF ISSUES ON APPEAL

- I. **Did the court err in ruling that a separate envelope containing a document with instructions devising a piece of the Testator's estate, should be integrated into the Testator's separate will when the separate document was not connected to the Testator's will, was not referenced in the said will, and was not properly executed according to the laws of the State of South Carolina?**

- II. **Did the court err in ruling that the joint tenancy with a right of survivorship between the Testator and the Appellant was defeated at the time of the purchase agreement to sell the property, where only the Appellant signed a contract to sell the joint tenancy property, and the Testator died before the closing of the said property?**

- III. **Did the court err in ruling that the Appellant failed to (1) pursue payment for loans made by the Decedent to Tammy Jackson; (2) account for funds received for the repossession and sale of the 2004 Jaguar; and (3) account for loans to Moore's Car LLC; based on the fact that the evidence allowed to be submitted in support of this judgment was untimely brought to the attention of the parties minutes before the hearing began, which in turn prejudiced the Appellant making him unable to provide a proper defense or counter to the improperly submitted evidence?**



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 04, 2022

The Honorable Doris Poulos O'Hara
181 N. Irby Street MSC-E
Florence SC 29501

REMITTITUR

Re: In the Matter of the Estate of: Thomas G. Moore
Lower Court Case No. 2016CP2103062
Appellate Case No. 2018-001144

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Michael Dennis Moore
C. Pierce Campbell, Esquire
James Ross Snell, Jr., Esquire
Vicki D Koutsogiannis, Esquire
Francine Laura Lawhon

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In the Matter of the Estate of Thomas G. Moore:

Michael Dennis Moore, Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon, Estate of
Linda Kaye Moore, and Phillip Frederick Moore,
Respondents.

Appellate Case No. 2018-001144

Appeal From Florence County
J. Munford Scott, Jr., Probate Court Judge
Thomas A. Russo, Circuit Court Judge

Opinion No. 5887
Submitted November 1, 2021 – Filed January 5, 2022

AFFIRMED IN PART AND REVERSED IN PART

Michael Dennis Moore, pro se.

C. Pierce Campbell, of Turner Padgett Graham & Laney,
PA, of Florence, for Respondent Thomas Paul Moore.

James Ross Snell, Jr. and Vicki D Koutsogiannis, of Law
Office of James R. Snell, Jr., LLC, both of Lexington, for
Respondent Phillip Frederick Moore.

THOMAS, J.: Michael Dennis Moore (Appellant), personal representative of the estate of Thomas G. Moore (Decedent), appeals a circuit court order affirming the probate court's order, arguing the circuit court erred in ruling (1) a joint tenancy with a right of survivorship between Decedent and Appellant was defeated at the time a purchase agreement to sell a parcel of real property was signed; (2) Appellant's claims of prejudicial submission of evidence and allowance of new claims on the day of trial were not preserved for the court's review; and (3) a separate envelope containing a document with instructions concerning a piece of Decedent's estate should be integrated into Decedent's last will and testament (Will). We affirm in part and reverse in part.¹

FACTS/PROCEDURAL HISTORY

Decedent passed away on December 20, 2013, leaving a Will dated September 27, 1997. The Will appointed Appellant as the personal representative. The Will was admitted to the Florence County Probate Court on February 20, 2014, and Appellant filed an Original Inventory and Appraisal for the Estate on April 24, 2014. Decedent was survived by five children: Appellant, Thomas Paul Moore, Phillip Frederick Moore, Francine Laura Lawhon, and Linda Kaye Moore. Thomas, Phillip, Francine, and Linda are Respondents.

The matter appeared before the probate court on December 22, 2015, and July 27, 2016. In its order filed November 29, 2016, the court ruled a document, separate from the Will that was found within Decedent's safe with the Will, should be integrated into the Will. The separate document sought to devise to Thomas an interest in a five-acre piece of property located in Richland County, referred to as the "Church Property" by the probate court because it was located across the street from the house of the pastor of Horrell Hill Baptist Church. The church's pastor was Decedent's brother, Reverend Lester Moore. Decedent and Reverend Moore each owned half of the property.

Appellant filed an appeal with the circuit court. After a hearing on February 14, 2018, the circuit court affirmed the probate court's decision by order filed on May 8, 2018. According to Appellant's brief, Appellant filed a motion to alter or amend, which was denied on June 5, 2018; however, neither the motion to alter or amend nor the order denying the motion is included in the record on appeal. This appeal followed.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STANDARD OF REVIEW

"The standard of review applicable to cases originating in the probate court is controlled by whether the underlying cause of action is at law or in equity." *In re Est. of Hyman*, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). An action to construe a will is an action at law. *Id.* Thus, our review extends merely to the correction of legal errors. *Id.* "[T]his [c]ourt may not disturb the probate [court's] findings of fact unless a review of the record discloses there is no evidence to support them." *In re Est. of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999).

LAW/ANALYSIS

I. Joint Tenancy with a Right of Survivorship

Appellant argues the circuit court erred in ruling a joint tenancy with a right of survivorship between Decedent and Appellant was defeated at the time a purchase agreement to sell a parcel of real property was signed. We agree.

Section 27-7-40(a) of the South Carolina Code (2007) provides joint tenancy includes the following incidents of ownership:

(i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.

....

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

Section 27-7-40(c) provides in part:

Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties.

Appellant and Decedent jointly purchased 334 Cypress Avenue in Garden City, South Carolina, with each owning half of the property. They entered into an agreement to sell the property in November 2013, prior to Decedent's death on December 20, 2013. The property was sold on December 27, seven days after Decedent's death. Appellant signed the deed individually and received all the proceeds from the sale, despite the existence of the sales contract before Decedent's death.

The probate court cited to section 27-7-40 of the South Carolina Code for the proposition that if all joint tenants who own real property in joint tenancy join in an encumbrance, the interest in the real property is encumbered for a third party or parties. The probate court wrote that this court expounded on the statute in *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, 307 S.C. 76, 78-79, 413 S.E.2d 852, 854 (Ct. App. 1992), when it held a "purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid for the purchase price," and "[t]his equitable interest arises from payment of the money and does not depend on the purchaser's taking possession of the real estate." Thus, the probate court reasoned that the sales contract entered into prior to Decedent's death encumbered the property, entitling the purchaser to possession of the property upon payment of the agreed price and Decedent to one-half of the proceeds at closing. The court found that neither the fact that Decedent's signature was not listed on the closing documents nor that the deed was not prepared prior to Decedent's death invalidated Decedent's rights to the proceeds of the sale of the property. Therefore, the probate court ruled the joint tenancy with right of survivorship was defeated by the contract to sell the property and Decedent's Estate was entitled to one-half of the proceeds from the sale. The

court ordered Appellant to pay Decedent's Estate \$162,500 for the Estate's portion of the sales proceeds.

In its order, the circuit court found there was evidence to support the probate court's findings; thus, they should not be disturbed. As to the legal question of the effect of a contract to purchase and sell real estate creating rights for Decedent after death, after a de novo review, the circuit court found the probate court correctly interpreted and applied the relevant law. The circuit court noted this court has held a "purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid on the purchase price." *Id.* at 78, 413 S.E.2d at 854. Thus, the court reasoned that once Decedent and Appellant entered into the binding contract to sell the property, Decedent's death did not prevent him from preserving all the rights under it simply because he was waiting for it to be executed. Accordingly, the court held Decedent and Appellant were entitled to receive an equal share of the proceeds of the sale. However, the circuit court noted the probate court incorrectly found half of the \$324,500 sale price was \$162,500, when it should have been \$162,250.

Appellant argues the probate court erred in ruling Appellant and Decedent's joint tenancy with a right of survivorship was severed at the signing of the purchase agreement for the sale of the property. He argues he was the sole owner of the property at the time it was sold because Decedent passed away before the final closing and recording of the property. He asserts the agreement to sell the property, signed by both joint tenants, did not terminate the joint tenancy with a right of survivorship. He argues § 27-7-40(a)(iv) allows for joint tenancies with a right of survivorship to effectively encumber property to third parties but does not state an encumbrance severs a joint tenancy with a right of survivorship. Appellant also argues the probate court incorrectly claimed jurisdiction over a non-probate asset and ruled the joint tenancy with the right of survivorship was terminated at the moment the contract for sale of the property was signed. He maintains there are no South Carolina cases that address this issue.

We find the case the probate court relied on, *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, does not state a seller's interests in a joint tenancy with a right of survivorship is severed at the signing of a purchase agreement. Also, Section 27-7-40 of the South Carolina Code does not provide that an encumbrance on real estate severs the joint tenancy with a right to survivorship. Thus, we look at other states for guidance. There is a split in authority as to whether a contract for the sale of property severs a joint tenancy with a right to survivorship. "In some jurisdictions, a contract of sale made by both or all of the joint tenants

operates as a severance, while a contrary view is taken by other courts." 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 27.

Appellant cites to a Supreme Court of Washington case, *Estate of Phillips v. Nyhus*, 874 P.2d 154 (Wash. 1994), where joint tenants brought suit against the estate of a deceased joint tenant to declare their entitlement to proceeds from the sale of property. The *Nyhus* court held that "[a] contract or agreement by only one joint tenant to convey property held in joint tenancy destroys the right of survivorship, terminates the joint tenancy and converts it into a tenancy in common." *Id.* at 157-58. However, in the *Nyhus* case, at the time of the joint tenant's death, the property was held by the parties as joint tenants with right of survivorship with contractual rights and obligations arising from an earnest money agreement. *Id.* at 158-59. Because there had been no severance of the joint tenancy by execution of the earnest money agreement at his death, the right of survivorship vested title in the surviving joint tenants along with the contractual rights and obligations. *Id.* The court held the operative event was the joint tenant's death and not the ultimate right to possession of the proceeds which followed as a consequence of the post-death completion of the earnest money agreement. *Id.*

In *Weise v. Kizer*, 435 So. 2d 381, 381 (Fla. Dist. Ct. App. 1983), the sole issue before the Florida District Court of Appeal was whether a joint tenancy is severed and the incident of survivorship destroyed when joint tenants execute a contract to sell real property. In that case, Judith Weise and Wallace Cawthon held real property as joint tenants with a right of survivorship. *Id.* Weise and Cawthon entered into a contract to sell the property to Howard and Karla Moss; however, Cawthon died approximately one month before the closing. *Id.* The *Weise* court held "severance does not automatically occur upon the execution of a contract to sell that is executed by all joint tenants, unless there is an indication in the contract, or from the circumstances, that the parties intended to sever and terminate the joint tenancy." *Id.* at 382. Thus, severance did not occur, and Weise was entitled to receive all of the proceeds of the sale of the property. *Id.* at 381.

We are inclined to follow the *Weise* court. The sales contract was silent as to whether severance of the joint tenancy was intended by Appellant and Decedent, and no extraneous circumstances indicated severance was intended by the parties. Thus, we find the probate and circuit courts erred in finding the joint tenancy became a tenancy in common without rights of survivorship when Appellant and Decedent entered into a sales contract for the sale of the property and hold the joint tenancy was not severed in this case. Therefore, we reverse the probate and circuit courts on this issue and find the Estate is not entitled to proceeds from the sale.

II. Issue Preservation

Appellant argues the circuit court erred in ruling his claims of prejudicial submission of evidence and allowance of new claims on the day of trial were not preserved for the court's review. We disagree.

At the hearing before the circuit court, Appellant argued the probate court erred in allowing new evidence and new claims of accounting to be submitted by Respondents at the July 27 hearing because they were in Respondents' possession prior to the first hearing on December 22. Appellant asserts he asked the probate court to allow him to respond to the checks submitted by Respondents, and the court denied his request. Thus, Appellant requested the circuit court reverse that decision or at least remand it to the probate court to allow Appellant to review the checks to determine if the money was spent and where it went.

Thomas asserted no written discovery was done by any party in this case, so the documents were not hidden or withheld before trial. He argued the issue was not preserved because Appellant did not object to the introduction of the documents into evidence. As for Appellant's assertion that the probate court denied his request to respond, Thomas stated Appellant asked the court if it wanted a summary of his interpretation of where the checks went and the court replied "no." Appellant did not object.

In its order, the circuit court noted the issue before it was whether the probate court properly considered the evidence and testimony presented at trial and correctly ruled based on that evidence that Appellant failed to pursue loans to Decedent, failed to account for funds received that belonged to the Estate, and failed to account for loans made by Decedent to Appellant's own business. The court found Appellant's primary arguments were that he was surprised by the evidence presented at trial and he was not permitted to submit a summary of the evidence post-trial. However, it noted Appellant chose not to conduct discovery on these matters, as no written discovery was exchanged between the parties, limited depositions were taken, and there were no requests for the production of documents submitted. Further, it found Appellant's trial counsel acquiesced to the admission of evidence related to the issues numerous times, either expressly or by failing to object to its introduction. Thus, the circuit court determined Appellant raised this issue to the court for the first time on appeal; therefore, it was not preserved for its review.

We find the circuit court correctly found Appellant did not preserve this issue for its review. At trial, Appellant did not object to the introduction of the documents into evidence. *See Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."). Also, Appellant did not object when the probate court denied his request to respond to the evidence with a summary of his own. *See id.* Further, even if Appellant raised any errors related to these issues in his motion to reconsider to the probate court, we cannot review that motion because Appellant did not include it in the record on appeal. *See Bonaparte*, 291 S.C. at 444, 354 S.E.2d at 50 (declining to address the appellant's claim of error because the appellant failed to furnish this court with a sufficient record on appeal to permit consideration of the issue); *id.* ("In the absence of such a record, this issue cannot be considered on appeal."); Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.").

III. Separate Envelope

Appellant argues the circuit court erred in ruling a separate envelope containing a document with instructions devising the Church Property to Thomas should be integrated into Decedent's Will. We decline to consider this issue.

Appellant argues the circuit court erred in affirming the probate court, and the typed document should not have been integrated into the Will because the document was not signed, witnessed, dated, or notarized, and it was in a separate envelope not attached to the Will. The Appellant has not included a copy of the Will or the separate document in the record on appeal. The Appellant bears the burden of providing a sufficient record on appeal from which this court can make an intelligent review. *See Bonaparte v. Floyd*, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987) (declining to address the appellant's claim of error because the appellant failed to furnish this court with a sufficient record on appeal to permit consideration of the issue). "In the absence of such a record, this issue cannot be considered on appeal." *Id.*; Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal."). Our standard of review is that this court may not disturb the probate or circuit courts' findings of fact unless a review of the record discloses there is no evidence to support them. *In re Est. of Cumbee*, 333 S.C. at 670, 511 S.E.2d at 393. Without the inclusion of the Will or the separate document that was allegedly incorrectly integrated into the Will, we decline to consider this issue.

CONCLUSION

Accordingly, we reverse the probate and circuit courts' rulings that the joint tenancy with a right of survivorship between Decedent and Appellant was severed at the time the purchase agreement to sell the property was signed. We affirm the circuit court's ruling that Appellant did not preserve the issue for review of prejudicial submission of evidence and allowance of new claims on the day of trial. We decline to consider the probate and circuit courts' rulings that the separate document disposing of the Church Property should be integrated into Decedent's Will.

AFFIRMED IN PART and REVERSED IN PART.

HUFF and GEATHERS, JJ., concur.

PRESS FIRMLY TO SEAL



PRESS FIRMLY TO SEAL



U.S. POSTAGE PAID
FLORANCE, SC
MAR 16, 23
\$28.75
R2308H127880-16

PRIORITY MAIL EXPRESS®

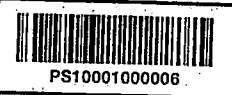
FLAT RATE ENVELOPE

ONE RATE ■ ANY WEIGHT

To schedule free Package Pickup, scan the QR code:



USPS.COM/PICKUP



PS10001000006

EP13F July 2022
OD: 12 1/2 x 9 1/2



PRIORITY MAIL EXPRESS®

CUSTOMER USE ONLY

FROM: (PLEASE PRINT) PHONES: 843-601-3347
PHILLIP F MOORESEN
1504 DAWG DRIVE
FLORANCE, S.C. 29505

DELIVERY OPTIONS (Customer Use Only)

SIGNATURE REQUIRED: After the meter read check the "Signature Required" box & the meter. If you do not check the box, the meter will not print the meter number. If you do not check the box, the meter will not print the meter number. If you do not check the box, the meter will not print the meter number. If you do not check the box, the meter will not print the meter number.

TO: (PLEASE PRINT) PHONE: 76
HONORABLE JENNY ABBOTT KITCHINGS
DEPUTY CLERK SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, S.C.
29201

ZIP+4® (U.S. POSTAGE ONLY)
29201-1220

For pickup or USPS Tracking®, visit USPS.com or call 800-222-1811.
\$100.00 Insurance Included.

PEEL FROM THIS CORNER



EI 310 917 665 US

RECEIVED

MAR 17 2023

PAYMENT BY ACCOUNT (if applicable)		U.S. POSTAGE PAID	
USPS® Corporate Acct. No.		Federal Agency Acct. No. or Postal Service® Check/No.	
ORIGIN (U.S. POSTAL SERVICE USE ONLY)		DATE	
City	State	MAR 17 2023	
PO ZIP Code	Scheduled Delivery Date (PRIORITY)	Insurance Fee	COO Fee
29505	3-17-23	\$28.75	
Units Accepted (PRIORITY)	Scheduled Delivery Time	Return Receipt Fee	Live Aerial Transportation Fee
376-23	12:00 PM		
Time Accepted	Special Handling Fee	Total Postage & Fees	
12:43 PM		\$28.75	
Weight	Accidental Employee Inks		
ORIGIN (U.S. POSTAL SERVICE USE ONLY)			
Delivery Method (PRIORITY)	Type	Employee Signature	
Delivery Method (PRIORITY)	Type	Employee Signature	



This package is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail Express® shipments. Misuse may be a violation of federal law. This package is not for resale. EP13F © U.S. Postal Service, July 2022. All rights reserved.

This package is made from post-consumer waste. Please recycle - again.