

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Certiorari to the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2021-001296

Vanessa Williams, Vanessa Williams, as
Conservator and Guardian of Sandra P.
Perkins, and Vanessa Williams, as
Personal Representative of the Estate of
Sandra P. Perkins Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron
Builders, Inc. Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is..... Petitioner.

BRIEF OF PETITIONER

Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863
jason@luck.law
Attorney for Petitioner

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QUESTIONS PRESENTED

- I. Whether the Court of Appeals' published opinion grossly misinterpreted South Carolina law in holding the caretaker of an allegedly incapacitated individual was not entitled to notice of a petition to appoint a guardian and conservator.
- II. Whether the Court of Appeals, in violation of the precedent of this Court, ignored evidence of material misrepresentations, self-dealing, and conflicts of interest properly presented to the Master-in-Equity which established a genuine issue of material fact as to claims of fraud, breach of fiduciary duty, slander of title, unclean hands, and lack of standing.
- III. Whether the Court of Appeals usurped the authority of the legislature in its published opinion by judicially expanding the incidents of ownership under South Carolina's joint tenancy statute.

STATEMENT OF THE FACTS

This petition presents an instance of “granny snatching.”¹ In the mid-1990s, Petitioner Bradford “Brad” Jeffcoat and Sandra Perkins, both in their golden years, began a roughly two-decade committed relationship. (App 51, 69, 147, 155, 305). “For reasons that are not uncommon or unusual in older relationships, they chose not to marry.” (App 265). During the course of their relationship, on April 28, 2000, Jeffcoat purchased 1955 Old Fort Avenue, Charleston, as the couple’s home. (App 71-72, 155-156, 159, 187). Jeffcoat and Perkins intended that 1955 Old Fort would transfer outside probate to the survivor of their relationship, so on July 1, 2000, Jeffcoat

¹ As observed by the Southern District of Illinois:

Of particular concern is a tactic known as “granny snatching.” The AARP has described granny snatching as “a deplorable tactic by which someone who wants control over a vulnerable individual and their assets – usually when there’s a sizeable estate involved – ‘snatches’ that individual across state lines and immediately files for guardianship, preventing control or contact with the individual by other family members.”

Elder law practitioners uniformly decry the practice, arguing that it isolates and exploits vulnerable seniors; results in expensive, protracted litigation that may deplete an estate; aggravates family disputes; delays needed care; and facilitates elder abuse.

In an effort to address this and other problematic practices in the field of adult guardianship, the Uniform Adult Guardianship and Protective [P]roceedings Jurisdiction Act (“the Act”) was established. The Act provides clear guidelines for determining which state has jurisdiction when guardianship disputes cross state boundaries. Typically, the senior’s “home” state (where the senior has been physically present over the last six months) will have original jurisdiction.

Easterley v. Burgett, No. 3:16-cv-00288-DRH-SCW, 2016 WL 6248312 at *4 (S.D.Ill. October 26, 2016) (footnotes removed). Both Alabama and South Carolina have adopted the Uniform Adult Guardianship and Protective proceedings Jurisdiction Act, and both states’ implementations of this uniform act are relevant to this appeal.

deeded the property to himself and Perkins “jointly with right of survivorship, and not as tenants in common”. (App 69, 151, 155-156, 159, 230-231, 292). In order to contribute toward their shared home, Perkins also executed a note and mortgage in favor of Jeffcoat, which has since been satisfied. (App 69, 155-156, 195, 207). Jeffcoat and Perkins thenceforth lived together at 1955 Old Fort as a committed couple. (App 70).

Circa 2009, Perkins began developing symptoms of dementia consistent with Alzheimer’s disease. (App 69, 145, 147, 156.). Perkins eventually quit her job due to her worsening memory loss. (App 69, 156). Jeffcoat served as Perkins’ sole caregiver at this time, until her condition deteriorated to the point where she required additional assistance, and he hired an in-home aide. (App 156, 158). In April of 2015, Jeffcoat asked Respondent Vanessa Williams, Perkins’ only child, to come to Charleston to help him care for Perkins. (App 143, 156-158). Prior to this time, Williams only saw her mother once or twice each year, usually when Jeffcoat and Perkins would travel to visit her in Mississippi. (App 71, 158).

One of Williams’ earliest activities when she arrived in South Carolina in April of 2015 was to add herself to Perkins’ checking account. (App 143). Shortly after gaining signatory authority over Perkins’ checking account, Williams wrote a draft of Perkins’ funds to pay the closing costs for a mobile home in Alabama. (App 143). According to Williams, Perkins at that time was diagnosed with frontotemporal dementia, and Perkins had been exhibiting symptoms of dementia since 2009 or 2010. (App 143, 145-147). For example, Williams testified Perkins believed Jeffcoat was

“cheating on her” as early as 2009 or 2010 (App 146-147), which is behavior consistent with dementia. *See In re Conservatorship of Groves*, 109 S.W.3d 317, 338-39 (Tenn. Ct. App. 2003) (setting forth the progression of Alzheimer’s Disease, which includes “suspicion and accusation” as the patient’s condition deteriorates).

During her brief tenure in South Carolina, Williams would help take Perkins to her doctors’ appointments. (App 69, 156). However, on June 16, 2015, Williams did not take Perkins to her doctor’s appointment: instead, she, without warning, packed some of Perkins’ belongings and spirited her away to Alabama, leaving Perkins’ automobile and “...certain other items of personal property, including...furniture and apparel...” (App 11, 15, 65, 69, 156). After absconding with Perkins, Williams locked Jeffcoat out of his lover’s life, and Williams did not respond to Jeffcoat’s subsequent attempts to contact her or Perkins. (App 70, 142, 157). Williams also shut Perkins’ two siblings out of her life. (App 141-142). Williams, as Perkins’ only child, now had exclusive access to Perkins.

On June 25, 2015, almost immediately after arriving in Alabama, Williams filed a petition for emergency guardianship and conservatorship powers over Perkins in the Baldwin County, Alabama Probate Court. (App 70, 157).² Williams’ petition omits the fact that Perkins had resided with Jeffcoat at 1955 Old Fort since 2000 and

² This petition and other Baldwin County Probate Court filings (App 305-318) were added to the record by consent. *See* Rule 212(b), SCACR. Other documents filed with the Baldwin County Probate Court can be found on its website: <https://probatecourt.baldwincountyal.gov/DuProcessCourtInquiry/Home/Search>. This Court may take judicial notice of these filings. *See Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) (appellate judicial notice); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).

that Jeffcoat was Perkin's caretaker. (App 305-308). Williams also did not notify Jeffcoat of the filing of this petition. (App 70, 157). On July 7, 2015, the Baldwin County Probate Court issued Temporary Letters of Guardianship, appointing Williams as guardian. (App 309). These Temporary Letters of Guardianship explicitly stated "said guardian does not have authority to expend any funds of said ward." (App 309). On July 17, 2015, Williams petitioned the Probate Court for a general guardianship/conservatorship, "to protect and manage the person, assets and financial affairs of [Perkins]." (App 310). Williams did not notify Jeffcoat of this petition. (App 286). This petition again omitted any information about Perkins' approximately fifteen years of residence with Jeffcoat in South Carolina. (App 70, 156, 310-311). On September 15, 2015, the Baldwin County Probate Court issued general Letters of Guardianship/Conservatorship appointing Williams as guardian and conservator. (App 116).

From April of 2015 until Perkins' death seven months later, Williams used funds from Perkins' checking and retirement accounts to pay for her family's groceries, her daughter's college tuition, and any other "expenses [of] around [\$2,200] or [\$]2,300 a month for a family of four." (App 144-145). Perkins' income at this time (from her retirement) was only \$2,200.00 a month. (App 144). When Williams took control of Perkins' checking account in April of 2015, it contained approximately \$41,000.00; Williams was unable to testify as to the value of Perkins' checking account when Perkins died seven months later. (App 144). Perkins also appears to have also been the beneficiary of a trust, but the record contains few details of this

instrument or how its proceeds, if any, were utilized. (App 146, 231, 233).

On October 7, 2015, Williams, through her attorney, requested Jeffcoat purchase Perkins' interest in 1955 Old Fort, ostensibly because Perkins needed financial assistance. (App 65-66, 70-71, 157). Williams, through her attorney, also requested at that time the return of Perkins' car, furniture, and personal property, despite having made no attempt to retrieve them since disappearing in June of 2015. (App 65-66, 71-72). Jeffcoat returned Perkins' car, but declined to purchase her interest in 1955 Old Fort. (App 157-158).

According to Williams, Perkins' health began to decline precipitously in early November of 2015. (App 83, 175). Williams knew at this time Perkins' 50% interest in 1955 Old Fort would vest in Jeffcoat upon Perkins' death. (App 83, 175). In order to prevent title from vesting as mandated in the deed, on November 16, 2015, Vanessa Williams, acting as purported guardian/conservator of Perkins, deeded Perkins' interest in the property to Vanessa Williams, individually, for \$10.00 "and love and affection".³ (App 61). At roughly the same time, Williams authorized her South Carolina attorneys to proceed with a partition action against Jeffcoat, which was ultimately filed November 24, 2015. (App 8, 15).

Perkins died on November 26, 2015.⁴ (App 142). Williams had Perkins

³ Shortly before Perkins died, Williams made a motion before the Baldwin County Probate Court for retroactive approval of this transaction. (App 285-286, 313-315, 318). Jeffcoat was not notified of Williams' motion, though the order approving the transaction was eventually presented to the Master-in-Equity on or about March 30, 2016. (App 50).

⁴ Jeffcoat's trial counsel alleged at a March 29, 2017, hearing the Alzheimer's-stricken Perkins died on a couch in Williams' trailer. (App 143, 265).

cremated and held a memorial service within roughly a week. (App 142). Williams did not notify Jeffcoat or Perkins' siblings of Perkins' memorial service. (App 70-72, 141-142, 157). Brad Jeffcoat subsequently learned of the death of Sandra Perkins, his lover and companion of roughly 20 years, from a mutual friend. (App 70, 157).

STATEMENT OF THE CASE

This appeal concerns the Master-in-Equity's summary judgment directing the partition and sale of 1955 Old Fort and denying relief under Jeffcoat's affirmative defenses and counterclaims. The action was filed on November 24, 2015, by Respondent Vanessa Williams, as the daughter and purported guardian/conservator of Sandra Perkins, against joint tenant and Petitioner Bradford Jeffcoat and Blue Heron Builders, LLC, a mortgagee (Blue Heron was eventually dismissed). (App 7-15). At this time, the Complaint also asserted an action for conversion of "certain other items of personal property, including without limitation, furniture and apparel..." (this issue was eventually resolved). (App 11). Jeffcoat filed his Answer and Counterclaims on December 29, 2015, disputing Alabama's jurisdiction over this matter (§ 4) and asserting, *inter alia*, defenses for unclean hands, lack of standing, and a fraud counterclaim arising out of Williams' taking of Perkins, appointment as guardian/conservator, and conveyance of 1955 Old Fort. (App 17-21). Jeffcoat filed an Amended Answer and Counterclaims on February 3, 2016, adding counterclaims for breach of fiduciary duty and slander of title arising out of Williams' conveyance of 1955 Old Fort. (App 22-28). Jeffcoat also filed a Motion to Dismiss on February 3, 2016, arguing Williams' conveyance of 1955 Old Fort was void because S.C. Code § 27-7-40 did not allow Williams to unilaterally sever the tenancy. (App 29-32). Williams filed a Reply to the original Answer and Counterclaim on February 16, 2016 and to the Amended Answer and Counterclaims on March 18, 2016. (App 35-38, 40-45). Williams also filed a Response to Jeffcoat's Motion to Dismiss on March 30, 2016.

(App 46-49). The Motion to Dismiss was heard by Judge Markley Dennis on April 1, 2016. Judge Dennis denied the Motion to Dismiss by order dated April 6, 2016. (App 1, 253-258).

On August 3, 2016, Jeffcoat filed a Motion for Summary Judgment, again arguing Williams' conveyance of 1955 Old Fort was void, and also that Alabama law did not allow Williams to convey her ward's property to herself without court approval. (App 51-72). This motion was supported by an affidavit executed by Jeffcoat on July 12, 2016. (App 69-72). Jeffcoat withdrew this motion, without prejudice, via a consent order dated January 5, 2017. (App 2).

On January 11, 2017, Williams amended her Complaint to appear as the Personal Representative of Perkins' Estate. (App 74-80, 142). On January 17, 2017, Williams filed a Motion for Partial Summary Judgment, arguing that S.C. Code § 27-7-40 allowed for Williams' unilateral severance of the joint tenancy and that Williams could convey 1955 Old Fort in order to "preserve" it. (App 81-129). On March 27, 2017, Jeffcoat filed a Response to this motion and asserted a cross-motion for Partial Summary Judgment, presenting again his arguments regarding severance of the joint tenancy and Williams' lack of authority to sever it (describing the latter as a "breach of fiduciary duty"). (App 130-159). Jeffcoat also filed another affidavit in support of his position. (App 155-159). On February 28, 2018, Jeffcoat filed a Second Amended Answer and Counterclaim, which reiterated his prior defenses and counterclaims. (App 160-166). Williams filed a Reply on March 19, 2018. (App 167-172). Judge Thomas Hughston heard the pending Motions for Partial Summary

Judgment on March 29, 2017, and denied them by order dated May 9, 2017. (App 3, 259-272). Judge Hughston’s order held: “Plaintiff’s Motion...is **denied**, viewing the evidence in the light most favorable to the non-moving party [Jeffcoat] and finding a scintilla of evidence exists giving rise to a genuine issue of material fact.” (App 3) (emphasis in original).

On April 2, 2018, Williams filed another Motion for Partial Summary Judgment, arguing grounds for relief substantially similar to Williams’ January 17, 2017 motion. (App 173-222). On April 17, 2018, Jeffcoat filed his own Motion for Summary Judgment, arguing grounds for relief substantially similar (though more developed) to his March 27, 2017, Motion for Partial Summary Judgment. (App 223-236). Williams responded to Jeffcoat’s motion on April 26, 2018. (App 237-246). Pursuant to an Order of Reference, Charleston County Master-in-Equity Mikell Scarborough heard these motions on April 30, 2018. (App 273-304). On May 25, 2018 (after the hearing), Williams filed a Supplemental Brief in support of her motion. (App 247-250).

On June 28, 2018, the Master-in-Equity issued his order finding that Williams was allowed under South Carolina law to sever the joint tenancy, and that Williams’ conveyance was lawful. (App 4-6). This order also ordered the judicial sale of 1955 Old Fort, and also held: “[a]ny relief specifically not addressed herein, is denied.” (App 6). Jeffcoat timely filed his Notice of Appeal on August 3, 2018. (App 251).

The Court of Appeals affirmed the Master-in-Equity in a published opinion. *Williams v. Jeffcoat*, 434 S.C. 461, 863 S.E.2d 822 (Ct. App. 2021). (App 412-423).

Jeffcoat timely filed a petition for rehearing on July 20, 2021. (App 424-431). After requesting a response from Williams, the Court of Appeals denied Jeffcoat's petition by order dated October 7, 2021. (App 441-443). Jeffcoat timely petitioned this Court for a writ of certiorari, which this Court granted by order dated May 17, 2023.

STANDARD OF REVIEW

The interpretation of a statute is reviewed *de novo*. *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

*
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An order granting summary judgment is reviewed *de novo*, applying the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure. *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). “Summary judgment is appropriate when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.* (quoting Rule 56(c), SCRCF). A material issue is one that constitutes a legal defense or that affects the result of the action. *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988).

“On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below.” *Id.* (quoting *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)). Summary judgment should not be granted if further development of the facts would assist in the application of the law. *Mosteller v. Cty. of Lexington*, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. *Id.*

“Matters subject to judicial notice are properly considered on a summary judgment motion.” 11 *Moore’s Federal Practice* § 56.95 (2016); *c.f. Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014) (Courts may take judicial notice of facts when considering a Rule 12(b)(6) motion).

“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). This Court has defined a “scintilla” as “‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’” *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935); *see also Rogers v. Norfolk Southern Corp.*, 356 S.C. 85, 588 S.E.2d 87 (2003) (Burnett, J., dissenting) (“A scintilla is defined as ‘a trace’ of evidence.”) (citing *Black’s Law Dictionary* 1347 (7th ed. 1999)). In cases requiring a heightened burden of proof (*e.g.*, fraud), the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock* at 330-31, 673 S.E.2d at 803.

ARGUMENT

I. The Court of Appeals’ interpretation of S.C. Code § 62-5-309 (Supp. 2015) runs counter to the plain language of, and all commentary on, that statute.

The July 14, 2021, opinion of the Court of Appeals correctly finds Jeffcoat would be due notice of the guardianship/conservatorship action under Alabama law if he was due notice under South Carolina law. (App 417). At the time of Williams’ filings with Baldwin County Probate Court, South Carolina was Perkins’ “home state” under the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. *See* Ala. Code § 26-2B-201(a)(2) (“home state” is where the ward was physically present for six consecutive months before the filing of petition). This statute requires notice of guardianship and conservatorship proceedings be given to “those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent’s home state”. Ala. Code § 26-2B-208.

The Court of Appeals fundamentally misinterpreted the South Carolina Probate Code in its opinion, finding Jeffcoat was not entitled to notice of proceedings if they had been filed in South Carolina. (App 417). The South Carolina statute in effect in 2015 clearly and unambiguously mandated caregivers such as Jeffcoat receive notice of guardianship actions:

(A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, the following persons must be properly served:

(1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62-5-501 **or who has his care and custody;**

(3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

S.C. Code § 62-5-309 (Supp. 2015) (emphasis added). Jeffcoat was Perkins' sole, then primary, caregiver prior to her removal to Alabama. (App 156, 158). As a caregiver, Jeffcoat was a person with "care and custody" of Perkins who was entitled to notice under South Carolina law. Jeffcoat's interpretation of South Carolina's former Probate Code is also consistent with the secondary sources interpreting that statute. *See* 21 S.C. Jur. *Guardian and Conservator* § 14 (Supp. 2021) ("[N]otice shall also be given to anyone serving as the person's guardian, conservator, attorney in fact under a durable power of attorney, **or primary caretaker.**") (citing version of S.C. Code § 62-5-309 relevant to this appeal) (emphasis added); 12 S.C. Jur. *Death and Right to Die* § 41 (Supp. 2021) (health care provider with "care and custody" of allegedly incapacitated person is entitled to notice) (citing version of S.C. Code § 62-5-309 relevant to this appeal).

Jeffcoat's interpretation is also consistent with legislative intent, as revealed in subsequent amendments to the South Carolina Probate Code. *See Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (noting that a subsequent statutory amendment may be interpreted as clarifying statutory intent). The legislature's amendments to the Probate Code in 2017 removed the "who has his care and custody" language in this statute and replaced it with: "a person, other than an unrelated employee or health care worker, who is known or reasonably ascertainable

by the petitioner to have materially participated in caring for the alleged incapacitated individual within the six-month period preceding the filing of the petition”. S.C. Code § 62-5-303(B)(4)(d). The Court of Appeals’ interpretation (App 417) gives no effect to the “care and custody” language of the prior statute, which is an incorrect interpretation. *See CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (in reading a statute as a whole and in harmony with its purpose, the Court must read the statute in a manner such that no word, clause, sentence, provision or part shall be rendered surplusage or superfluous).

The Court of Appeals correctly found, and Williams acknowledges, Jeffcoat was never notified of Williams’ guardianship/conservatorship petitions⁵ with the Baldwin County Probate Court. (App 286, 417). This violation of Ala. Code § 26-2B-208 and S.C. Code § 62-5-309(A)(2) (Supp. 2015) is fatal to the Baldwin County Probate Court’s subject matter jurisdiction over this matter.⁶ The Baldwin County Probate

⁵ Had Jeffcoat been notified of the action in Baldwin County, he would have been able to attack that court’s jurisdiction on the ground of “unjustifiable conduct”. *See* Ala. Code § 26-2B-207; *see also* Section II.B.1, *infra*. Commentators have recognized “granny snatching” represents “unjustifiable conduct” under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. *See* Lori A. Stiegel, *et al.*, *Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, Bifocal, e-journal of the ABA Commission on Law and Aging, Feb. 2009, at 4 *available at* https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_nine_ways.pdf (last visited June 11, 2023).

⁶ Equally fatal to jurisdiction is the Baldwin County Probate Court’s failure in its orders to address the many mandatory factors it must consider to assert jurisdiction. *See* Ala. Code § 26-2B-201(a)(3) (“significant connection” jurisdiction and factors); Ala. Code § 26-2B-201(a)(2) (additional factors for “significant connection” jurisdiction); Ala. Code § 26-2B-206(c) (additional factors). Williams acknowledged to the Court of Appeals the Baldwin County Probate Court did not include a consideration of these factors in its orders. (App 386).

Court's lack of jurisdiction is properly considered by this Court. *E.g., Peoples Nat'l Bank of Greenville v. Manos Bros., Inc.*, 226 S.C. 257, 275, 84 S.E.2d 857, 866 (1954) ("It is well settled that want of jurisdiction over either the person or the subject matter is open to inquiry where a judgment rendered in one state is challenged in another."). A judgment of a court without jurisdiction is void. *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). This Court must reverse the Court of Appeals, dismiss Williams' action with prejudice, void the November 16, 2015, deed, and allowing Brad Jeffcoat to remain in the house where he and his lover intended to grow old together.

II. The Court of Appeals erroneously disregarded the significant evidence of Williams' misconduct supporting Perkins' affirmative defenses and counterclaims.

The Court of Appeals erroneously found Jeffcoat only preserved the issue of whether a statutory joint tenant may unilaterally sever the tenancy, and not his multiple affirmative defenses and counterclaims (*e.g.*, unclean hands, fraud, breach of fiduciary duty, slander of title). (App 418, 422). This holding is indefensible and must be reversed.

A. The record establishes the Master-in-Equity considered and rejected Perkins' affirmative defenses and counterclaims.

The Court of Appeals based its failure to preserve holding on Jeffcoat's trial counsel's statement at the summary judgment motions' hearing that there were no genuine issues of material fact. (App 418). Any statement in hearing by Jeffcoat's trial counsel that there were "no disputed facts" in his motion for summary judgment referred to the severance of a statutory joint tenancy with right of survivorship, a pure issue of law and the primary subject of his cross-motion for summary judgment (which mirrored his July 7, 2016, motion for partial summary judgment). (App 51-59, 235-236). Jeffcoat's February 1, 2016, motion to dismiss also acknowledges the severance issue was one of law. (App 32). The Master-in-Equity understood this qualification at hearing:

So I've got cross Motions for Summary Judgment. One would be -- the rule would be dispositive as to the case if the Court grants either motion as I understand it. **I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right of survivorship can be alienated.** I think that's the legal question for the Court to have to address. So I'll do that.

It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?

I do tend to agree with you. It's a question of law. **If we get into the trial there will be lots of questions of fact**, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

(App 302-303) (emphasis added). Further, when Williams' trial counsel began to discuss Perkins' 2015 condition at the summary judgment hearing, the Master-in-Equity asked: "That will be a matter for trial one day, right?" (App 301). Williams' trial counsel agreed. (App 301). Finally, Jeffcoat's trial counsel specifically mentioned the existence of Jeffcoat's counterclaims at hearing and in his April 17, 2018, motion for summary judgment. (App 235-236, 293-294). The Master-in-Equity's order disposed of these other matters: "Any relief not specifically addressed herein, is denied." (App 6).

B. The evidence of Williams' unclean hands, fraud, breach of fiduciary duty, slander of title, and lack of standing is substantial and damning.

The record, viewed in a light most favorable to Jeffcoat, contains substantial evidence of Williams' misconduct, well in excess of that necessary to create a genuine issue of material fact. From taking financial advantage of the vulnerable Perkins, to fraudulently obtaining a guardianship/conservatorship over Perkins, to her self-dealing real estate transaction, Williams has engaged in a wide range of activities that support Jeffcoat's affirmative defenses and counterclaims. It was reversible error for the Master-in-Equity to grant, and the Court of Appeals to affirm, summary judgment on these defenses and counterclaims.

1. Williams' unclean hands precludes relief in her partition action.

Williams' misconduct particularly implicates Jeffcoat's defense of unclean hands. (App 18-19, 23-24, 162-164). Partition is an action in equity. *Zimmerman v. Marsh*, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). The defense of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *First Union National Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *see also Whitlock v. Creswell*, 190 S.C. 315, 2 S.E.2d 838 (1939) (One who comes into a court of equity must do so with clean hands.). Williams misrepresented her intention to take Perkins to her doctor on June 16, 2015, when she truly intended to abscond with Perkins to Alabama. (App 69, 156). Perkins filed petitions before the Baldwin County, Alabama, Probate Court that omitted or misrepresented material facts, such as Perkins' "home state" and the existence of Jeffcoat. (App 69-71, 155-157, 286, 305-308). Williams used her mother's assets to pay a down payment for a mobile home, pay her daughter's college tuition, and generally support Williams' family, instead of supporting Perkins. (App 143-145). Williams was aware that Jeffcoat would assume full title to 1955 Old Fort upon Perkins' death. (App 83, 225). In order to further enrich herself (and contrary to the intent of her mother), she misused her putative authority as a conservator to transfer 1955 Old Fort to herself for \$10.00 "and love and affection" while her mother was in her final illness. (App 69, 71-72, 155-156, 159, 213-214, 292). This transfer was made free and clear of any encumbrance, trust, or any legal obligation to use 1955 Old Fort for the benefit of Perkins. The facts set forth above

preclude any award of summary judgment for Williams, and this Court must reverse the Court of Appeals and remand this case for a trial on the merits.

2. Williams' fraud precludes relief in her partition action and mandates affirmative relief for Jeffcoat.

Jeffcoat has also alleged, both as a defense and counterclaim, Williams' fraudulent behavior prohibits her recovery and requested that Perkins' deed to Williams be set aside. (App 18-19, 23-24, 162-164). Courts may deny partition when it becomes an instrument of fraud and oppression. *E.g. Holland v. Shaffer*, 178 P.2d 235 (Kan. 1947); *accord Pruitt v. Pruitt*, 298 S.C. 411, 414, 380 S.E.2d 862 (Ct. App. 1989) ("Partition is an action in equity and, accordingly, the partition procedure must be fair and equitable to all parties of the action."). The elements of an action (here, a counterclaim) for fraud based on a representation include: (1) a representation; (2) falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *First State Sav. & Loan v. Phelps*, 299 S.C. 441, 385 S.E.2d 821 (1989); *Moorhead v. First Piedmont Bank & Trust Co.*, 273 S.C. 356, 256 S.E.2d 414 (1979). The party asserting a claim for fraud must prove these elements by clear, cogent, and convincing evidence. *Kahn Const. Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Pitts v. Jackson Nat'l Life Ins. Co.*,

352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct.App. 2002) (quoting *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App. 1993)).

Viewing the facts in a light most favorable to Jeffcoat, the record creates a genuine issue of material fact that Williams has obtained her interest in 1955 Old Fort by fraud and has otherwise injured Jeffcoat. On June 16, 2015, Williams misrepresented her intention to take Perkins to her doctor, when she truly intended to abscond with Perkins to Alabama. (App 69, 156). As co-caretaker of Perkins, Jeffcoat had every right to rely on Williams' honesty, which he did. As a result of Williams' dishonesty, Jeffcoat was shut out of Perkins' life, allowing Williams to appropriate all of Perkins' assets and eventually to obtain via fraud a one-half interest in 1955 Old Fort. Jeffcoat now faces the sale of, and eviction from, his home of approximately 23 years. The facts set forth above preclude any award of summary judgment for Williams, and this Court must reverse the Court of Appeals and remand this case for a trial on the merits.

3. Williams has breached her fiduciary duties as a conservator.

Jeffcoat has also alleged as a counterclaim that Williams has breached her fiduciary duty. (App 26-27, 164-165). "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). "A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity

and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *Moore v. Moore*, 360 S.C. 241, 250, 599 S.E.2d 467, 472 (Ct. App. 2004). “To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will not act in [its] own behalf but in the interest of the party so reposing.” *Id.* at 251, 599 S.E.2d at 472. “The evidence must show the entrusted party actually accepted or induced the confidence placed in [it].” *Id.*

According to the Alabama Code, a conservator is a fiduciary who must act as a “prudent person dealing with the property of another.” Ala. Code § 26-2A-145; *see also* S.C. Code § 62-5-417 (equivalent South Carolina law).

In (i) investing the estate, (ii) selecting assets of the estate for distribution under subsections (a) and (b) of Section 26-2A-153, and (iii) utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, **the conservator and the court shall take into account any estate plan of the protected person known to them, including a will, any revocable trust of which the person is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected person with provisions for payment or transfer of benefits or interests at the person’s death to another or others.** The conservator may examine the will of the protected person.

Ala. Code § 26-2A-155 (emphasis added); *see also* S.C. Code § 62-5-427 (equivalent South Carolina law). Similarly:

It was stated in England many years ago that “in managing the estate of a lunatic the general principle is to attend solely to the interest of the owner without any regard to the succession”; and that “the courts have always shut out of their view all consideration of eventual interests; and consider only the immediate interest of the person under their care.”

Dolbear v. Bowser, 149 N.E. 626, 628-29 (Mass. 1925) (quoting *Oxenden v. Lord Compton*, 2 Ves. Jr. 69, 72 (Ch. 1793)); accord *Minnehan v. Minnehan*, 147 N.E.2d 533, 671 (Mass. 1958) (“Unless necessary for the ward’s maintenance [a conservator] cannot vary or change the ward’s property so as to affect any alteration in its succession.”). The July 1, 2000, deed that created the joint tenancy of 1955 Old Fort made clear that the parties’ intent was to allow title to the property to vest in the survivor of the relationship. (App 191-192). This intent is further supported by Jeffcoat’s testimony and the lack of disposition of the property in Perkins’ will. (App 69, 71-72, 155-156, 159, 292). Williams’ self-dealing sale of her mother’s share of 1955 Old Fort to Williams for \$10.00 “and love and affection” is contrary to Perkins’ estate plan, *i.e.*, that full title to the property vest in Jeffcoat at her death. This is a violation of Williams’ fiduciary duty.⁷

An Alabama conservator has a limited number of activities he or she may conduct without court approval, none of which apply here. *See* Ala. Code § 26-2A-152(c). Williams has advanced the affidavit of Leslie T. Fields in support of the contention that Williams’ sale of the 1955 Old Fort for \$10, changing the estate from a joint tenancy with a right of survivorship to a tenancy in common, and subsequent partition action did not violate Ala. Code § 26-2A-152(d)(3). (App 219-222). This statute requires prior court approval to: “Dispose of any real property, including land in another state, for cash or on credit, at public or private sale, and manage, develop,

⁷ Judge Hughston recognized the significance of this transfer early in the hearing on Williams’ first Motion for Partial Summary Judgment: “Doesn’t sound too good to start with.” (App 262).

improve, partition, or change the character of estate real property”. Ala. Code § 26-2A-152(d)(3). Fields argues that Williams’ acts were permissible under Ala. Code § 26-2A-152(c)(1), which allows a conservator, without prior court order, to: “Collect, hold, and retain assets of the estate including land in another state and stocks of private corporations, until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested”. Not only is Fields’ argument contradicted by the plain language of the statute,⁸ her affidavit is nothing more than legal argument, and is thus inadmissible. *See Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (“In general, expert testimony on issues of law is inadmissible.”); *Id.* at 66-67, 580 S.E.2d at 437 (finding the trial court properly refused to consider an affidavit that was a legal argument as to why summary judgment should be denied).

Williams also never fully addressed her conflicts of interest and self-dealing in her conservatorship. Williams was presumably the beneficiary of Perkins’ trust. (App 146). The terms of this trust are not part of the record, and for this reason alone summary judgment was premature and should have never been issued. *See Mosteller v. Cty. of Lexington*, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999) (Summary judgment should not be granted if further development of the facts would assist in the application of the law.). Williams was a signatory on Perkins’ checking account; if she was using these joint funds to avoid drawing on trust assets that she would

⁸ Even if Williams’ self-dealing sale of 1955 Old Fort to Williams for \$10.00 “and love and affection” were permissible without prior court approval, self-dealing nonetheless requires court approval. *See* Ala. Code § 26-2A-150.

eventually inherit, there existed a conflict of interest. *E.g., Dowdy v. Jordan*, 196 S.E.2d 160 (Ga.App. 1973) (conflict of interest because guardian depleted other assets in order to maximize his inheritance).

Alabama law provides:

Any sale or encumbrance to or purchase from a conservator, the spouse, agent, attorney of a conservator, any person related to the conservator by blood or marriage within the fourth degree, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.

Ala. Code § 26-2A-150; *see also* S.C. Code § 62-5-422 (substantially equivalent South Carolina law). From April to November of 2015, Williams, as signatory, used her mother's assets to help buy a mobile home, pay her daughter's college tuition, and generally support her family. (App 143). Not only did these acts violate the July 7, 2015, Temporary Letters of Guardianship (which prohibited expending any of Perkins' funds), none of the orders of the Baldwin County Probate Court address the conflict between Williams as co-owner of Perkins' accounts and Williams as conservator of Perkins' assets. Finally, the order purportedly approving the transfer of 1955 Old Fort Williams from the Baldwin County Probate Court was issued well over a month after Perkins died. (App 142, 218). The facts set forth above preclude any award of summary judgment for Williams, and this Court must reverse the Court of Appeals and remand this case for a trial on the merits.

4. Williams' illegal claim of ownership has slandered Jeffcoat's title to 1955 Old Fort.

Williams falsely claims she owns a 50% share of 1955 Old Fort via the November 16, 2015, deed, thus slanders Jeffcoat's title to his home. (App 27-28, 165-166). “[T]o maintain an action for slander of title in South Carolina, the plaintiff must establish: (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 21-22, 567 S.E.2d 881, 892 (Ct. App. 2002). As set forth earlier in this brief, Williams' title to 1955 Old Fort is void. Williams' representation of her ownership of the property via the November 16, 2015, deed is thus false. Williams' dishonest acts, and her efforts to hide Perkins from Jeffcoat provide evidence of her malicious intent. It should be self-evident that a person claiming a 50% interest in another's property diminishes the value and is derogatory of the owner's title. Furthermore, the cost of litigation necessary for Jeffcoat to combat Williams' erroneous claims constitutes special damages. *See Huff v. Jennings*, 319 S.C. 142, 151, 459 S.E.2d 886 (Ct. App. 1995) (“Special damages are the pecuniary losses that result ‘directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation.’”) (emphasis added); accord *Restatement (Second) of Torts* § 633. Summary judgment was premature, and this Court must reverse the Court of Appeals and remand this case for a trial on the merits.

5. Williams never established standing to bring her action.

Jeffcoat has alleged as a defense Williams' lack of standing. (App 19, 24, 162). South Carolina is not required by the "full faith and credit" clause to recognize guardianship/conservatorship orders of other states. *E.g., Easterley, supra* (citing *Morris v. Morris*, 273 F.2d 678, 681 (7th Cir. 1960)). However, South Carolina's version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act does allow such recognition, provided a certified copy of the relevant order is filed of record with the Clerk of Court as a foreign judgment, and the certificate then issued by the Clerk of Court is filed with the Register of Deeds. S.C. Code § 62-5-716. There is no record that Williams performed any of these tasks, thus she had no right under South Carolina law to bring any action as a guardian or conservator. As a matter of law, Williams lacked standing to pursue her original action against Jeffcoat and the Court of Appeals must be reversed. *Easterley, supra; see generally ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (standing).

C. To the extent there is any question of preservation, this Court's precedent demands Jeffcoat's defenses and counterclaims be considered on their merits.

The Court of Appeals' holding that Jeffcoat has not preserved or has otherwise waived his defenses and counterclaims ignores the precedent of this Court. First and foremost, Sandra Perkins was *non compos mentis* and this action directly affected her property rights. Jeffcoat is thus excused from strict compliance with error preservation rules. *See Caughman v. Caughman*, 247 S.C. 104, 109, 146 S.E.2d 93, 95 (1965) ("[T]he duty to protect the rights of incompetents has precedence over

procedural rules otherwise limiting the scope of review.”). Further, this Court has recently observed:

We are mindful that issue preservation rules should not be applied in a technical manner as if this is some sort of game of “gotcha” elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.

State v. Morales, Op. No. 28154 (S.C. Opinion filed May 31, 2023) (citations omitted); *see also Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (Error preservation “is not a ‘gotcha’ game aimed at embarrassing attorneys or harming litigants.”). “[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) (quoting *Atl. Coast* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring in result in part and dissenting in part)); *see also Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000) (holding issue preserved where alleged in complaint that was dismissed with prejudice).

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Dismissal of Jeffcoat’s affirmative defenses and counterclaims was contrary to law and terribly premature, particularly when the court was considering a motion for partial summary judgment; this Court must reverse the Court of Appeals and Master-in-Equity’s award of summary judgment, void the November 16, 2015, deed, and allow Brad Jeffcoat to present the evidence of Williams’ misconduct to the trier of fact.

III. The Court of Appeals created a new way to sever a statutory joint tenancy not authorized by S.C. Code § 27-7-40.

The Court of Appeals created new law, allowing a statutory joint tenant with right of survivorship to sever the tenancy in a manner not explicitly authorized by S.C. Code § 27-7-40. (App 422). It is inappropriate for the Court of Appeals to create new law or expand existing law. *See Rainey v. Charlotte-Mecklenburg Hosp. Auth.*, No. 2015-UP-209, 2015 WL 1880212 at *2 (S.C. Ct. App. Apr. 22, 2015) (citing Jean Hoefler Toal *et al.*, *Appellate Practice in South Carolina* 12-13 (2d ed. 2002) (“The Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.”)). As three justices of this Court recently noted: “If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.**” *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n.*, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

The only methods by which a statutory joint tenant with right of survivorship may sever the estate are specified in the statute, which must be strictly construed. *See* S.C. Code § 27-7-40 (“[t]his joint tenancy includes, and is limited to, the following incidents of ownership”); *South Carolina Dep’t of Soc. Servs. v. Wheaton*, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App. 1996) (legislation in derogation of common law to be strictly construed); *see also Smith v. Cutler*, 366 S.C. 546, n.4, 623 S.E.2d 644, n.4 (2005) (“Joint tenancy was disfavored as a rule of construction...”); Joby C. Castine, *Deeds of Conveyance* 152-153 (S.C. Bar CLE Div. 2019) (“South Carolina Code § 27-

7-40 does not specifically list as an incidence of ownership the right of unilateral alienation by one cotenant which would destroy the right of survivorship.”).

Accordingly, a statutory joint tenant with right of survivorship may not unilaterally alienate his or her interest. This interpretation is entirely consistent with the intent of section 27-7-40, which provides: “The provisions of this section must be liberally construed to carry out the intentions of the parties.” S.C. Code § 27-7-40(c). The record contains substantial evidence, whether in the deed in question or in the testimony of Jeffcoat, of Sandra Perkins’ intent to allow her interest in 1955 Old Fort to pass to Brad Jeffcoat upon her death. (App 61, 69, 71-71, 155-156, 159, 292).

This Court must reverse the Court of Appeals’ erroneous interpretation of South Carolina law and overreach of power, void the November 16, 2015 deed, and allow this action to be considered by the trier of fact.

CONCLUSION

The Court of Appeals should be reversed.

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/s/ Jason Scott Luck
Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Petitioner