

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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AUG 11 2023

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

James Marshall Shoemaker, III.....Appellant,

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee, Edward Sloan Shoemaker and
Jonathan Evans Shoemaker.....Respondents.

RECORD ON APPEAL

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INDEX

Order by Judge Horlbeck filed 12/13/19	3
Order by Judge Jennings filed 7/29/20	6
Order for Sanctions filed 11/18/20	8
Order Granting Respondent's Motion for Summary Judgement filed 6/15/21	10
Amended Order Granting Summary Judgement to Respondent, filed 12/15/21	17
Order by Judge Jennings regarding Recusal filed 12/15/21	25
Order of the Supreme Court filed 2/1/22	29
Order Affirming Summary Judgement in Favor of Respondents and Dismissing Petitioner's Appeal filed 10/27/22	30
Summons in Probate Court filed 6/27/19	39
Motion to Dismiss/Strike or Motion for a More Definite Statement filed 7/26/19	41
Motion to Dismiss filed 2/3/20	44
Reply to Amended Petition filed 2/14/20	46
Amended Petition filed 2/20/20	51
Motion to Dismiss filed 4/17/20	59
Motion for Sanctions and to Dismiss Amended Petition filed 9/10/20	71
Motion for Summary Judgement with Exhibits filed 11/4/20	79
Petitioner's Response to Decedent's Motion for Summary Judgement filed 4/12/21	119
Motion for Recovery of Costs and Attorney's Fees filed 6/18/21	123
Petitioner's Notice of Motion and Motion to Recuse and Vacate filed 10/1/21	127
Appellant's Notice of Appeal to Circuit Court and Statement of Issues on Appeal filed 1/27/22	133
Motions to Dismiss Appeal filed 1/27/22	137
Statement of Issues on Appeal to the Circuit Court filed 1/10/22 and 2/21/22	152
Transcript for Probate Court – Judge Horlbeck – Hearing on 10/21/19	162
Transcript for Probate Court – Judge Jennings – Hearing on 4/7/21	181
Transcript for Probate Court – Judge Jennings – Hearing on 9/15/21	198

Transcript of Record from Common Pleas – Judge McCaslin – Hearing on 9/8/22	217
Memorandum in Support of Respondent’s Motion for Summary Judgement filed 4/1/21	268
Supplemental Memorandum in Support of Respondent’s Motion to Dismiss Appeal and Affirm Summary Judgement filed 9/6/22.....	381

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

DEC 13 2019

IN THE PROBATE COURT

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

ORDER

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

This matter came before the Court for a hearing on October 21, 2019 pursuant to Respondents Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore's Motion to Strike, Motion to Dismiss and Motion to Make More Definite and Certain. Appearing on behalf of the foregoing Respondents was Knox L. Haynsworth, III and attorney Anne Culbreath appeared on behalf of Respondent Debora Wine. The Petitioner Marshall Shoemaker, III appeared Pro Se.

After considering the matters filed with the Court as well as considering the arguments of counsel and the Pro Se Petitioner James Marshall Shoemaker, III, and the applicable law, the Court finds that Respondents' Motions to Strike and to Dismiss should be granted in part.

Specifically, with regard to so much of Respondent's motion as requests certain parts of the petition be stricken, this motion is granted pursuant to Rule 12(f) and the following shall be stricken from the Petition:

- a. Page 2 – Strike lines 9 through 12 beginning with “My mother....” and ending with “...Syndrome”
- b. Page 3 – Strike line 6 and part of line 7 “...in large part I believe because of her own untreated emotional problems,”
- c. Page 3 - Strike line 7 “both she and”

ct

d. Page 3 - Strike line 19 beginning at "By placing....." through Page 4 Line 8 ending in "reasoned, informal manner."

e. Page 7 - Strike lines 3 through 11

In connection with this part of my ruling, Petitioner Marshall James Shoemaker, III is given 15 days from the date of this Order within which to modify his Petition to incorporate my rulings relative to the portions that should be stricken. Further, Mr. Shoemaker is directed to file with the Court and serve on counsel for the remaining Respondents his Amended Petition with the modifications this Order addresses. Respondents shall have 15 days after service to answer or otherwise plead in response to the Amended Petition.

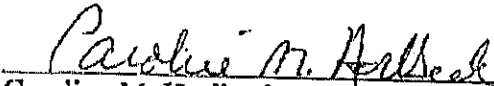
Additionally, as noted above, the Court strikes the allegations of the Petition at Page 7 lines 3 through 11 and in connection therewith, dismisses, with prejudice, the claims asserted by Petitioner requesting the appointment of a Guardian ad Litem on behalf of his mother Mary Shoemaker and directing that such Guardian ad Litem be charged with taking over Petitioner's mother's healthcare power of attorney from Respondents Jonathan Shoemaker and Sloan Shoemaker, hiring a team of medical and psychiatric doctors to evaluate and treat his mother and evaluate and hire a national trust company to take over financial guardianship of his mother's assets. As to those claims, the court dismisses them for failure to state facts sufficient to constitute a cause of action. If Petitioner wishes to pursue these allegations, he is required file a separate action, unrelated to Case No.: 2018-ES-23-01729, utilizing the appropriate forms and/or pleadings.

"A Motion to Dismiss when analyzed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure should not be granted if the facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to relief on any theory of the case." *Plateau v. Harrelson*, 355 S.C. 197 202, 584 S.E. 2d 413, 415 (Ct. App. 2003). The question to be assessed

is whether in a light most favorable to the plaintiff and with every doubt resolved in his behalf, the Complaint states a valid claim for relief which, at this point, it does not.

The Petitioner requests the appointment of a Guardian ad Litem relative to his mother. A Guardian ad Litem is a representative for a disabled or incapacitated person appointed by the Court for purposes of advocating for the best interest of the alleged incapacitated individual before a Court. Nothing in the record establishes nor is it even alleged that Mrs. Shoemaker is in need of anyone to represent her in the proceedings before this Court beyond the attorneys whom she and other Respondents have retained to represent them. This matter will proceed forward solely as a challenge by Petitioner to contest the Will of his late father, set aside the trust(s) established by his father and remove Lesley Moore as Personal Representative and Trustee.

IT IS SO ORDERED.


Caroline M. Horlbeck
Associate Probate Judge

December 13, 2019
Greenville, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JUL 29 2020

GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER

This matter came before the court for a hearing on Wednesday July 15, 2020 to address respondents' motion to dismiss the amended petition due to petitioner's failure to comply with the applicable rules of civil procedure concerning the setting of his deposition. Respondents were represented by attorney Knox L. Haynsworth, III, and also in attendance was respondent Lesley Moore. Petitioner was represented by attorney John Blincow, Jr.

After reviewing the court's file in this matter and considering arguments of counsel, the court finds as follows: because attorney Blincow represented to the court that Mr. Shoemaker's deposition has been scheduled for Friday, July 24, 2020, a dismissal of the amended petition, the court believes, is too drastic of a remedy. However, in reviewing the court's file, it is apparent that Mr. Shoemaker, who heretofore was representing himself, has previously ignored orders of this court and has been non-cooperative in moving this case forward, including participating in the scheduling of his deposition. He has caused unnecessary delay and expense related to these proceedings and his deposition. As such, the court finds it appropriate as a sanction pursuant to Rule 37 of the South Carolina Rules of Civil Procedure to award respondents the amount

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\$500.00 for costs and attorney's fees incurred in bringing this matter before the court and arguing its merits. The court further finds the amount of costs and attorney's fees are reasonable under all the attendant circumstances. Further, should Mr. Shoemaker fail to participate in good faith going forward with the discovery process, the court will view such conduct severely.

As noted above, based upon the representations at the hearing, all parties are now in agreement that the deposition of Mr. Shoemaker will go forward on Friday July 24, 2020 at the office of counsel for respondents. As such, the court denies respondents' motion to dismiss the amended petition as a sanction, but grants the request for costs and attorney's fees in the amount of \$500.00 to be paid by petitioner to respondents within thirty days.

IT IS SO ORDERED.

July 29, 2020
Greenville, SC


Clayton L. Jennings
Associate Probate Judge

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FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

NOV 18 2020

IN THE PROBATE COURT

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER FOR SANCTIONS

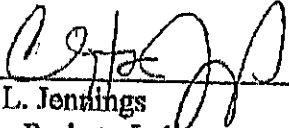
This matter came before the court for a hearing on Wednesday November 4, 2020 pursuant to respondents' motion to dismiss or in the alternative for sanctions. In reviewing the court's file in this matter, it appears that petitioner Marshall Shoemaker has been before the court on at least two prior occasions concerning his compliance with the rules of civil procedure and the Orders of this court. In fact, this court's Order dated July 29, 2020 specifically admonished Mr. Shoemaker regarding his prior conduct before this court. Notwithstanding this admonition, based upon the materials before the court it appears that Mr. Shoemaker has willfully violated this court's most recent past Order. Specifically, on July 15, 2020 the undersigned conducted a hearing concerning a previous motion to dismiss/for sanctions and at that hearing ruled that Mr. Shoemaker would be subject to a sanction in the amount of \$500.00 for costs and attorney's fees, payable in 30 days. Following my ruling from the bench, a written Order was issued and signed on July 29, 2020. As such, through counsel Mr. Shoemaker was aware as of the July 15th, the date of the hearing, that the court had sanctioned him in the amount of \$500.00. Thereafter the court's ruling was embodied in a written Order dated and filed on July 29, 2020.

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At the hearing before me on November 4th, it was represented by counsel for respondents, Knox L. Haynsworth, III, that a check and cover letter both dated October 22, 2020 were transmitted to him by petitioner's attorney, John Blincow and represented payment of the \$500.00 sanction previously levied. When questioned about the failure to pay the sanction in accordance with the court's Order, attorney Blincow represented that Mr. Shoemaker had been out of the country in Ireland visiting his girlfriend's family but readily conceded that Mr. Shoemaker was not out of the country the entire time from the date I issued my ruling from the bench until October 22, 2020, the date of the check, a period of over 90 days. While the court again is of the opinion that Mr. Shoemaker's conduct does not rise at this time to the level sufficient to strike his pleading as a sanction, his continued willful disregard of the Orders of this court remain quite troubling and in need of a significant sanction to deter any similar conduct in the future. As such, it is the opinion of this court based upon all the attendant circumstances, the materials submitted in connection with the present motion as well as the prior materials and prior Orders of this court, that Mr. Shoemaker be sanctioned in the amount of \$1,500.00 for costs and attorney's fees, such sanction to be paid within thirty days of the date of this Order.

IT IS SO ORDERED.

Greenville, South Carolina
November 18, 2020



Clayton L. Jennings
Associate Probate Judge

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FILED

STATE OF SOUTH CAROLINA JUN 15 2021 IN THE PROBATE COURT
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE MATTER OF:

James Marshall Shoemaker, Jr.,
Deceased

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III,

Petitioner,

vs,

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe,

Respondents.

ORDER GRANTING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

This matter came before the court for a hearing on Wednesday April 7, 2021 concerning Respondents' Motion for Summary Judgment. After a careful consideration of the pleadings, the Court's file, the Respondents' Motion, the Memorandum in Support of Summary Judgment with Exhibits, the Petitioner's Memorandum in Opposition to Summary Judgment with Exhibit, the arguments of counsel, the applicable law, I find and rule as follows:

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, III ("Petitioner") instituted a *pro se* action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long-time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court, certain claims of Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore. By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John

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Blinco, Jr. of the firm Blinco Griffin Law, P.C. appeared on behalf of Petitioner. Following a process of lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the Last Will and Testament of Trust of James M. Shoemaker, III dated June 24, 2018 (the "Will"), and the Restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the grounds of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once "the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation." Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew [(1)] his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks, 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent

to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 So. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to found his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Ann. §62-7-601)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

"Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influence—"there [must be] additional evidence that such influence was actually utilized." Howard v. Nasser, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock, 266 S.C. at 277, 222 S.E.2d at 774).

"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallas, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at

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333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)).

XII. Analysis

Petitioner relies exclusively on the Affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr. With regard to Affidavit of Thomas Hughes, M.D., the Court notes that the affidavit was not notarized at the time of filing with the Court. However, attorney John Blincow represented at the hearing that, as an officer of the court, he actually saw Dr. Hughes execute the affidavit. He then notarized the Affidavit of Thomas Hughes, M.D. after the hearing. In addition, Rule 5(d) of the South Carolina Rules of Civil Procedure specifically provides that except as otherwise provided in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence or argument was provided to explain why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Furthermore, pursuant to Rule 33(b) SCRCPP, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The Court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing, yet Dr. Hughes has never been listed as a witness. The affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

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Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker, but instead reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, supra. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that, based on a review of the records Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Exhibits B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate, or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom the decedent

shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the State of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding a lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the wills and trusts of his parents. The record establishes that, decades ago, Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021, the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any

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obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion for Summary Judgment of Respondents is granted; and
2. Lesley Moore is hereby dismissed from this action with prejudice.

AND IT IS SO ORDERED.



Clayton L. Jennings
Associate Probate Judge

June 15, 2021
Greenville, SC

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FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

DEC 15 2021

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III,

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe,

Respondents.

AMENDED ORDER
GRANTING SUMMARY JUDGMENT
TO RESPONDENTS

This Court originally granted summary judgment in favor of Respondents and issued its Order reflecting the same dated June 15, 2021. Pursuant to a timely filed Motion under Rule 59 of the South Carolina Rules of Civil Procedure, Respondents requested the Court alter the language of its Order to change the phrase "Petitioner relies exclusively on the affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." to "Petitioner relies primarily on the affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." In considering the record before it, the Court modifies its Order dated June 15, 2021 granting Respondent's Motion for Summary Judgment as noted below and the Court finds and rules as follows:

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, III instituted a pro se action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long-time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court, certain claims of

Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore. By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John Blincow, Jr. of the firm Blincow Griffin Law, P.C. appeared on behalf of Petitioner. Following lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the last Will and Testament and Trust of James M. Shoemaker, III dated June 24, 2018 (the "Will") and the restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the grounds of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once "the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation." Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew [(1)] his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks, 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 So. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to found his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Ann. §62-7-601.)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

"Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influence—"there [must be] additional evidence that such influence was actually utilized." Howard v. Nasser, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock, 266 S.C. at 277, 222 S.E.2d at 774).

"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallas, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)

III. Analysis

Petitioner relies primarily on the Affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr.. With regard to Dr. Hughes' affidavit, it is noted that the affidavit was not notarized. However, attorney John Bilincow represented at the hearing that as an officer of the court, he actually saw Dr. Hughes execute the affidavit. More significantly, Rule 5(d) of the South Carolina Rules of Civil Procedure specifically provides that except as otherwise provided

in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence was adduced explaining why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Additionally, pursuant to Rule 33(b) SCRPC, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The Court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing yet Dr. Hughes has never been listed as a witness. In this matter it is undisputed that the affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker but instead, reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, *supra*. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that based on a review of the records Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that

his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Ex B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom he shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the state of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it

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is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the Wills and Trusts of his parents. The record establishes that decades ago Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021 the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

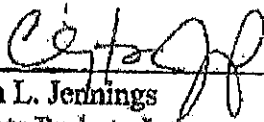
Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion for Summary Judgment of Respondents is granted; and
2. Lesley Moore is hereby dismissed from this action with prejudice.

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AND IT IS SO ORDERED.

December 15, 2021
Greenville, South Carolina



Clayton L. Jennings
Associate Probate Judge

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

DEC 15 2021

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER

This matter came before the Court for a hearing on Wednesday November 10, 2021 pursuant to Petitioner's motion that the undersigned recuse himself and to vacate prior Orders.

As explained below, the Court denies Petitioner's Motion to Vacate this Court's prior Order granting summary judgment and oral ruling granting Respondents' motion to alter or amend that summary judgment order. The Court grants Petitioner's Motion for Recusal as to any future matters heard in the present action as well as the related action involving the Estate of Polly Shoemaker pending under C.A. No.: 2020-ES-23-00073.

Petitioner bases his Motion to Vacate this Court's prior Order Granting Summary Judgment and seeks recusal of the undersigned based on the relationship of the undersigned as co-counsel with Stanley McLeod, who is a partner in the firm in which Knox Haynsworth, III practices. However, as disclosed to counsel: I have never served as co-counsel with a member of the firm of which Mr. Haynsworth is a member until serving with Stanley McLeod; I agreed to represent a friend, Jeff Gaafary, in litigation involving him and a limited liability company in which he is a member; I filed a notice of appearance on April 7, 2021 in anticipation of needing

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By Court Clerk

to appear at a motion hearing on the following day, but co-counsel (Stanley McLeod) appeared at the hearing, and my service was not needed, and I did not appear in court; I have received no retainer or fee in connection with my representation; I have not appeared at any hearing or proceeding in the subject representation of Mr. Gaafary of his company; and I have not billed or recorded any time for my representation, and my representation is not subject to a contingency fee agreement. However, I anticipate that I will need to spend time on the cases involving Mr. Gaafary and his company at some point in the coming months.

I disclosed my representation in these matters only after it occurred to me that my co-counsel on these cases was in practice with Attorney Haynsworth, who represents the respondents in this matter. This disclosure was to demonstrate sensitivity to assuaging any concerns about my impartiality. See Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E. 2d 535, 546 (S.C. 2014), at 546, citing Simpson v. Simpson, 377 S.C. at 525, 660 S.E. 2d at 277.

Petitioner argues that the case of Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), requires recusal where an objective inquiry into the co-counsel relationship "would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true." Petitioner also argues that the Judicial Merit Selection Commission's decision in In Re: Public Hearing on Judicial Qualification of Judge Segars-Andrew S.C. December 18, 2009 requires a judge to recuse himself if the judge's impartiality might reasonably be questioned. Petitioner argues that the refusal of the South Carolina Supreme Court to hear the matter of Judge Segars-Andrews signifies that there is no longer a requirement to present evidence of actual bias as required by prior South Carolina law such as in Simpson v. Simpson, 660 S.E. 2d 274 (S.C. App. 2008).

The facts related to Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009) are clearly distinguishable from the present case in that the judge in Caperton received \$3 million in campaign contributions from Massey Coal Co. prior to issuing a decision in a case involving Massey Coal Co. as a party. In this case, I have received no payment and billed for no time or services. I have had no financial interest in the instant case or in the cases in which I have appeared as co-counsel with Mr. McLeod.

In addition, the case of Davis v. Parkview Apartments, 409 SC 266, 762 SE 2d 535 (2014) makes it clear that "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.* at 545 "It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality." *Id.* at 545, quoting Lyvers v. Lyvers, 280 S.C. 361, 367, 213 S.E. 2d 590, 594. "The party seeking disqualification must do more than merely allege bias on the judge's behalf; the party must present some evidence of judicial prejudice or bias." Simpson, at 277, quoting Patel v. Patel, 359 S.C. 515, 599 S.E. 2d 114 (2004). Considering that the opinion of the Judicial Merit Selection Commission related to Judge Segars-Andrews was issued in the year 2009, roughly 5 years prior to the decision in Davis v. Parkview Apartments, *supra*, in 2014, it appears quite clear that the law of South Carolina still requires both a reasonable basis for questioning a judge's impartiality and evidence of actual prejudice. Moreover, the opinion from Davis v. Parkview Apartments, *supra*, in 2014, was issued nearly years after the decision in Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009). Thus, Petitioner's argument that evidence of actual prejudice was no longer required following the matter of Judge Segars-Andrews is invalid. Although the court requested Petitioner to provide South Carolina law

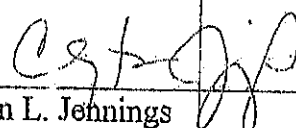
holding that evidence of actual prejudice was no longer required after the opinion concerning Judge Segars-Andrews, Petitioner produced none.

I find that Petitioner has failed to show a reasonable basis for questioning my impartiality in this matter. Petitioner admits that he has no evidence of actual prejudice, but contends that such is not necessary.

Therefore, for the reasons set forth above, the Motion to Vacate this court's prior Order Granting Summary Judgment is DENIED. The court also notes that parties have expended a great deal of time and expense on the proceedings to date, and it would be a colossal injustice for them to relitigate matters already heard and decided by this court, especially knowing that the matters were decided impartially.

Nevertheless, because I expect over the coming months to begin working on the subject cases involving Stanley McLeod as co-counsel, because there may be billing and payments associated with such work, and because Petitioner may renew his objection or file additional motions for recusal and to vacate prior Orders based on a financial interest in the cases involving Stanley McLeod as co-counsel, I recuse myself from future proceedings in the matters of James Marshall Shoemaker, Jr (2018ES2301729) and Mary Sloan Shoemaker (2020ES2300073),
decedents.

AND IT IS SO ORDERED.


Clayton L. Jennings
Associate Probate Judge

Greenville, South Carolina

December 15, 2021

I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC
Dated: 12/20/21

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The Supreme Court of South Carolina

FILED

ORDER

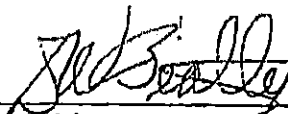
FEB 01 2022

GREENVILLE COUNTY
PROBATE COURT

I find that the Honorable Debora A. Faulkner, Probate Judge for Greenville County, and the Associate Probate Judges for Greenville County are disqualified from any further hearings In the Matter of James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker (Case Nos. 2018-ES-23-01729 and 2020-ES-23-00073) and unable to sit as judge of probate in these matters in their entirety.

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution and S.C. Code Ann. § 14-23-1080 (2017),

IT IS ORDERED that the Honorable Joshua L. Queen, Probate Judge for Cherokee County, is appointed as special probate court judge to sit in the above matter in its entirety. The Honorable Joshua L. Queen shall have all the powers and duties appertaining to a probate court judge for Greenville County in the handling of the above matter.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
February 1, 2022

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2021CP2302955;
2022CP2300933

IN THE MATTER OF:

James Marshall Shoemaker, Jr.,

Decedent

James Marshall Shoemaker, III,

Petitioner,

vs.

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker and
Jonathan Evans Shoemaker as
Beneficiaries,

Respondents.

ORDER AFFIRMING SUMMARY JUDGMENT
IN FAVOR OF RESPONDENTS AND
DISMISSING PETITIONER'S APPEAL

James Marshall Shoemaker, III,

Petitioner/Plaintiff,

vs.

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker and
Jonathan Evans Shoemaker,

Respondents/Defendants.

THIS MATTER IS BEFORE THE COURT for hearings in connection with two case numbers related to the same matter. In reviewing the file, it appears that Petitioner's prior attorney, John Blicow, Esquire, attempted to appeal the initial granting of summary judgment prior to a final order being issued by the probate court. That appeal resulted in the action found under Case Number 2021CP2302955. Thereafter, the probate court issued its final order granting summary

judgment in favor of respondents. That final order was appealed by petitioner pro se resulting in the action found under Case Number 2022CP2300933. Subsequently, Petitioner retained the services of Will McKibbin, Esquire, who confirmed at the hearing that he was representing Petitioner in both matters.

FACTUAL BACKGROUND

This controversy arises out of a challenge to the validity of Decedent's will. Shortly before his passing, Decedent changed his will to disinherit his son, Petitioner. It appears that Decedent and Petitioner had an uncertain and unstable relationship which led to multiple changes in Decedent's will to alternately exclude and include Petitioner. However, the above-referenced change which disinherited Petitioner was Decedent's Last Will & Testament at the time of his passing.

After Decedent's passing, Petitioner brought an action to declare the will invalid for lack of testamentary capacity. In support, Petitioner submitted the affidavit of Dr. Thomas Hughes, M.D., which purported to find Decedent incompetent at the time of the execution of his will. Dr. Hughes reached this conclusion exclusively through a review of records and had no occasion to personally evaluate Decedent before his passing. Respondents moved for summary judgment and submitted multiple affidavits in support. That motion was heard on April 7, 2021 before Judge Jennings. That same day, Judge Jennings filed a Notice of Appearance in two civil lawsuits as co-counsel with the firm of Brown, Massey, Evans, McLeod & Haynsworth, LLC (BMEMH), which was also representing Respondents in this matter. Judge Jennings did not disclose his relationship with BMEMH at the time.

On June 15, 2021, Judge Jennings granted Respondents' Motion for Summary Judgment, finding that Dr. Hughes' affidavit did not sufficiently identify the incapacity Decedent was under.

In other words, though Decedent may have been neurologically^b impaired, the affidavit does not show that he lacked testamentary capacity, specifically. On the other hand, Respondents submitted multiple affidavits all affirming that Decedent did have testamentary capacity when executing his will.

On September 15, 2021, Judge Jennings heard a motion from BMEMH seeking fees and costs which Judge Jennings took under advisement. The following day, Judge Jennings notified all counsel of his business relationship with BMEMH and when it began. In response, Petitioner filed a Motion to Recuse and Vacate on October 1, 2021. Specifically, Petitioner asked Judge Jennings to recuse himself from this matter and vacate the summary judgment order based on the conflict, or appearance thereof. On December 15, 2021, Judge Jennings recused himself from all future matters based on his business relationship with BMEMH, but he refused to vacate the summary judgment order. Judge Jennings stated that his business relationship only existed on paper when he granted summary judgment and that he had derived no benefit and performed no work in that relationship. Therefore, in Judge Jennings' view, there was no real conflict that could form the basis for vacating the order. Petitioner now appeals both the summary judgment order and the refusal to vacate.ⁱ

STANDARD OF REVIEW

When considering probate appeals, "if there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that" the appellate courts of this state would. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *Id.* "When reviewing a grant of summary judgment, appellate courtsⁿ

apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP.” *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011).

ANALYSIS

I. Timeliness of Appeal

South Carolina Code Annotated § 62-1-308 (“the statute”) governs an appeal from a probate court order to the circuit court. The statute provides, in pertinent part: “[A] person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence or decree of the probate court.” Based upon the record before this court, the probate court filed its order entitled “Amended Order Granting Respondents’ Summary Judgment” on December 15, 2021 and written notice was provided on December 16, 2021. Petitioner’s Notice of Appeal was filed January 10, 2022.

This specific issue has been addressed by the South Carolina Supreme Court. In the matter of *In Re: Estate of Charles H. Cretzmeyer, Jr.*, the Supreme Court addressed an appeal wherein the circuit court held that appellant failed to file her notice of appeal in the circuit court within ten days of receiving the probate court order, as required by the statute. The sole issue was whether the notice of appeal was timely filed in the circuit court.

“We decline Appellant’s invitation to construe the statute in a manner inconsistent with its unambiguous terms. Our settled rules of statutory construction mandate the result we reach, for the statute is clear that the notice of appeal ‘must be filed’ in the circuit court within the ten-day period. *See Gary v. State*, 347 S.C. 627, 629 557 S.E. 2d 662, 663 (2001) (“When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.”); *see also State v. Brown*, 358 S.C. 382, 387, 586 S.E. 2d 39, 41 (2004) (noting that

failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction)."

In Re: Estate of Charles H. Crtezmeier, Jr., 365 S.C. 12, 14, 615 S.E. 2d 116, 116–17 (2005).

Based on the foregoing, Petitioner has failed to comply with the mandates of the statute thus divesting this court of jurisdiction to address his "appeal."

At the hearing counsel for Petitioner argued that South Carolina law favors the resolution of disputes on the merits and Petitioner should be excused for his failure to comply with certain statutory deadlines. Even were the Court to overlook Petitioner's failure to properly perfect his appeal, Petitioner's appeal is also foreclosed on the merits. However, before the Court addresses the lack of evidence sufficient to overturn the decision of the probate court, the Court must quickly address the recusal order from Judge Jennings. Based upon a review of the records submitted, this Court does not believe that Judge Jennings' recusal was required or that his decision to not retroactively reverse his prior orders is subject to reversal by this court. Judge Jennings' order of December 15, 2021, declining to retroactively recuse himself and vacate his prior orders analyzes in great detail the facts and law applicable to that issue and this Court adopts the reasoning asserted by Judge Jennings in that order.

II. Summary Judgment Merits

As noted previously, Petitioner submitted an affidavit of a Dr. Thomas Hughes who had never seen the Decedent and who never had occasion to treat Mr. Shoemaker; to speak with him; or to speak with his physician or any witnesses to changes to his estate plans or execution of the relevant documents. More importantly Dr. Hughes' affidavit simply failed to address what level of incapacity the decedent allegedly suffered on the date of the execution of his will and trust. It is also noted in the order that in contrast to the affidavit of Dr. Hughes, respondents submitted affidavits that clearly established Mr. Shoemaker had testamentary capacity and requested the

changes to his estate plan of his own volition by instructing his trusted estate planning attorney, in consultation with his long-time accountant, to modify his estate planning documents.

In support of summary judgment respondents submitted affidavits of witnesses to Mr. Shoemaker's Will and his Trust including: his personal physician; his pastor; his longtime estate planning attorney, and his longtime CPA. The record is replete with personal knowledge evidence as to the competency of the Decedent at the time he executed his testamentary documents. For example, based upon his sworn testimony, Petitioner confirmed that Ms. Lewis' affidavit is factually accurate. A review of that affidavit establishes a number of significant points. First, Ms. Lewis had known Mr. and Mrs. Shoemaker, and they had been clients of hers since approximately December of 2000. She had occasion to meet with Mr. Shoemaker or speak with him approximately 2 to 4 times each year. As noted in paragraph 5 of her affidavit, of her own personal knowledge, Ms. Lewis is familiar that Mr. Shoemaker changed his estate plans at various times such that his eldest son, Marshall, would not share on an equal basis with his other two children. Ms. Lewis confirmed that as part of her general practice, she often times keeps contemporaneous notes regarding the substance of meetings and instructions she has been given by her clients. She reviewed those notes relative to Mr. Shoemaker's estate plan and his intentions with regard to his son Marshall. As noted in her affidavit, on June 24, 2018, the very day that the testamentary documents were executed, Mr. Shoemaker spoke with Ms. Lewis by telephone and told her he was going to change his estate plan relative to his son Marshall, and attorney Lesley Moore would be preparing the documents to reflect his changes. Her notes went on to indicate that Mr. Shoemaker's desire was to remove his son Marshall from his estate plan because Marshall was "trouble." At no time during her conversation on June 24, 2018, did she observe anything that would lead her to question Mr. Shoemaker's mental competency or whether the actions stated

regarding his intention to alter his estate plan was completely voluntary. Ms. Lewis' affidavit confirms that more than three weeks later, on July 12, 2018, she met in person with Mr. Shoemaker at his residence at The Cascades to obtain his signatures on documents. Based on a review of her notes from the meeting on July 12, 2018, James Shoemaker was "totally lucid" and her notes reflected a direct quote from the Decedent to her: "Marshall is out."

Similarly, in contrast to the affidavit of Dr. Hughes which fails to speak to testamentary capacity, Dr. Grover, Mr. Shoemaker's personal physician, avers that he has been advised that the criteria for determining testamentary capacity is that the person must have the mental capacity to (1) know the nature and extent of his property; (2) know the natural objects of his bounty; and (3) know to whom he wishes to leave his property. Dr. Grover specifically avers that based upon his personal observations, Mr. Shoemaker was in no sense delusional or suffering from any mental deficits.

By way of yet another example, the underlying record contains the affidavit of Lesley R. Moore. Ms. Moore's affidavit confirms she was personally familiar with the fact that Mr. Shoemaker did not always treat his three sons equally in his estate planning as contended by petitioner and Ms. Moore cites specific instances of her knowledge of prior unequal treatment in his estate planning among the three children. Ms. Moore confirms that she was intimately involved in preparation of the documents being challenged and she discusses at length the interaction with Mr. and Mrs. Shoemaker regarding the preparation and execution of the documents. Ms. Moore confirms Mr. Shoemaker possessed testamentary capacity at the time the documents were executed.

Likewise, the underlying record contains the affidavits of Amos A. Workman and Carl F. Mueller. Both affidavits confirm that they personally witnessed Mr. Shoemaker review his Last

Will and Testament and Trust dated June 24, 2018, and sign the documents. They both confirmed by affidavits that they were aware of the criteria for determining testamentary capacity and that Mr. Shoemaker possessed testamentary capacity at the time they witnessed execute his documents. Based on the foregoing and other evidence, the probate court held there was no genuine issue of material fact in dispute regarding petitioner's claims and accordingly, respondents were granted summary judgment.

Though Dr. Hughes' affidavit implies some neurological deficiency, it does not adequately allege a lack of testamentary capacity. In contrast, the affidavits submitted by Respondents clearly establish that Decedent did have testamentary capacity at execution. Therefore, even if Petitioner had timely appealed both of the underlying orders of the Probate Court, based upon the evidence presented, the judgment of the probate court should be affirmed, and Petitioner's appeal is dismissed.

IT IS SO ORDERED.

Debra R. McCaslin
Presiding Judge

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Greenville Common Pleas

Case Caption: James Marshall Shoemaker III , plaintiff, et al VS Mary Hunter Sloan
Shoemaker , defendant, et al
Case Number: 2022CP2300933
Type: Order/Dismissal

So Ordered

Debra R. McCaslin

Electronically signed on 2022-10-26 15:45:30 page 9 of 9

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY PROBATE COURT
HON. DEBORA A. FAULKNER

FILED

JUN 27 2019

GREENVILLE COUNTY
PROBATE COURT

JAMES MARSHALL SHOEMAKER, III

Petitioner/Plaintiff,

vs.

MARY HUNTER SLOAN SHOEMAKER,

EDWARD SLOAN SHOEMAKER,

JONATHAN EVANS SHOEMAKER,

DEBORA WINE,

LESLEY MOORE,

JOHN AND JAN DOE.

Respondents/Defendants

Case No.: 18-2301729

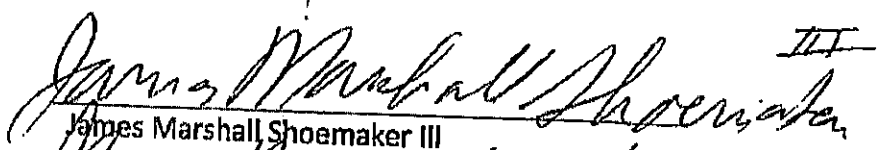
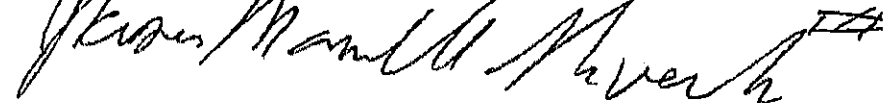
CIVIL SUMMONS
FOR FORMAL HEARING IN THE ESTATE OF
JAMES M. SHOEMAKER, JR.

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the petitioner, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Date: June 27, 2019

James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com


James Marshall Shoemaker III


SCCA 401PC (9/11)

Addresses for Service to Respondents

Mary Hunter Sloan Shoemaker
10 Creekridge Road
Greenville, South Carolina 29607
864-528-5370

Edward Sloan Shoemaker
1071 County Road 111
Carbondale, CO 81623
970-963-4214

Jonathan Evans Shoemaker
301 108th St #3D
New York, NY 10025
(212) 678-5487, (212) 678-2194

Debora Wine
10 Creekridge Road
Greenville, South Carolina 29607
864-528-5370

Lesley R. Moore
Freeman and Moore PC
245 East Broad Street, Suite D
Greenville, South Carolina 29601
(864) 236-8768

FILED

JUL 26 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

NOTICE OF MOTION AND
MOTION TO DISMISS/STRIKE OR
IN THE ALTERNATIVE, MOTION
FOR A MORE DEFINITE STATEMENT

TO: MARSHALL SHOEMAKER, PETITIONER PRO SE

You will please take notice that respondents Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore will move on the 10th day following service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing petitioner's complaint or in the alternative, ordering petitioner to amend his complaint to properly allege the facts of his pleadings and relief sought. This motion is based upon Rules 10(b), 12(b)(1), 12(b)(6), 12(e) and 12(f) of the South Carolina Rules of Civil Procedure.

As an initial matter, petitioner's pleadings fail to comply with the requirements of SCRCP 10(b). Specifically, the Rule provides in pertinent part, "all averments of the facts of a cause of action... and demands for relief shall be made in consecutive numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances". The petition as filed is jumbled and does not state the facts in separate, consecutively numbered paragraphs nor are the contents limited to a statement of a single set of

circumstances. As such, respondents have no meaningful way in which to respond to the pleadings as drafted.

Relatedly, respondents move for a more definite statement pursuant to Rule 12(e) for petitioner to refine his pleadings to comply with Rule 10(b) so that the same can be properly responded to.

Additionally, respondents Lesley Moore, Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker and Jonathan Evans Shoemaker move to dismiss several claims in this action based upon the provisions of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Petitioner's complaint fails to state facts sufficient to constitute a cause of action to the extent it purports to be an action for court appointment of a guardian. In order to institute an action for the appointment of a guardian, petitioner was required to follow the provisions of and set forth the specific information required by SC Code Ann. §62-5-303. Petitioner's failed to allege the required facts thus rendering the petition fatally defective and subject to dismissal.

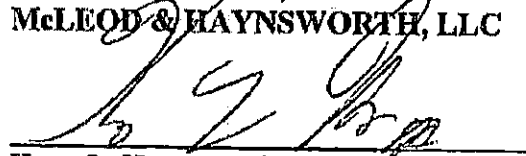
Petitioner requests that respondent Lesley Moore be removed by the court from serving as personal representative or trustee. He also requests that the court appoint a Guardian ad Litem for his mother, Mary Hunter Sloan Shoemaker, and have the court charge the guardian to 1) take over from Mrs. Shoemaker's two sons, Jonathan and Sloan, her healthcare power of attorney; 2) hire a team of medical and psychiatric doctors to evaluate and treat his mother; 3) replace his mother's housekeeper Debra Wine and 4) evaluate and hire a national trust company to take over financial guardianship of his mother's assets and his father's trust.

Respondents respectfully submit as to the claims asserted by petitioner referenced above, this court does not have jurisdiction over the subject matter of those claims in the present action.

This action relates to the estate of James Marshall Shoemaker, Jr. and within the confines of such lawsuit, petitioner is entitled to assert claims relative to the testamentary capacity of Mr. Shoemaker in disposing of his assets as he saw fit. The action is not one in which petition can obtain the relief sought above. Thus, as to this present action, the court lacks subject matter jurisdiction and the action and all claims related to Ms. Moore, Ms. Wine and Ms. Shoemaker should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

S.C. Bar #: 010275

R. David Massey

S.C. Bar #: 003681

Post Office Box 2464

Greenville, SC 29602

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Attorneys for Respondents Mary Hunter

Sloan Shoemaker, Edward Sloan Shoemaker,

Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
July 26, 2019

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FEB 03 2020

IN THE PROBATE COURT

**GREENVILLE COUNTY
PROBATE COURT**

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III ;

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

NOTICE OF MOTION AND
MOTION TO DISMISS

TO: MARSHALL SHOEMAKER, PETITIONER PRO SE

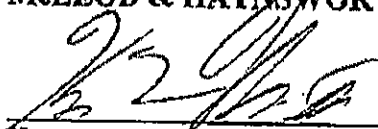
You will please take notice that respondents Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore will move the court for an Order pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure dismissing petitioner's petition.

The grounds for the present motion are that pursuant to her Order dated December 13, 2019, the Honorable Caroline M. Horlbeck directed that petitioner was to strike from his petition certain specific allegations and certain causes of action and file and serve his amended petition within 15 days of that Order. The date of Judge Horlbeck's Order was December 13, 2019. To date, Mr. Shoemaker has failed and refused and continues to fail and refuse to comply with the Order resulting in prejudice to these respondents. In light of petitioner's conduct, respondents would specifically request that the court dismiss petitioner's petition pursuant to the provisions of Rule 41(b) for failure to comply with the court's Order.

This motion is based upon the pleadings and other documents on file with the court and such other and further materials as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

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Attorneys for Respondents Mary Hunter

Sloan Shoemaker, Edward Sloan Shoemaker,

Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
January 30, 2020

FEB 14 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

REPLY TO AMENDED PETITION

TO: MARSHALL SHOEMAKER, PETITIONER PRO SE

Respondents Mary Hunter Sloan Shoemaker¹, Edward Sloan Shoemaker, Jonathan Evans
Shoemaker and Lesley Moore hereby respond to the petition of James Marshall Shoemaker, III.

FOR A FIRST DEFENSE

1. All allegations of the petition not specifically admitted, qualified or explained are denied.
2. Answering petitioner's allegations as are found at lines 1 through 8 of page 1 of the amended petition, respondents would deny those allegations as stated. Further answering, respondents would state that at the time Mr. Shoemaker executed the Will presented for probate, he was of sound mind and body and fully aware of his actions relative to his estate and assets.
3. Answering the allegations at lines 9 through 18 of page 1 of the amended petition, respondents admit that Mr. Shoemaker revised his Will and, upon information and belief, that document excluded the petitioner from benefitting from his father's estate to the extent as other beneficiaries

¹ Since this action was instituted, Mrs. Shoemaker has passed. It is anticipated that the PR of her estate, will be substituted as respondent in the present action at the appropriate time.

of the Will. Respondents specifically deny Mr. Shoemaker was suffering from any weakened, disturbed or distorted state of mind or was the subject of any collusion or persuasions to cause him to undertake any actions beyond those of his own free will, undertaken with full knowledge of his estate and to whom he wished to leave it.

4. Answering the allegations found at lines 19 through 27 on page 1 continuing through lines 1 through 6 of page 2 of the amended petition, respondents deny the allegations as stated. Respondents do admit, upon information and belief, that Mrs. Shoemaker explained to the petitioner during the visit at issue that Mr. Shoemaker did not wish to see the petitioner and petitioner was not allowed against his father's wishes, to enter his father's bedroom. Respondents specifically deny Mrs. Shoemaker exercised any undue influence over Mr. Shoemaker.

5. Answering the allegations of paragraphs 7 through 17 on¹ page 2 of the amended petition, respondents specifically deny such allegations as stated. Further answering, respondents deny so much of the allegations as state "my brothers have been edging me out of the family for years in a cold and calculated manner". Further answering, respondents are without sufficient information with which to admit or deny the allegations as to a private communication meant for petitioner's brothers only and the eyes of a concerned Greenville police officer and Carrie Hall the co-trustee of Mr. Shoemaker's Irrevocable Trust. Respondents would admit that in the email referenced by petitioner, he raised concerns about and elder fraud crime being committed upon his parents.

6. Answering the allegations found at lines 18 through 21 of page 3 carrying over to lines 1 and 2 of page 4 of the amended petition, respondents deny the allegations as stated. Further answering, respondents admit so much of the allegations as contend Mr. Shoemaker signed the document on June 24, 2019. Respondents would crave reference to the actual document for all

of its terms and conditions. Respondents are without knowledge or information to admit or deny what petitioner believes with regard to the value of the estate.

7. Answering the allegations found at lines 3 through 14 on page 4 of the amended petition, respondents deny so much of the allegations as contend Mr. Shoemaker was under conditions of physical, emotional or spiritual agony or that he was influenced to take action. Further answering, respondents admit upon information and belief, that on August 12, 2010 petitioner received a note from his father. Respondents would crave reference the actual writing for its terms.

8. Answering the allegations found at lines 15 through 18 of page 4 carrying over to lines 1 through 14 of page 5 of the amended petition, respondents deny such allegations as stated. Further answering, respondents would state Mr. Shoemaker made various alterations to an estate plan over the course of his life altering that plan from time to time and in various ways as he saw fit. Respondents would crave reference to the documents themselves for their specific terms and conditions.

9. Answering the allegations found at line 15 through line 19 of page 5 carrying over to lines 1 through 10 of page 6 of the amended petition, respondents deny such allegations as stated. Further answering the allegations, these respondents would state that petitioner is not entitled to the relief he has requested in this action, deny he was excluded from his father's funeral and deny his father was unduly influenced or vulnerable.

10. Answering the allegations found at line 11 through line 21 of page 6 of the amended petition, respondents deny such allegations as stated. Further answering, respondent Lesley Moore denies she knew or should have known of Mr. Shoemaker's lack of capacity and undue influence because there was no lack of capacity or undue influence with regard to Mr. Shoemaker. Respondents

deny that Ms. Moore allowed any personal prejudice or self-interest to cloud her judgment in connection with any actions undertaken with regard to Mr. Shoemaker or his estate plan. Respondents admit petitioner has requested the court remove Ms. Moore as PR of petitioner's father's estate and Trustee of any Trust created by his father or Will, but deny petitioner is entitled to the relief so requested.

11. Answering the allegations found at lines 1 through 19 of page 7 of the amended petition, respondents are without sufficient information with which to admit or deny what Mr. Shoemaker, the petitioner, has used to form the basis of his opinions but deny the allegations that Ms. Moore expressed any animus towards petitioner. Respondents admit, upon information and belief, that Ms. Moore expressed to petitioner her great personal feelings and involvement with both Mr. Shoemaker and Mrs. Shoemaker. Further answering, respondents deny that Ms. Moore was not professional and forthcoming in any information she was requested to provide to petitioner and specifically deny any lack of objectivity.

12. Answering the allegations of lines 20 through 24 of page 7 of the amended petition, respondents admit petitioner has requested the court grant him an award of attorney's fees and costs as well as all other legal and equitable relief to which he may be entitled. Respondents deny petitioner is entitled to any legal or equitable relief or the award of costs and attorney's fees.

13. Answering the allegations found at lines 1 through 6 of page 8 of the amended petition, respondents admit so much of the allegations as allege petitioner is representing himself but deny that Mr. Shoemaker is entitled, as a pro se, to being advised by the court as to how to correct any mistakes or that he is entitled to request the court's intervention for what he contends to be the best interest of all Shoemaker family members.

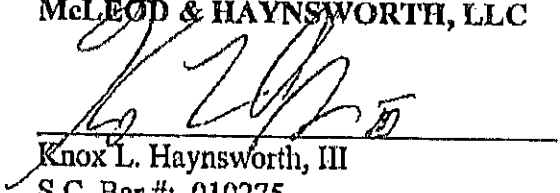
FOR A SECOND DEFENSE

14. Respondents restate and incorporate by reference the contents of paragraphs 1 through 9 above as fully as if repeated herein and insofar as the same are not inconsistent with this defense.
15. Further answering the amended petition and as a second defense thereto, respondents submit the amended petition must be dismissed for failure to comply with Judge Horlbeck's previous order and the notification from the probate court that Mr. Shoemaker, the petitioner, would be required to file a signed copy of his amended petition in order for the same to be valid.
16. Upon information and belief, at this time Mr. Shoemaker has not complied with the court's instruction and not filed his amended petition with his signature.
17. As such, the amended petition should be dismissed.

WHEREFORE, having replied to the allegations of the amended petition, respondents pray that the amended petition be dismissed, that they be awarded the costs of this action, their attorney's fees and such other and further relief as the court may deem just and proper.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

S.C. Bar #: 010275

R. David Massey

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Telephone: (864) 271-7424

Attorneys for Respondents Mary Hunter

Sloan Shoemaker, Edward Sloan Shoemaker,

Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
February 14, 2020

1 James Marshall Shoemaker III,
2 Representing myself
3 1859 Tecumseh Trail SE
4 Smyrna, Georgia 30080
5 678-558-3259
6 marshall@flockingbehavior.com

FILED
FEB 20 2020
GREENVILLE COUNTY
PROBATE COURT

7 STATE OF SOUTH CAROLINA
8 GREENVILLE COUNTY PROBATE COURT

9 HON. DEBORA A. FAULKNER

10 JAMES MARSHAL SHOEMAKER III,

Case No.: 18-2301729

11 Petitioner/Plaintiff,

12 vs.

PETITION FOR FORMAL HEARING IN THE
ESTATE OF JAMES M. SHOEMAKER, JR.
(ORIGINALLY FILED JUNE 27, 2019) -
AMENDED PER ORDER OF JUDGE
HORI BECK (DECEMBER, 13, 2019)

13 MARY HUNTER SLOAN SHOEMAKER,

14 EDWARD SLOAN SHOEMAKER,

15 JONATHAN EVANS SHOEMAKER,

16 DEBORA WINE,

17 LESLEY MOORE,

18 JOHN AND JAN DOE.

19 Respondents/Defendants

20
21
22
23 My name is James Marshall Shoemaker III. I am the oldest son of James Marshall
24 Shoemaker Jr. My father passed away July 14, 2018.

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26
27
28 PETITION FOR FORMAL HEARING IN THE ESTATE OF JAMES M. SHOEMAKER, JR. (ORIGINALLY
FILED JUNE 27, 2019) - AMENDED PER ORDER OF JUDGE HORI BECK (DECEMBER, 13, 2019) - 1

1 At the time that my father executed the will that has been presented for probate in
2 this Court¹, he was suffering from last-stage pulmonary fibrosis, under constant hospice care,
3 under the influence of mind-altering pain medications and other chemical substances, and
4 suffering from long-term untreated alcoholism. Because he was basically suffocating to death,
5 heavily medicated, and emotionally and spiritually disturbed, he was not of sound mind over the
6 last several months of his life. He was also heavily influenced by my mother, Mary Hunter Sloan
7 Shoemaker, and my two brothers, Edward Sloan Shoemaker and Jonathan Evans Shoemaker.
8

9 My brothers stand to benefit substantially, both financially and emotionally (per
10 the twisted logic of severely dysfunctional families), if my father were to amend his previous
11 testamentary arrangements, under which the three brothers shared equally, and exclude me from
12 sharing in the estate remaining after my mother's death. As a result of his weakened, disturbed
13 and distorted state of mind during his final months, and the collusion of my mother and brothers
14 to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his will
15 and trusts, less than three weeks before his passing, which expressly excluded me from
16 benefiting from his estate.
17

18 During the last several months of my father's life, my mother and brothers refused
19 to communicate with me the seriousness of my father's failing health. I only learned that people
20 were making their lasts visits to his bedside by a distant family friend who kindly reached out to
21 me, outside of family channels, four weeks before his death. When my girlfriend and I attempted
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27 ¹ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018
28

1 to visit my father in person three weeks before his death, I was prevented from saying goodbye
2 to my father at his bedside by my mother, despite my repeated polite requests, in the presence of
3 my girlfriend, of my mother to allow me to have access to my father's bedroom. My mother's
4 influence over my relationship with my father was undue, hostile, and filled with anger at me for
5 suggesting that father required treatment for chemical dependency.
6

7 My brothers have been edging me out of the family for years, in a cold and
8 calculated manner. Weeks before my father's death my brothers abused my trust and misused my
9 private communications to them, meant only for their eyes, (and the eyes of a concerned
10 Greenville Police Officer and Cary Hall, a former law partner of my father and co-trustee of his
11 Irrevocable Trust). In these communications I expressed clearly and specifically my concerns
12 about my parents' victimization in a successful elder fraud crime, and their declining mental and
13 emotional health, and general vulnerability. By placing these communications in front of my
14 father while he lay dying, they engendered in my heavily-medicated father a demented anger that
15 led to the last minute changes to his will.
16
17

18 As a result of my father's highly disturbed and distorted state of mind during his
19 final months alive, and the collusion of my mother and brothers to vilify me to, and separate me
20 from, my father, he allegedly signed on June 24, 2019, revisions of his will and trusts². These
21 revisions expressly excluded me, and my children Mary and Peter, from benefiting from his
22
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26 ² Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018;
27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
28 2018

1 estate as originally intended, and twice later confirmed³. Although I am not certain, I believe that
2 the estate is valued somewhere between \$10,000,000 and \$15,000,000. It may even be larger.

3 Under conditions of physical, emotional and spiritual agony, my father was
4 influenced, three weeks before his death, to take drastic action contrary to the principles of love
5 and equity which he had previously shown explicitly, here documented, me and my brothers, and
6 all of our collective children, for the previous 20 years. On April 6, 1998, my father created an
7 Irrevocable Life Insurance Trust⁴ (value of \$4.9 million in 2010), second to die policy, the
8 proceeds of which are to be split in three equal parts between my two brothers, and my children
9 and me.⁵ On August 12, 2010, he wrote me (Marshall Shoemaker, Petitioner) a handwritten note
10 making very clear his intention to treat this three sons and their issue with complete equity.⁶ This
11 note from my father was followed one day later with confirmation from his two then law
12 partners, Cary Hall and Lesley Moore.⁷

13 On June 5, 2015, my father executed the first of four historical versions of his
14 Revocable Will and Trust.⁸ The language of love and fairness is unequivocal: "Upon POLLY's
15 (my mother's nickname) death, if any of the Grantor's issue survives POLLY, such property shall
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22 ³ Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;

23 Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;

24 Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December
25 23, 2016;

26 Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of
27 February 2, 2018

28 ⁴ Exhibit 2 - The John Hancock Life Insurance Policy, 59-148-650

⁵ Exhibit 1 - The Shoemaker Family Trust of April 6, 1998

⁶ Exhibit 3 - 081210 Letter from Dad to Marshall re: Irrevocable Trust

⁷ Exhibit 4 - 081110 Letter from Hall and Moore to Marshall re: Irrevocable Trust

⁸ Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;

Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;

1 be distributed as follows: One-third of such property shall be distributed to the Grantor's son,
2 MARSHALL . . . One-third of the property shall be distributed to the Grantor's son, SLOAN . . .
3 One-third of the property shall be distributed to the Grantor's son, JONATHAN This
4 original Will and Trust model, of equal divisions to this three sons, was later formally confirmed
5 twice: in a restatement on December 23, 2016⁹, and an amendment on February 5, 2018¹⁰
6 (slightly more than six months prior to his passing). On three separate occasions, over 2.5 years,
7 he unequivocally affirmed his wish that sons and grandchildren, and their future children, be
8 treated in a fair, loving and equal manner, a manner designed with intention to leave a legacy of
9 family unity, cooperation and cohesion. It makes absolutely no sense that this sophisticated
10 businessman, an attorney himself, who previously fairly and equitably managed significant
11 wealth left for his three sons by his wife's father, would decide on his death bed to take action
12 which would predictably destroy the relationships between his offspring, and their offspring.
13

14 I hereby request that the Court set aside the Will and Trusts executed on June 24,
15 2018¹¹ and thereby revert to my father's repeated, clear, considered and rational wishes (as
16 expressed in his Will and Trusts of June 5, 2015, as restated on December 23, 2016, as amended
17 February 5, 2018)¹² to treat his three sons and their offspring equally.
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23 ⁹ Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December 23, 2016

24 ¹⁰ Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of February 2,
25 2018

26 ¹¹ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018

27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
28 2018

¹² Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;

Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;

Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December
23, 2016;

1 The Court should grant the relief requested, because of the following (among
2 other things): 1) my father's long-term evidenced and sane wishes for the welfare of all of his
3 sons and grandchildren; 2) his incapacity at the time of the alleged revisions to his will; 3) my
4 mother's and brothers' actions (with so called professional assistance), which, three weeks before
5 his death, unduly influenced my very sick and vulnerable father, resulting in the changes to the
6 June 24, 2018, Will and Trusts¹³. The behavior referred to in item 3 above was graphically
7 repeated in the partially successful attempt by my mother and brothers, in the days after my
8 father's death, to exclude me from his funeral and related family gatherings.
9

10
11 The attorney who is presently tasked with, and compensated for, administering
12 the Will and managing my father's Revocable Trusts, Lesley Moore, knew or should have known
13 of my father's lack of capacity and the undue influence of my mother and brothers, and yet did
14 nothing, and allowed her personal prejudice, and her self-interest in earning fees for service as
15 Personal Representative, Trustee and/or counsel to the same, to cloud her judgement. As such,
16 she is unable to fulfill her fiduciary duty of loyalty to all the beneficiaries, including me and my
17 children. Accordingly, I ask that the Court remove Lesley Moore from serving as Personal
18 Representative of my father's Estate, as Trustee of any Trust created by my Father or his Will,
19 and/or service as the attorney for any of the foregoing. I ask that the Court instead appoint a
20 nationally reputable trust company to serve as replacement Personal Representative and Trustee.
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25 Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of
February 2, 2018

26 ¹³ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018;

27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
2018
28

PETITION FOR FORMAL HEARING IN THE ESTATE OF JAMES M. SHOEMAKER, JR. (ORIGINALLY
FILED JUNE 27, 2019) – AMENDED PER ORDER OF JUDGE HORLBECK (DECEMBER, 13, 2019) - 6

1 I have formed this opinion based on 1) Ms. Moore's expression of animus towards me in
2 my first phone conversation with her in many years, when I called in December 2018 to ask for
3 copies of the estate documents six months after my father's death, and 2) Ms. Moore's expression
4 to me of having "great personal feelings" for, and very personal involvement in the day to day
5 lives of both my father, previously, and my mother, to this day. In January, February and March
6 of 2019, as I tried to recover from my shock at learning of the existence and impact of the last
7 hour Will revisions (which I assume Ms. Moore was paid to draft and put in writing and had
8 witnessed at my father's bedside), and to gather information about the history of my father's
9 estate plan, I did not receive professional, forthcoming and prompt responses from Attorney
10 Moore. She has proved herself lacking in the objectivity and assertiveness required to manage
11 both the money and the personalities component to this terrible and absolutely avoidable mess. I
12 do not know what actions she may have taken to encourage the last minute changes, three weeks
13 prior to death, by an unsound man, under undue influence, but it certainly seems by the evidence
14 that she was ineffective in any attempts, if at all made, to discourage the resulting financial and
15 interpersonal disaster for me, my children, my father's legacy and for the Shoemaker family as a
16 whole.

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20 Furthermore, I ask that the court grant me an award of any and all attorneys' fees,
21 and costs, incurred by me in connection with pursuing this matter.
22

23 Finally, I ask for all other legal and equitable relief to which I may be entitled.

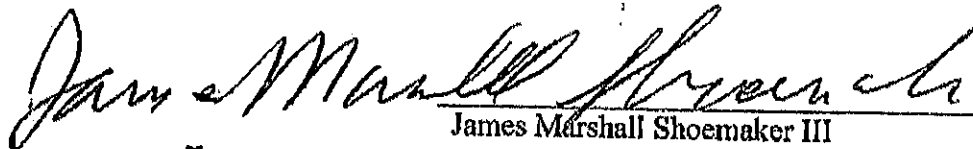
24 To the extent provided by law, I ask for a jury trial.
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1 Since I am representing myself in this matter, and am completely without legal
2 training, I will undoubtedly make some mistakes in this complicated process. I request the Court
3 to please advise me how to correct any such mistakes.
4

5 I beg the Court's intervention on the side of justice, compassion and the long term
6 best interests of all Shoemaker family members.
7

8 Date: February 2, 2020
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11 James Marshall Shoemaker

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14 James Marshall Shoemaker III

15 02-16-2020
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STATE OF SOUTH CAROLINA APR 17 2020
COUNTY OF GREENVILLE GREENVILLE COUNTY
 PROBATE COURT

R -59

respondents to incur costs and attorney's fees by filing the aforementioned motion to dismiss and only after that motion was filed, did petitioner finally comply with the court's Order.

Yet again, petitioner's lack of compliance and refusal to participate in discovery has resulted in respondents being required to seek the court's assistance. As such, in addition to the relief requested, respondent's also request the court award them their costs and attorney's fees pursuant to SCRCF Rule 37 (a)(4) for being forced to file the within motion.

Going forward, on January 24, 2020 the undersigned counsel wrote Mr. Shoemaker and in the final paragraph of the January 24, 2020 letter requested Mr. Shoemaker provide tentative dates and times for his deposition. On February 13, 2020 an email was sent again requesting deposition dates. On February 14, 2020 the undersigned counsel wrote Mr. Shoemaker again requesting dates for deposition and advising that if Mr. Shoemaker continued to refuse to engage in discussions regarding moving forward with discovery and his deposition, a motion would be filed with the court seeking dismissal of Mr. Shoemaker's amended petition for failure to comply with the applicable rules of civil procedure. Continuing to ignore the communications and the notification that a motion to dismiss would be filed, Mr. Shoemaker continued to refuse to provide dates. On March 18, 2020 the undersigned sent Mr. Shoemaker an email that yet again deposition dates were being requested. Finally, on March 23, 2020 Mr. Shoemaker was sent an email to confirm that Mr. Shoemaker did not intend to voluntarily sit for his deposition. All of the correspondence is attached and incorporated by reference as Exhibit A.

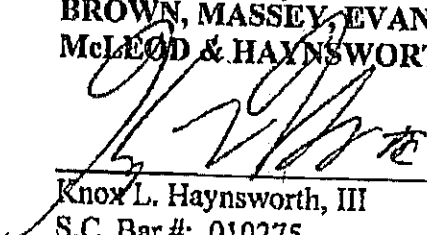
To date, Mr. Shoemaker has failed and refused and continues to fail and refuse to make himself available or to participate in scheduling his deposition. In light of petitioner's conduct, respondents would specifically request that the court dismiss petitioner's amended petition

pursuant to the provisions of Rules 33 and 41(b) of the South Carolina Rules of Civil Procedure for failure to comply with the applicable rules of civil procedure.

This motion is based upon the pleadings and other documents on file with the court, the correspondence attached as Exhibit A, and such other and further materials as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

S.C. Bar #: 010275

R. David Massey

S.C. Bar #: 003681

Post Office Box 2464

Greenville, SC 29602

Telephone: (864) 271-7424

Attorneys for Respondents Mary Hunter

Sloan Shoemaker, Edward Sloan Shoemaker,

Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
April 17, 2020

EXHIBIT

A

IMAGED

January 24, 2020

James Marshall Shoemaker, III
1859 Tecumseh Trail SE
Smyrna, Georgia 30080

Re: *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Debora Wine, Lesley Moore and John and Jan Doe*
C.A. No.: 2018-ES-23-01729

Dear Marshall:

In response to your recent communication to the court regarding medical records that have allegedly been withheld, a couple of thoughts. First, you are not entitled to any medical records regarding your mother in the pending action regarding your father's estate. When and if you bring an action to challenge your mother's testamentary capacity and request medical records in that action, we will address your mother's records at that time.

Going forward, I produced to you on October 10, 2019, Dr. Grover's medical records from IMA. Based on the allegations of your lawsuit that your father was subject to undue influence and did not have sufficient testamentary capacity at the time he changed his Will/Trust, his medical condition is relevant only for the time he executed the testamentary documents. What your father's medical records looked like before or after that event, are irrelevant to the claims you have made. That said, and in an effort to comply with your request whether I believe it is overly broad or not, please find enclosed for service upon you respondents' first supplemental responses to petitioner's first request for production and respondents' second supplemental to petitioner's interrogatories. Attached to the responses is a DVD with a copy of the records from Regency Southerncare, one of the hospice firms who were caring for your father in his last weeks. I do not yet have the records from the other hospice, Kindred but have been led to believe we will have them in a few weeks. I will further supplement our responses with those when received. I have also enclosed on the DVD 286 pages of records from St. Francis Eastside. To our knowledge these are the only facilities/providers who were involved with your father during the relevant time period as well as somewhat before and after, until the day of his passing. If for some reason you believe you are entitled to medical records regarding your father that go back in time any further, you are welcome to file a motion with the court and I will be happy to further explain to you as well as the presiding judge our position as to why records outside the execution of the documents being challenged are not relevant to your claims.

IMAGED

Going forward, you indicated in your email to the probate court on January 23, 2020 that you were shopping for a lawyer to take over the case regarding your father and presumably institute a case regarding your mother. As you may recall, you told Judge Horlbeck during the one hearing you have attended that you talked to over 100 lawyers attempting to have them take this case on a contingency basis. I would assume that after checking with that first 100, you would have found someone if an attorney was going to take the case. As such, I need to move forward and one of the things I need to do is take your deposition. Typically attorneys try and schedule depositions so as to accommodate their own schedules as well as that of the deponent. In this spirit, if you will give me some tentative dates and times where you could come to Greenville to be deposed, I would be most appreciative. I would anticipate the deposition will last most of the day. My suggestion would be to have the deposition here in my office beginning at 9:00 a.m. on whatever day works best, but if you have different thoughts, I am certainly open to discuss.

With best regards I remain,

Sincerely,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**

Knox L. Haynsworth, III

KLH/lab
Enclosure

IMAGED

Knox Haynsworth

From: Knox Haynsworth
Sent: Thursday, February 13, 2020 11:42 AM
To: Marshall Shoemaker
Subject: you

Marshall. I'm trying to get a handle on your intentions going forward. Per her email to you on 2-5-2020 Ms. Campos-Ivey advised she was returning your amended petition as it was not signed. I have a pending motion to dismiss your petition for failure to comply with Judge Horlbeck's Order. I had intended to withdraw that motion when you finally filed your amended petition but now that it has been rejected by the court for not being signed and to my knowledge you have not filed a "signed" version, I guess I need to set my motion for a hearing. Unless of course you intend to file a signed version. I'm trying to avoid unnecessary expense to all concerned so please let me know of your intentions. In this regard, per my letter to you dated 1-24-2020 I mentioned I would like to take your deposition and requested some tentative dates that would work for you. Assuming you intend to move forward, I would appreciate it if you could give me some dates that work on your end so we can get it set. Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
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Greenville, SC 29602
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knoxhaynsworth@bmemhlaw.com

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February 14, 2020

James Marshall Shoemaker, III
1859 Tecumseh Trail SE
Smyrna, Georgia 30080

Re: *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Debora Wine, Lesley Moore and John and Jan Doe*
C.A. No.: 2018-ES-23-01729

Dear Marshall:

By copy to my letter to the probate court, I served you with a copy of Respondents' Reply to Petitioner's Amended Petition. Enclosed for service upon you with this letter, please find Respondents' Second Supplemental Responses to Petitioner's First Request for Production of Documents and Respondent's Third Supplemental Answers to Petitioner's First Set of Interrogatories in the above matter. Enclosed is a DVD with the referenced documents.

Marshall, pursuant to my email yesterday, I want to again request you contact me to discuss dates to take your deposition. I do not know whether you are not receiving my correspondence regarding your deposition or whether you are simply ignoring it, but part of the purpose of this follow up letter is to document for the court's edification my efforts to schedule your deposition as the petitioner in the lawsuit you have instituted. If you continue to refuse to engage me in a discussion regarding moving forward with discovery in the case you have brought, I will file the appropriate motion with the court seeking to have your amended petition dismissed for failure to comply with the applicable rules of civil procedure. So, how about pick up the phone or shoot me an email so we can start to look at workable dates.

With best regards I remain,

Sincerely,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**

Knox L. Haynsworth, III

KLH/lab
Enclosure

IMAGED

Knox Haynsworth

From: Knox Haynsworth
Sent: Wednesday, March 18, 2020 9:18 AM
To: Marshall Shoemaker
Subject: Your deposition

Marshall. In light of Covid-19 issues I am not looking for a date any earlier than mid-April, but I need you to give me some deposition dates to take your deposition. I have now requested deposition dates from you via letter dated 1-24-2020, email dated 2-13-2020 and email dated 2-16-2020. If you have not given me dates by next Monday, I'll have no choice but to file a motion to dismiss your case for failure to comply with the South Carolina Rules of Civil Procedure. Please let me know your intentions. Thanks, Knox

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Marshall Shoemaker

Marshall Shoemaker MBA, PMP, CSM
Software Development Project Manager
Flocking Behavior LLC
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678.558.3259
Skype - marshallshoemaker
marshall@flockingbehavior.com
<https://www.linkedin.com/in/marshallshoemaker/>

From: Knox Haynsworth [<mailto:knoxhaynsworth@bmemhlaw.com>]
Sent: Wednesday, March 18, 2020 10:04 AM
To: Marshall Shoemaker <Marshall@flockingbehavior.com>
Subject: RE: Your deposition

I doubt there will be time to do more than you on a single day. Feel free to suggest dates for anyone you want to depose and if they are parties to the suit, I will be happy to get dates for you. However, my guess is as to Sloan and Jonathan, we will have to travel to NY and Colo. so you will need to line up where their depositions will be held and make arrangements for the court reporter. If there are witnesses beyond parties to the suit that you would like to depose, I'll do what I can to help you coordinate their depositions. That said, you may need to send depo notices and subpoenas for any non-parties.

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From: Marshall Shoemaker [<mailto:Marshall@flockingbehavior.com>]
Sent: Wednesday, March 18, 2020 9:47 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: RE: Your deposition

Will Sloan, Jonathan and Ms. Moore be making themselves available to be deposed at the same time?

Marshall Shoemaker MBA, PMP, CSM
Software Development Project Manager
Flocking Behavior LLC

1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678.558.3259
Skype - marshallshoemaker
marshall@flockingbehavior.com
<https://www.linkedin.com/in/marshallshoemaker/>

From: Knox Haynsworth [<mailto:knoxhaynsworth@bmemhlaw.com>]
Sent: Wednesday, March 18, 2020 9:18 AM
To: Marshall Shoemaker <Marshall@flockingbehavior.com>
Subject: Your deposition

Marshall. In light of Covid-19 Issues I am not looking for a date any earlier than mid-April, but I need you to give me some deposition dates to take your deposition. I have now requested deposition dates from you via letter dated 1-24-2020, email dated 2-13-2020 and email dated 2-16-2020. If you have not given me dates by next Monday, I'll have no choice but to file a motion to dismiss your case for failure to comply with the South Carolina Rules of Civil Procedure. Please let me know your intentions. Thanks, Knox

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Knox Haynsworth

From: Knox Haynsworth
Sent: Monday, March 23, 2020 9:03 AM
To: Marshall Shoemaker
Subject: RE: deficiencies in your Discovery responses

Marshall. No need to be so formal. You can continue to go with Knox. I have provided all discovery that is relevant to your current pleadings, but of course you absolutely can file a motion to compel if you disagree. So to make sure I understand your intentions, you do not intend to sit for your deposition voluntarily at this time—correct? Do not want to misrepresent those intentions to the court. Thanks, Knox

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From: Marshall Shoemaker [mailto:Marshall@flockingbehavior.com]
Sent: Sunday, March 22, 2020 6:42 PM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: deficiencies in your Discovery responses

Mr. Haynsworth,

I understand that you want take depositions, and I want to take depositions.

However, the Respondents' responses to the Petitioner's Interrogatories and Requests for Document Production have been inadequate.

It does not make sense to take depositions before all Answers to Interrogatories and Document Requests are produced, and thus take the risk of having to call back people for second depositions.

As you know, I have pointed out to you the many deficiencies in your Discovery responses, and this leaves me no choice but to file a Motion to Compel with the Court, and to request that the Court stay depositions, unless you voluntarily agree to do so.

Sincerely,

IMAGED

FILED

SEP 10 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

GREENVILLE COUNTY

IN THE PROBATE COURT

PROBATE COURT Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jane Doe

Respondents.

MOTION FOR SANCTIONS
AND TO DISMISS THE AMENDED
PETITION

TO: JOHN BLINCOW, ESQUIRE ATTORNEY FOR PETITIONER

You will please take notice that respondents, on the tenth day following service hereof, or as soon thereafter as counsel may be heard, will seek an Order from the Probate Court of Greenville County dismissing plaintiff's amended petition as a sanction for willful and continual refusals to comply with the Orders of this court pursuant to SC Code Ann. Sections 62-1-111, 62-1-112 and 62-7-1004.

This Motion is based upon the following grounds: On July 15, 2020, this court heard respondents' motion to dismiss the amended petition due to petitioner's failure to comply with the applicable rules of civil procedure concerning the setting of his deposition. At the conclusion of that hearing an Order was issued by the Honorable Clayton L. Jennings and filed with the court on July 29, 2020. A copy of the foregoing Order is attached as Exhibit 1. In Exhibit 1, the court specifically noted the prior conduct of the petitioner and found that petitioner had previously ignored Orders of this court and had been non cooperative in moving this case forward. The Order specifically noted with regard to petitioner that "he has caused unnecessary delay and expense

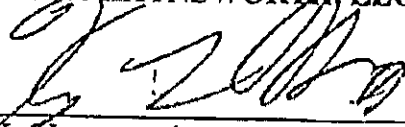
related to these proceedings and his deposition". Additionally, the court specifically stated in its Order "further, should Mr. Shoemaker fail to participate in good faith going forward with the discovery process, the court will view such conduct severely". Exhibit 1 declined to dismiss the amended petition as a sanction, but did order petitioner to pay \$500.00 in costs and attorney's fees to respondents within thirty days. As with the prior Orders of this court, Mr. Shoemaker continues to willfully fail to comply. Thirty days has long passed, yet Mr. Shoemaker has not forwarded the \$500.00 in compliance with the clear mandate of this court.

Due to petitioner's conduct, respondents have yet again been required to expend costs and attorney's fees pointing out Mr. Shoemaker's continued failure, even after warning, to comply with the Orders of this court. ; Given the willful nature of this latest conduct, respondents respectfully submit that as a sanction, the amended petition should be dismissed, with prejudice. In the alternative, respondents respectfully request that petitioner be sanctioned in a severe manner, sufficient to prevent him from continued abuse and disregard of the lawful Orders of this court, by paying respondents' costs and attorney's fees in an amount no less than \$2,000.00.

This motion is supported by the pleadings on file with the court, prior Orders of this court, prior motions and exhibits filed and such other and further material as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

S.C. Bar #: 010275

R. David Massey

S.C. Bar #: 003681

Post Office Box 2464

Greenville, SC 29602

Telephone: (864) 271-7424

Attorneys for Respondents Mary Hunter

Sloan Shoemaker, Edward Sloan Shoemaker,

Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
September 10, 2020

EXHIBIT

1

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JUL 29 2020
GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT
Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER

This matter came before the court for a hearing on Wednesday July 15, 2020 to address respondents' motion to dismiss the amended petition due to petitioner's failure to comply with the applicable rules of civil procedure concerning the setting of his deposition. Respondents were represented by attorney Knox L. Haynsworth, III, and also in attendance was respondent Lesley Moore. Petitioner was represented by attorney John Blincow, Jr.

After reviewing the court's file in this matter and considering arguments of counsel, the court finds as follows: because attorney Blincow represented to the court that Mr. Shoemaker's deposition has been scheduled for Friday, July 24, 2020, a dismissal of the amended petition, the court believes, is too drastic of a remedy. However, in reviewing the court's file, it is apparent that Mr. Shoemaker, who heretofore was representing himself, has previously ignored orders of this court and has been non-cooperative in moving this case forward, including participating in the scheduling of his deposition. He has caused unnecessary delay and expense related to these proceedings and his deposition. As such, the court finds it appropriate as a sanction pursuant to Rule 37 of the South Carolina Rules of Civil Procedure to award respondents the amount

1 # 100g

\$500.00 for costs and attorney's fees incurred in bringing this matter before the court and arguing its merits. The court further finds the amount of costs and attorney's fees are reasonable under all the attendant circumstances. Further, should Mr. Shoemaker fail to participate in good faith going forward with the discovery process, the court will view such conduct severely.

As noted above, based upon the representations at the hearing, all parties are now in agreement that the deposition of Mr. Shoemaker will go forward on Friday July 24, 2020 at the office of counsel for respondents. As such, the court denies respondents' motion to dismiss the amended petition as a sanction, but grants the request for costs and attorney's fees in the amount of \$500.00 to be paid by petitioner to respondents within thirty days.

IT IS SO ORDERED.

July 29, 2020
Greenville, SC



Clayton L. Jennings
Associate Probate Judge

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2 cog

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

NOV 18 2020

IN THE PROBATE COURT

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER FOR SANCTIONS

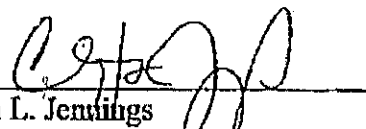
This matter came before the court for a hearing on Wednesday November 4, 2020 pursuant to respondents' motion to dismiss or in the alternative for sanctions. In reviewing the court's file in this matter, it appears that petitioner Marshall Shoemaker has been before the court on at least two prior occasions concerning his compliance with the rules of civil procedure and the Orders of this court. In fact, this court's Order dated July 29, 2020 specifically admonished Mr. Shoemaker regarding his prior conduct before this court. Notwithstanding this admonition, based upon the materials before the court it appears that Mr. Shoemaker has willfully violated this court's most recent past Order. Specifically, on July 15, 2020 the undersigned conducted a hearing concerning a previous motion to dismiss/for sanctions and at that hearing ruled that Mr. Shoemaker would be subject to a sanction in the amount of \$500.00 for costs and attorney's fees, payable in 30 days. Following my ruling from the bench, a written Order was issued and signed on July 29, 2020. As such, through counsel Mr. Shoemaker was aware as of the July 15th, the date of the hearing, that the court had sanctioned him in the amount of \$500.00. Thereafter the court's ruling was embodied in a written Order dated and filed on July 29, 2020.

1 #1.02g

At the hearing before me on November 4th, it was represented by counsel for respondents, Knox L. Haynsworth, III, that a check and cover letter both dated October 22, 2020 were transmitted to him by petitioner's attorney, John Blincow and represented payment of the \$500.00 sanction previously levied. When questioned about the failure to pay the sanction in accordance with the court's Order, attorney Blincow represented that Mr. Shoemaker had been out of the country in Ireland visiting his girlfriend's family but readily conceded that Mr. Shoemaker was not out of the country the entire time from the date I issued my ruling from the bench until October 22, 2020, the date of the check, a period of over 90 days. While the court again is of the opinion that Mr. Shoemaker's conduct does not rise at this time to the level sufficient to strike his pleading as a sanction, his continued willful disregard of the Orders of this court remain quite troubling and in need of a significant sanction to deter any similar conduct in the future. As such, it is the opinion of this court based upon all the attendant circumstances, the materials submitted in connection with the present motion as well as the prior materials and prior Orders of this court, that Mr. Shoemaker be sanctioned in the amount of \$1,500.00 for costs and attorney's fees, such sanction to be paid within thirty days of the date of this Order.

IT IS SO ORDERED.

Greenville, South Carolina
November 18, 2020


Clayton L. Jennings
Associate Probate Judge

#2
2 C28

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

NOV 04 2020

IN THE PROBATE COURT

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

TO: JOHN BLINCOW, ESQUIRE ATTORNEY FOR PETITIONER

You will please take notice that respondents Mary Hunter Sloan Shoemaker¹, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting these respondents judgment in their favor as a matter of law. The grounds for this motion are that there exists no genuine issue of material fact in dispute concerning the testamentary capacity of decedent James Marshall Shoemaker, Jr. and whether his Will and Trust were the product of undue influence. Further, there exists no genuine issue of material fact in dispute concerning petitioner's claims that respondent Lesley Moore failed to fulfill her fiduciary duty or took any action in contravention to the last wishes of Mr. Shoemaker as confirmed by the documents he requested Ms. Moore prepare and/or witness. Additionally, not only is there a complete absence of genuine issues of material facts in dispute relative to petitioner's claims, petitioner has not advanced any evidence, other than

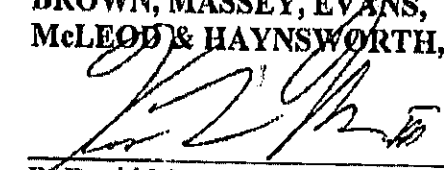
¹ Mrs. Shoemaker has passed away since the action was instituted.

his own self-serving statements and opinions, to support any claims made in this litigation. As such, this court should deem petitioner's claims to be frivolous and exercising its inherent powers pursuant to S.C. Code Ann. §62-1-111, 62-1-112 and 62-1-1004, award respondents their costs and attorney's fees for having to defend the spurious claims asserted by petitioner.

This motion is supported by the following which are attached hereto and incorporated by reference: Affidavit of Amos A. Workman (Exhibit A); Affidavit of Carl F. Muller (Exhibit B); Affidavit of Harrison McLeod (Exhibit C); Affidavit of Martha Louise Ramage Lewis (Exhibit D) and Affidavit of Dr. Grover (Exhibit E); Affidavit of Rita M. Christopher (Exhibit F); Affidavit of William W. Kehl (Exhibit G). This motion is further supported by the transcript of the hearing dated October 21, 2019 before the Honorable Carolina M. Horlbeck, submitted herewith, the deposition of petitioner Marshall Shoemaker submitted herewith, a memorandum of law to be submitted, as well as any other and further materials as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



R. David Massey
S.C. Bar #: 003681
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents Mary Hunter
Sloan Shoemaker, Edward Sloan Shoemaker,
Jonathan Evans Shoemaker and Lesley Moore

Greenville, South Carolina
November 4, 2020

EXHIBIT

A

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
GREENVILLE COUNTY
PROBATE COURT

NOV 04 2020

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

AFFIDAVIT OF
MARTHA LOUISE RAMAGE LEWIS

Personally appeared before me, Martha Louise Ramage Lewis who, after being duly sworn, states as follows:

1. That my name is Martha Louise Ramage Lewis and I am a Certified Public Accountant based in Greenville, South Carolina.
2. That in the early 1990s, while I was with Ernst & Young, I began handling the tax work and related tax planning advice for Jim and Polly Shoemaker.
3. That in approximately December 2000, Mr. and Mrs. Shoemaker became clients of my current firm, Ramage Lewis, LLC, formerly known as Martha Louise Ramage Lewis, LLC.
4. That over the course of my representation of Mr. Shoemaker, I had occasion to either meet or speak with him approximately 2 to 4 times each year. Typically as the end of each quarter of the year would approach, Mr. Shoemaker and I and potentially others, such as his primary financial advisor Ben Clauss, would get together either in person or over the telephone to discuss Mr. Shoemaker's desires and needs and to determine the best approach from a tax standpoint so as to accomplish the goals Mr. Shoemaker set out.

5. That I of my own personal knowledge am familiar that Mr. Shoemaker changed his estate plan at various times such that his eldest son Marshall would not share on an equal basis with his other two children, Sloan and Jonathan.
6. That I understand Marshall Shoemaker has brought a legal action challenging his father's Will and his Trusts and contending that Mr. Shoemaker was not of sound mind and was subject to undue influence when he last changed his estate plan on or about June 24, 2018.
7. That in the course of my representation of Mr. Shoemaker and as a matter of my general practice, I sometimes keep contemporaneous notes regarding the substance of my meetings and instructions that I have been given by my clients. In this regard, I have reviewed my notes concerning meetings I had with Mr. Shoemaker either alone or in the presence of others as well as telephone calls I had with him to refresh my recollection as to decisions he made and matters we discussed in the months before his passing.
8. That on February 27, 2018, I met with Mr. Shoemaker to discuss his 2017 tax data and he stated he wanted to make additions to educational funds prior to April 15th to get the South Carolina tax savings.
9. That on April 3, 2018, I had a telephone conference with Mr. Shoemaker and separately with Mr. Clauss for the purpose of his making plans for educational gifting for his grandchildren and we discussed the monies needed for his plans and the most appropriate mechanism to raise the money as far as tax implications were concerned.
10. That on June 14, 2018, Mr. Shoemaker and I had a telephone conference as well as a joint conference call with Ben Clauss of Merrill Lynch to raise money to make a bequest. My notes from the telephone conference on June 14, 2018, indicate that Mr. Shoemaker was very lucid and very deliberate in his instructions for his current gifts. He stated that he wanted to make a current

gift, simple and direct during lifetime and not at death. These notes and my recollection are consistent with my various meetings and conversations with Jim Shoemaker over a number of years. There was never any doubt in my mind he was very lucid and very deliberate in his decisions and was not under the influence of any person or medication. Based on the phone conference, cash funds were raised to satisfy the gift on July 1, 2018.

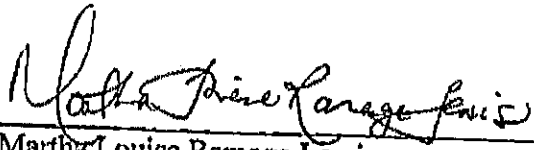
11. That on June 24, 2018, I spoke with Mr. Shoemaker via telephone concerning what I understood were going to be changes to his estate plan relative to his son Marshall and Attorney Lesley Moore would be preparing the documents to reflect his changes. My notes from this call indicate that Mr. Shoemaker's desire was to remove his son Marshall from his estate plan because Marshall was "trouble". At no time during my conversation on June 24, 2018, did I observe anything that would lead me to question Mr. Shoemaker's mental competence or whether his actions as stated to me regarding the intention to alter his estate plan was completely voluntary.

12. On July 12, 2018, I met in person at Cascades with Jim Shoemaker to get signatures on documents to update withholding from his IRA distribution needed based on income tax projections completed in late June. Present at Cascades on this evening were Mr. Shoemaker's longtime secretary Rita, his wife Polly and his sister and brother-in-law (sister's husband) and someone helping answer the door with Lifelong Care. At this meeting my notes reflect that Jim Shoemaker was "totally lucid" and they also reflect a direct quote from Mr. Shoemaker to me which was "Marshall is out". During this meeting, Mr. Shoemaker appeared to me to be completely lucid and fully possessed of all of his mental faculties. The conversation was factual and to the point.

13. As noted above, and in addition to the specific examples referenced above, it is my opinion based upon knowing Mr. Shoemaker for approximately 40 years at this point and having dealt with

him on a professional basis for many decades, that he was fully lucid and in possession of all of his mental faculties and under no influence from any person, medication or substance, when he relayed to me the decisions over the course of 2018 as to his estate plans and giving.

FURTHER AFFIANT SAYETH NAUGHT.


Martha Louise Ramage Lewis

Sworn to me this 4 day of
February, 2020


Notary Public for South Carolina
My Commission Expires: 7.18.27



EXHIBIT

B

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

NOV 04 2020

IN THE PROBATE COURT

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

AFFIDAVIT OF
CARL F. MULLER

Personally appeared before me, Carl F. Muller who, after being duly sworn, stated as follows:

1. I am Carl F. Muller, a resident of Greenville, SC and an attorney licensed to practice law in the State of South Carolina.
2. On July 5, 1977 I began work as a lawyer Wyche, Burgess, Freeman & Parham, P.A., where the decedent James Marshall Shoemaker, Jr. was also practicing law. There were then 12 lawyers in the firm. My office was three doors down from his and I came to know him very well. A half dozen or so years later my office moved next to his. A few years after that I moved upstairs next to Tommy Wyche, but still only two offices away from "Shoe" as he was known. We remained in close contact on a daily basis until I left the firm and started my own firm on November 1, 2010. After that, I saw Shoe less often, sometimes not for several months.
3. At a personal and professional level Shoe was larger than life. He was a boy at Pearl Harbor when it was attacked by the Japanese; he was strafed with his mother and little sister while running for shelter 100 yards from the battleship Arizona. He was an outstanding college athlete and scholar. He was a Major in the Marine Corps and a United States Foreign Service Officer.

1

CFM

He was an exemplary lawyer and fine friend. He was every inch a true American, who was a first rate intellect and his own man, always.

4. On occasion over the years, Shoe would express anguish over the heartache caused to his family by the Petitioner, his oldest son. I knew that he was planning to remove the Petitioner from his will, and yet be generous to the Petitioner's children, whom he loved and of whom he was very proud. Shoe told me all of this.

5. One day perhaps six months before he died, I met Shoe by accident at Seymore's filling station. He was on oxygen and told me that he had pulmonary fibrosis, a fatal disease. He was marking time, but one would never have known it. Shoe was his usual self, upbeat and confident. I decided to keep in closer touch and two or three times after that visited him and his wife Polly at their home at Cascades in Greenville. Shoe, Polly and I talked on the telephone a few times during this period, as well.

5. On June 24, 2018 I along with Amos Workman, another lawyer at the Wyche firm, sat down with Shoe and watched him review his Last Will and Testament dated June 24, 2018, initial every page and sign the Will.

6. In South Carolina the criteria for determining the testamentary capacity of a person making a Will, is that the person must have the mental capacity to know the nature and extent of his property; and, know the natural objects of his bounty; and, know to whom he wishes to leave his property. Shoe knew all of this, especially when he signed his will noted above. He and I talked about it then. We specifically discussed it.

7. During the entire time that I knew Shoe, every day in every interaction, it was beyond question that he was completely in command of his mental faculties and actions. He knew who he was, who I was and who his family was. He was aware of himself and was able to discuss himself and his

L7M

condition and treatment with me. He knew what he had and what he wanted. There was nothing amiss. He was not overborne. Based on the criteria for testamentary capacity set forth above, in my opinion he did have such testamentary capacity, without any question whatsoever.

8. I regret this circumstance within the family, all of whom I have known for decades. If and when the time comes, and I am called upon to do so, I shall do that within the bounds of what is good and right, and within my reach, to bring this family together again.

FURTHER AFFIANT SAYETH NAUGHT.

Sworn to me this 16th day of
March, 2020

[Signature]
Notary Public for South Carolina
My Commission Expires: 11-19-23

[Signature]
Carl F. Muller

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED

IN THE PROBATE COURT

James Marshall Shoemaker, III

NOV 04 2020

Case No.: 2018-ES-23-01729

Petitioner,

GREENVILLE COUNTY
PROBATE COURT

vs.

AFFIDAVIT OF
RITA M. CHRISTOPHER

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

Personally appeared before me, Rita M. Christopher who, after being duly sworn, stated as follows:

1. That my name is Rita M. Christopher and I have been employed by the Wyche Law Firm since 1996 as a legal assistant. I also provide IT Support for the firm, its members and employees.
2. That I was the primary assistant for James M. Shoemaker, Jr. from approximately 2000 until his passing on July 14, 2018.
3. I am aware of the strained relationship that existed between Mr. Shoemaker and his son Marshall, as Mr. Shoemaker was fairly open with me concerning that relationship. As his assistant, I had occasion to see communications from Marshall to his father, as well as be involved in preparing and transmitting communications from Mr. Shoemaker to Marshall.
4. That I personally saw a violent, threatening email that Marshall sent to his brother Sloan on May 1, 2018, which Sloan forwarded to his father on May 7, 2018.
5. The receipt of the email Marshall sent Sloan appeared to be the precipitating event in Mr. Shoemaker's decision to change his Will in the early summer of 2018. I am familiar with

this situation because Mr. Shoemaker asked me to print the emails that Marshall had sent to Sloan and take them to his house for him. I have attached the emails Marshall sent Sloan and which I took to Mr. Shoemaker's house collectively as Exhibit A.

6. After receipt of the emails attached as Exhibit A, Mr. Shoemaker asked me to send Marshall the email dated July 3, 2018 which is attached as Exhibit B. Mr. Shoemaker called and dictated the email to me over the phone.

7. I last saw Mr. Shoemaker on Thursday, July 12, 2018 and at that time he appeared to be in possession of all of his mental faculties and was lucid and competent in my opinion.

8. It has been represented to me that in South Carolina, the criteria for determining the testamentary capacity of a person making a Will is that the person must have the mental capacity to: know the nature and extent of his property; know the natural objects of his bounty; and know to whom he wishes to leave his property.

9. During the times I interacted with Mr. Shoemaker, he knew who he was, who I was and who his family was. He was aware of himself and was able to discuss himself and his condition and treatment with me during our encounters. Mr. Shoemaker was in no sense delusional or suffering from any mental deficits. Based on the criteria for testamentary capacity set forth above, in my opinion he did have such testamentary capacity at all the times I ever saw, spoke, or dealt with him.

FURTHER AFFIANT SAYETH NAUGHT.

Sworn to me this 3rd day of
March, 2020

Donna F. Murphy
Notary Public for South Carolina
My Commission Expires: _____

Rita M. Christopher
Rita M. Christopher



EXHIBIT

A

Rita Christopher

From: Sloan Shoemaker <sloan@sopris.net>
Sent: Monday, May 07, 2018 5:41 AM
To: Rita Christopher
Subject: Fwd: My decision

Sloan Shoemaker
970.618.6022

Sent from my iPhone.
Please forgive typos.

Begin forwarded message:

From: Marshall Shoemaker <jmarshallshoemaker@gmail.com>
Date: May 1, 2018 at 9:03:35 PM EDT
To: Sloan Shoemaker <sloan@sopris.net>
Subject: Re: My decision
Reply-To: jmarshallshoemaker@gmail.com

Sloan,

You are a real ass.

You offer a petty little amends for being a dick, but no response to the real issues I raised about our sick family, our sick parents and your and Jonathan's life long asshole behavior towards me.

You don't even have the respect in you to call me when my mother is in the hospital. Stay the fuck away.

This is NOT your extended family: it is MY extended family and my children and I do not welcome you.

You don't give a shit about Amelie and Cliff and Peter and Mary and Julie.

You are not a part of their lives.

Nobody here needs your "support": you have none to give.

The sad part is that the Shoemaker assholes that I grew up with have an incredible methodology of holding out the promise of love, and more importantly money, and never delivering.

The only thing you assholes deliver is withholding and judgement and delusion scapegoating.

So my children naturally seek out the love of a Shoemaker

"extended family" which never had any love to give,

only devious family politics and ongoing wounding (to them) by rejecting their father.

Just fucking shut down narcissistic "grandparents" and

mean asshole "uncles" who have poisoned any hope of

a loving relationship between my children's father, me, and his family.

You and Jonathan and Mom and Dad are a tribe of mean drunks.

I highly recommend you stay the fuck away.

I am contemplating, strike that, I am going to rip out your fucking heart out if you show up.

Nobody here needs your "support": you have none to give.

I am going to fucking kill you if you show up.
Stay in Colorado, running away from life, waiting for the Patriarch to die
and refund your insanely dependent life style.
Marshall

On Sun, Apr 29, 2018 at 10:00 PM, Sloan Shoemaker <sloan@sopris.net> wrote:

I regret the unnecessarily provocative smart-ass response in my previous email about refunding my ticket and apologize for it.

Nonetheless, I will be traveling to Atlanta next weekend to celebrate my nephew's accomplishment and to support my extended family.

I commit to being civil and peaceful.

Marshall Shoemaker MBA, PMP, CSM

Software Development Project Manager

678.558.3259

Skype - marshallshoemaker

marshall@flockingbehavior.com

Flocking Behavior LLC

1859 Tecumseh Trail SE

Smyrna, Georgia 30080

Rita Christopher

From: Sloan Shoemaker <sloan@sopris.net>
Sent: Monday, May 07, 2018 5:35 AM
To: Rita Christopher
Subject: The email thread with Marshall

This is the first a few emails coming your way

Begin forwarded message:

From: "Sloan Shoemaker" <sloan@sopris.net>
Date: April 19, 2018 at 12:53:39 PM EDT
To: <jmarshallshoemaker@gmail.com>
Subject: Re: copy of evite note
Reply-To: <sloan@sopris.net>

Hmmm...I was just looking after my needs. No slight intended.

I'll stay in a hotel.

Sloan Shoemaker
sloan@sopris.net
970.618.6022

— jmarshallshoemaker@gmail.com wrote:

From: Marshall Shoemaker <jmarshallshoemaker@gmail.com>
To: Sloan Shoemaker <sloan@sopris.net>
Subject: Re: copy of evite note
Date: Wed, 18 Apr 2018 22:19:04 -0400

Sloan,
I found your email insulting and maddening.
If you don't value being a guest in my home with my girlfriend
and my close friends, then I withdraw the invitation.
Marshall

On Wed, Apr 18, 2018 at 11:22 AM, Sloan Shoemaker <sloan@sopris.net> wrote:
Hi Marshall

Yes, it does sound like a fun weekend. It'll be good to see everyone.

I appreciate the offer of Peter's room. I've been having trouble sleeping so am wondering about Peter's room - bed, quiet, ambient light, etc. Can you give me a sense of it?

I arrive Friday around 3pm. Does it make sense for me to go directly to Amelle's where there's dinner for out of town folks? I scheduled my return flight for Tuesday which gives me time to do a Greenville lap to check on Mom and Dad. I'll rent a car and head up on Sunday afternoon, returning Tuesday in time for my afternoon flight.

see you soon,

Sloan Shoemaker
sloan@sopris.net

970.618.6022

-- jmarshallshoemaker@gmail.com wrote:

From: Marshall Shoemaker <jmarshallshoemaker@gmail.com>

To: Sloan Shoemaker <sloan@sopris.net>

Subject: copy of evite note

Date: Tue, 17 Apr 2018 11:07:57 -0400

Hi Sloan, Glad you will be joining us. Peter's bedroom is available to you. My friends Ken and Cindy will be in Mary's bedroom. Julie has been living with me since December. It will be fun. Could you please let me know your travel schedule? Thanks, Marshall

Marshall Shoemaker MBA, PMP, CSM

Software Development Project Manager

678.558.3259

Skype - marshallshoemaker

marshall@flockingbehavior.com

Flocking Behavior LLC

1859 Tecumseh Trail SE

Smyrna, Georgia 30080

Marshall Shoemaker MBA, PMP, CSM

Software Development Project Manager

678.558.3259

Skype - marshallshoemaker

marshall@flockingbehavior.com

Flocking Behavior LLC

1859 Tecumseh Trail SE

Smyrna, Georgia 30080

Rita Christopher

From: Sloan Shoemaker <sloan@sopris.net>
Sent: Monday, May 07, 2018 5:37 AM
To: Rita Christopher
Subject: Fwd: please do not come

Begin forwarded message:

From: "Sloan Shoemaker" <sloan@sopris.net>
Date: April 26, 2018 at 6:30:43 PM EDT
To: <jmarshallshoemaker@gmail.com>
Subject: Re: please do not come
Reply-To: <sloan@sopris.net>

You gonna refund my plane ticket?

Sloan Shoemaker
sloan@sopris.net
970.618.6022

--- jmarshallshoemaker@gmail.com wrote:

From: Marshall Shoemaker <jmarshallshoemaker@gmail.com>
To: Sloan Shoemaker <sloan@sopris.net>
Subject: please do not come
Date: Thu, 26 Apr 2018 16:19:00 -0400

Sloan,

Ideally we would have this conversation face to face, or over the phone. But my experience with calling you is that your return about 50% of the messages I leave for you, a pattern which I find highly insultingly on your part, and destructive of the building trust in our relationship. So I prefer not to stick my neck out there again. Here is the message in email. A shit medium for serious communication I acknowledge, but all I have at present, given the timing and circumstances.

I would prefer that you not show up for Peter's graduation. I know that my wishes have in the past meant nothing to you or Jonathan or my father or mother but I am going to make them very clear to you, Sloan, man to man, none the less. You will do as you wish, but from my perspective I would strongly prefer for you not to show up.

I want to focus on my son's considerable achievement and the celebration of this achievement with close family. I no longer consider you close family. I do love you and have tried very hard over the years to build a strong and loving relationship, but it is impossible to do for me to continue trying to do so in one direction, with chronically mixed and unpredictable results. I have also, and more blatantly, failed to build a bridge with Jonathan, and now with my mother and father, with whom visits and phone calls

have become openly hostile on their part, and personal newsy letters from me go unacknowledged and unreturned.

I believe that my father will go to his grave a miserable practicing alcoholic, and my mother will go to her grave a completely insane practicing drug addict (benzodiazepines). I do not care any longer if you or Jonathan share my view on this. My view on the two of you is that your joint oppositional stance towards addressing their treatable (but overwhelmingly powerful individual madnesses) contributes to their denial, their continued unnecessary suffering in the disease, and my isolation within the family system. They will go to their graves knowing damn little real experience of felt love, and much more experience of constant intoxication, and it is unnecessary. Your stance towards Jonathan's treatment of me - hostile, political, without any love what so ever - also feeds into the Shoemaker family mythology that "Marshall is the only one with problems, the rest of us are fine".

I will never forget when you and your wife and girls and Debbie and I were sitting around the pool at Litchfield and Beth asked if we would like to come visit you in Colorado. You said quite quickly and forcefully, "Hold on there!", meaning we should forget about making plans. And the invitation has never been extended since.

You are your family, which I do respect you for keeping together, and am gratified to see the smiles on your girls faces in a picture that Mary shared, have my best wishes in the future. But I am tired of waiting around on any generosity of spirit on your part to be included in you and your family's lives in any meaningful way.

I would prefer you not come to Peter's graduation. I do not find your behavior towards me to be either loving or kind. I find it disrespectful and dismissive. I really don't want to deal with what I see as the "Sloan and Jonathan and Jim and Polly Shoemaker Shit Show" at my son's graduation. Please stay away and give me the opportunity to enjoy the moment without the baggage of my failed family of origin relationships. I would do the same for you if asked.

Marshall

EXHIBIT

B

Knox Haynsworth

From: James M. Shoemaker <jshoemaker@wyche.com>
Sent: Tuesday, July 03, 2018 10:23 AM
To: jmarshallshoemaker@gmail.com

Marshall –

In light of our years of discord, I do not wish to speak to you in person, by phone or by e-mail.



James M. Shoemaker | Wyche

44 East Camperdown Way | Greenville, SC 29601-3512

Phone: (864) 242-8210 | Fax: (864) 235-8900

jshoemaker@wyche.com | www.wyche.com/jshoemaker | [vCard](#)

A Lex Mundi Member Firm

EXHIBIT

D

FILED

NOV 04 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

AFFIDAVIT OF
HARRISON M. MCLEOD

Personally appeared before me, Harrison M. McLeod who, after being duly sworn, states as follows:

1. That my name is Harrison M. McLeod and I presently serve as the Rector for Christ Church Episcopal located in Greenville, South Carolina.
2. I was called to be the twentieth Rector of Christ Church and began on August 11, 2008.
3. Shortly after I began my ministry with Christ Church, I had occasion to meet Jim and Polly Shoemaker although exactly when I met each of them, I am unsure. Suffice it to say that I have known Jim and Polly during most of my time with Christ Church.
4. I have been advised that Jim and Polly's son Marshall has instituted a lawsuit challenging the disposition of his father's estate and contending that Jim Shoemaker was not competent to handle his affairs and was under undue influence from others resulting in him making the decisions he made shortly before his passing regarding the disposition of his estate.
5. That throughout my time knowing Jim Shoemaker, I do not believe his personality was such that he would be coerced to make any type of decision if it was not his own decision to make.

6. In connection with my knowledge of Jim Shoemaker, I have reviewed my calendar to refresh my recollection regarding various meetings and discussions with him.
7. On September 18, 2017, I met with Jim at his residence at The Cascades at around 4:00 p.m. on that day and he shared with me the diagnosis of his illness.
8. I again talked with Jim Shoemaker on May 30, 2018 at 2:30 p.m. and we talked generally about his condition and his illness.
9. I again spoke with Jim Shoemaker on June 18, 2018 at 2:00 p.m. and again, generally speaking, we discussed his illness and the ultimate conclusion of that illness. Jim seemed comfortable, both spiritually and physically, with where his disease was taking him.
10. During much of July, I was out of the office hence my calendar is not as accurate for that month as it typically is. However, I do recall during July of 2018 that my wife and I were in Florida visiting friends to include attending a ceremony for the transition of the Marine Corp. Commandant. On my way back from Florida in route to Linville, N.C., I stopped by to visit Jim Shoemaker on either July 12th or 13th at The Cascades. To my recollection during this visit Polly was present, as well as I believe Jim's sister. A hospice nurse may have been present but was not in the room with us.
11. During my visit with Jim on either the 12th or 13th of July of 2018 we discussed at some length my recent trip to Florida and the visit to the Marine Corp. Commandant Transition Ceremony. My wife Jennifer and I attended the change of command ceremony for our friend General Sam Mundy who became the commander of the Marine Corp Central Command Base at McDill Airforce Base in Tampa, Florida. Our friend's father, General Carl Mundy, was the commandant of the Marine Corp. under President Bush (41). General Carl Mundy had been a student of Jim Shoemaker's when Jim was an artillery instructor at Quantico and General Mundy

was training at the Officer's Candidate School. During my visit with him Jim was in bed on oxygen but was totally lucid during our conversation and was awake the entire time. In addition to laughing about the Marine Corp. "small world", we discussed Jim's funeral plans and what awaited him upon his death.

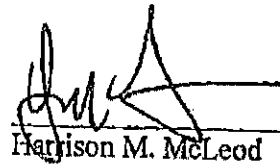
12. During this last meeting, Jim and I also discussed that I would see him again, one way or another. Jim smiled at that comment and I believe he and I both were aware that my meaning was I would either see him again here among the living or at some later date and in a better place. As I left, I kissed him on the forehead and told him I loved him and he responded I love you too.

13. During my last visit with Jim Shoemaker on July 12th or 13th, he appeared to be fully aware of his surroundings and his mental faculties appeared to be as sharp as they have always been during the approximate ten years I have known him. During the visit on the 12th or 13th as well as the prior visits referenced in this affidavit, Jim appeared to be fully possessed of his mental faculties and did not appear to be under the influence of any other person or substance.

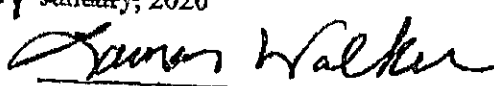
14. It has been represented to me that in South Carolina the criteria for determining the testamentary capacity of a person making a Will, is that the person must have the mental capacity to: know the nature and extent of his property; and, know the natural objects of his bounty; and know to whom he wishes to leave his property.

15. During the time I interacted with Jim, he knew who he was, who I was and who his family was. He was aware of himself and was able to discuss himself, his condition and his wishes with me during our encounters. Mr. Shoemaker was in no sense delusional or suffering from any mental deficits. Based on the criteria for testamentary capacity set forth above, in my opinion, he did have such testamentary capacity.

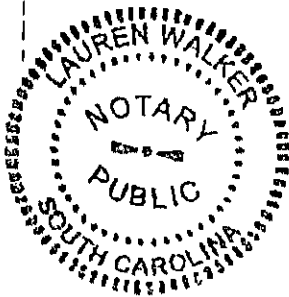
FURTHER AFFIANT SAYETH NAUGHT.


Harrison M. McLeod

Sworn to me this 29 day of
May ~~January~~, 2020


Notary Public for South Carolina

My Commission Expires: 3/21/2029



EXHIBIT

E

FILED

STATE OF SOUTH CAROLINA NOV 04 2020
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

AFFIDAVIT OF
WILLIAM W. KEHL

1
Personally appeared before me, William W. Kehl who, after being duly sworn, stated as follows:

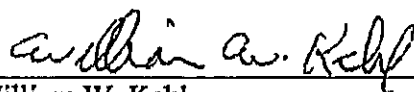
1. That my name is William W. Kehl, a resident of Greenville, South Carolina and an attorney licensed to practice law in the state of South Carolina.
2. I began work as a lawyer with Wyche, Burgess, Freeman and Parham, P.A. at the same time as the decedent, James Marshall Shoemaker, Jr. (Shoe), both of us starting with the firm in 1965 after attending and graduating together from the University of Virginia School of Law.
3. Shoe and I not only started at the firm together, our fathers were both naval veterans. Shoe's father was Rear Admiral James M. Shoemaker, Sr. One of the many connections Shoe and I had was the fact that my father, Captain George W. Kehl, and his father were both Naval Academy graduates and both commanded ships in the Pacific during World War II.
4. During the entire time that I knew Shoe, it was beyond question that he was in complete command of his mental faculties and actions. This is true not only during the many, many years we worked together, but equally true in the final weeks of Shoe's life.

5. Knowing Shoe as well as I did, and having worked with Shoe for so many years, I was familiar with and knew his three children, Marshall, Sloan and Jonathan. I am aware because Shoe shared with me that there was family strife involving Marshall. I was also aware because Shoe told me that when he prepared his Last Will and Testament dated June 24, 2018, Marshall was excluded from his estate.

6. In South Carolina the criteria for determining the testamentary capacity of a person making a Will is that the person must have the mental capacity to know the nature and the extent of his property; know the natural objects of his bounty; and, know to whom he wishes to leave his property.

7. Based on the criteria for testamentary capacity as set forth above, in my opinion Shoe did have such testamentary capacity, without any question. I never saw him or spoke to him, including in the weeks before his death, where I felt Shoe was not in complete control of all of his mental faculties and any decisions made were his and his alone.

FURTHER AFFIANT SAYETH NAUGHT.



William W. Kehl

April Sworn to me this 14th day of
~~March~~, 2020


Notary Public for South Carolina
My Commission Expires: 6/6/2026

EXHIBIT

F

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED

NOV 14 2020

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III
Petitioner,
vs.
Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe
Respondents.

GREENVILLE COUNTY
PROBATE COURT

AFFIDAVIT OF
AMOS A. WORKMAN

Personally appeared before me, Amos A. Workman who, after being duly sworn, stated as follows:

1. That my name is Amos A. Workman and I am presently retired from Wyche P.A. (formerly known as Wyche, Burgess, Freeman and Parham)
2. That between the years of 1998 and 2020, I worked at Wyche P.A. and in connection with that work had occasion to know and work with James M. Shoemaker, Jr. over many, many years.
3. That in my dealings with him, whether it be on a personal or professional level, Jim Shoemaker always appeared to be well possessed of his complete mental faculties and in my experience any decisions Jim Shoemaker made, were his own decisions and not decisions based on any outside influence upon him.
4. On June 24, 2018 I along with Carl F. Muller sat down with Jim Shoemaker and watched him review his Last Will and Testament dated June 24, 2018, initial every page and sign the Will.
5. It has been represented to me that in South Carolina the criteria for determining the testamentary capacity of a person making a Will, is that the person must have the mental capacity to: know the

nature and extent of his property; and, know the natural objects of his bounty; and know to whom he wishes to leave his property.

6. During the time I interacted with Mr. Shoemaker, he knew who he was, who I was and who his family was. He was aware of himself and was able to discuss himself and his condition and treatment with me during our encounters. Based on the criteria for testamentary capacity set forth above, in my opinion he did have such testamentary capacity.

FURTHER AFFIANT SAYETH NAUGHT.

Amos A. Workman

Amos A. Workman

Sworn to me this 19 day of
March, 2020

Sherri L. Owens
Notary Public for South Carolina
My Commission Expires: July 31, 2024

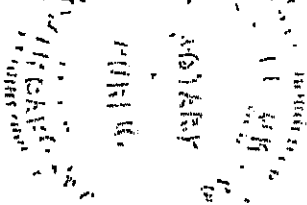


EXHIBIT
G

FILED

NOV 04 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

AFFIDAVIT OF
DANIEL AUSTIN GROVER, M.D.

Personally appeared before me, Daniel Austin Grover, M.D. who, after being duly sworn, states as follows:

1. That my name is Danny Grover and I am a board certified internal medicine physician currently practicing with Internal Medicine Associates located at 1025 Verdae Blvd. in Greenville, South Carolina.
2. That I have been the primary care physician for James Marshall Shoemaker, Jr. since before November 2001.
3. That I have had occasion to interact with Mr. Shoemaker at various times since I began seeing him as his physician including his medical condition immediately (6/15/19) prior to his death on July 14, 2018.
4. That I have reviewed my records regarding my consultations with and treatment of Mr. Shoemaker including my treatment records for the calendar year 2018.
5. That on January 26, 2018 Mr. Shoemaker had an office visit with me for the purposes of following up on various medical problems and his annual exam. In reviewing my encounter and progress notes from the office visit on January 26, 2018 I noted that Mr. Shoemaker had taken and

tolerated all of his medications well and I further noted that he was doing exceptionally well considering his idiopathic pulmonary fibrosis. My notes reflect that Mr. Shoemaker had an amazingly good attitude and was at grips with the terminal nature of his illness. During the visit on January 26, 2018 a review of his symptoms was conducted as well as his maintenance history. During the visit from a neurological standpoint Mr. Shoemaker was alert and oriented to person, place and time. As to his psychiatric condition, he exhibited a normal mood, affect and behavior. In my notes for this encounter date I also indicated that Mr. Shoemaker was doing amazing and had a fantastic attitude considering the progressive nature of his pulmonary fibrosis. He was in good spirits and was not letting his condition get him depressed and although his disease was terminal, he was making the most of things.

6. The next encounter with Mr. Shoemaker was on June 15, 2018 when he presented for red, swollen and peeling lips which had been going on for the past three to four weeks. During his physical examination on this date Mr. Shoemaker's neurological condition was alert and oriented as to time, place and person and as to psychiatric he had a normal mood and affect and his behavior was normal.

7. It has been represented to me that in South Carolina the criteria for determining the testamentary capacity of a person making a Will, is that the person must have the mental capacity to: know the nature and extent of his property; and, know the natural objects of his bounty; and know to whom he wishes to leave his property.

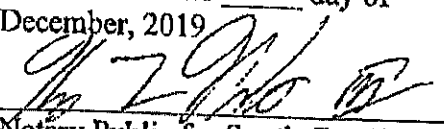
8. During the time I interacted with Mr. Shoemaker, he knew who he was, who I was and who his family was. He was aware of himself and was able to discuss himself and his condition and treatment with me during our encounters. Mr. Shoemaker was in no sense delusional or suffering

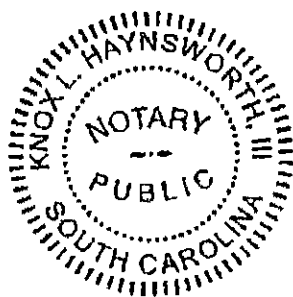
from any mental deficits. Based on the criteria for testamentary capacity set forth above, in my opinion he did have such testamentary capacity.

FURTHER AFFIANT SAYETH NAUGHT.


David Austin Grover, M.D.

Sworn to me this 3 day of
December, 2019


Notary Public for South Carolina
My Commission Expires: June 25, 2020



FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

NOV 04 2020

IN THE PROBATE COURT

James Marshall Shoemaker, III

GREENVILLE COUNTY
PROBATE COURT

Case No.: 2018-ES-23-01729

Petitioner,

vs.

CERTIFICATE OF SERVICE

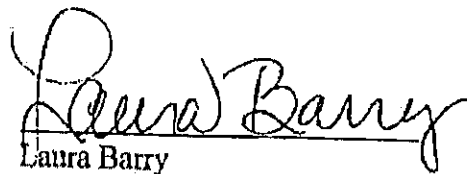
Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for respondents Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore and that I have this day caused to be served upon the person(s) named below respondents' Notice of Motion and Motion for Summary Judgment by placing copies of the same in the United States mail, with adequate postage thereon, addressed as follows:

John Blincow, Jr., Esquire
126 Meeting Street
Charleston, South Carolina 29401

Greenville, South Carolina
November 4, 2020


Laura Barry

FILED

STATE OF SOUTH CAROLINA

APR 12 2021

IN THE PROBATE COURT

COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

Case No. 18-ES-23-01729

IN THE MATTER OF:

James Marshall Shoemaker, Jr.
(Decedent)

PETITIONER'S RESPONSE TO DECEDENTS'
MOTION FOR SUMMARY JUDGMENT

James Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries
Respondents

To: Knox L Haynsworth, III, attorney for the Respondents

The Petitioner, James Marshall Shoemaker, III, responds to the Respondents' Motion for Summary Judgment as follows:

This case involves the last Will and Trust of James Marshall ("Shoe") Shoemaker, Jr., a prominent attorney in Greenville, S.C. Since 2012 Mr. Shoemaker had a history of idiopathic pulmonary fibrosis with chronic hypoxic respiratory failure. He had a slow progression of his disease and, in May 2018, in consultation with his pulmonologist and family, decided to become a hospice patient. A Do Not Resuscitate (DNR) order was placed and he began hospice services at home. At the time he was on supplemental oxygen (6 L/min), was often short of breath, and desaturated with any activity.

Ex. K

FILED

STATE OF SOUTH CAROLINA

APR 12 2021

GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No. 18-ES-23-01729

COUNTY OF GREENVILLE

IN THE MATTER OF:

James Marshall Shoemaker, Jr.
Decedent

James Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

AFFIDAVIT OF THOMAS HUGHES, M.D.

Personally appeared before me, Thomas Hughes, M.D., who, being duly sworn, avers as follows:

1. I am Thomas Hughes, M.D. I am over the age of eighteen (18) and fully competent to make this affidavit.
2. I am a physician licensed to practice medicine in the State of South Carolina. I received my medical degree from the Medical University of South Carolina in Charleston, S.C. and completed my residency training at Vanderbilt University in Nashville, Tenn. I am Board Certified in the field of Neurology.
3. I am the founder and one of the owners of Tidewater Neurology, a general neurology practice in Mt Pleasant, S.C.



4. I have been retained by John Blincow, Jr., counsel for Marshall Shoemaker, III, to review certain medical records and opine about certain matters that are within my field of expertise in neurology.

5. In connection with my review I have been provided the following records:

- a) hospice records from Kindred Hospice in Greenville
- b) hospice records from Regency Southern Care in Greenville
- c) hospital records from a St. Francis Hospital admission beginning July 5, 2018
- d) S.C. case law on testamentary capacity
- e) letter from Dr. Dan Matthews dated June 29, 2020.
- f) affidavit from Dr. Daniel Grover dated December 3, 2019.

6. Based on my review, Mr. Shoemaker had some level of cognitive impairment. Up to 70% of patients with idiopathic pulmonary fibrosis (IBF) have cognitive impairment. IBF is a progressive disease. Mr. Shoemaker was at the end stage of his disease so he, most probably, had significant cognitive impairment during the relevant time period.

7. I saw no documentation that Mr. Shoemaker saw any physicians prior to signing the new Will. A physician would have been able to perform an assessment of his cognitive function and mental status at that time. In my opinion this should have been done especially considering the consequential nature of the decision to exclude a beneficiary from his Estate.

8. There are indications in the medical records that he had very poor saturation rates while on supplemental oxygen, was at times angry and irate, was at times agitated and confused, was at times impulsive, and had refused to see family members before he died (which he had never done before). These are all indications of cognitive impairment and evidence that he lacked the requisite mental capacity.

9. In my opinion, a fact finder will need to consider all of the evidence, including the objective evidence in the medical records that tends to support significant cognitive

impairment, in order to decide whether Mr. Shoemaker had or didn't have the requisite mental capacity at the time.

10. My opinions are based on my education, training and experience. My opinions are given to a reasonable degree of medical certainty.

11. I reserve the right to modify or change my opinions if additional material becomes available.

Further, affiant saith not.

Witness my hand and seal this 6 day of April, 2021.


Thomas Hughes, M.D.

Sworn before me this 6th day of April, 2020


Notary Public for South Carolina
My Commission expires _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED
JUN 18 2021

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III GREENVILLE COUNTY
PROBATE COURT

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

NOTICE OF MOTION AND
MOTION FOR THE RECOVERY OF
COSTS AND ATTORNEYS' FEES

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

You will please take notice that Respondents will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard, for an Order awarding them the recovery of their costs and attorney's fees by virtue of Petitioner's conduct in this matter. In this action Petitioner Marshall Shoemaker challenged his father's Will and Trust. In a related action captioned *James Marshall Shoemaker, III vs. Lesley Moore, Esquire as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries C.A.* No.: 2020-ES-23-00073. In the present action Petitioner advanced claims that are both factually and legally impossibly inconsistent. Further, Petitioner asserted claims in this Court and advanced positions while offering sworn testimony that clearly establish Petitioner has mislead this Court.

Plaintiff's initial Petition made spurious and unsupported allegations regarding his deceased father's supposed alcohol dependency and his still living mother's supposed chemical dependency. Some of the more flagrant allegations of the Petition were stricken pursuant to

court order, however, Petitioner continued to maintain allegations that were not only wholly unsupported, but were simply misrepresentations to the court. By way of example, on Page 4 beginning at Line 10 of Petitioner's Petition, he states, "as a result of my father's highly disturbed and distorted state of mind during his final months alive, and the collusion of my mother and brothers to vilify me to and separate me from, my father, he allegedly signed on June 24, 2019¹ revisions of his Will and Trust. These revisions expressly excluded me, and my children Mary and Peter, from benefiting from his estate as originally intended, and twice later confirmed." The foregoing quotation relative to the exclusion of Mary and Peter Shoemaker is but one of Petitioner's misrepresentations. Contrary to what Petitioner stated, the most recent Trust of Jim Shoemaker specifically included, by direct bequest, Mary and Peter Shoemaker.

In the quotation above Petitioner alleges that his mother, "Polly" Shoemaker, engaged in collusion with his brothers in the months prior to his father's death, culminating in revised documents executed on June 24, 2018. Respondents submit that it is impossible for Mrs. Shoemaker to have both colluded with her sons Sloan and Jonathan in the final months of Jim Shoemaker's life while at the exact same time lacked sufficient testamentary capacity to execute her own Will and Trust.

In his Petition on Page 7 beginning at Line 14, Petitioner alleges that Respondent Lesley Moore "[k]new or should have known of my father's lack of capacity and the undue influence of my mother and brothers, and yet did nothing, and allowed her personal prejudice, and herself interest in earning fees for services as Personal Representative, Trustee and/or Counsel to the

¹ The actual date is June 24, 2018.

same, to cloud her judgment. As such, she is unable to fulfill her fiduciary duty of loyalty, to all the beneficiaries, including me and my children.”

As with the allegations relative to his brothers and mother, Marshall Shoemaker has absolutely no information or evidence to support the spurious allegations made against Respondent Lesley Moore. With regard to the claims against Ms. Moore specifically, although Petitioner's attorney stated in open court on April 7, 2021 at the hearing on Respondents' Summary Judgment Motion that Ms. Moore was not being sued individually, up until that point Ms. Moore was defending allegations that she either willfully or negligently breached a fiduciary duty to Petitioner. Neither the facts nor the law supported Petitioner's spurious claims as to Ms. Moore. Until Petitioner's counsel announced the claims really were not asserted against Ms. Moore on an individual basis, that is how Petitioner proceeded against her from June 27, 2019 until the hearing on April 7, 2021.

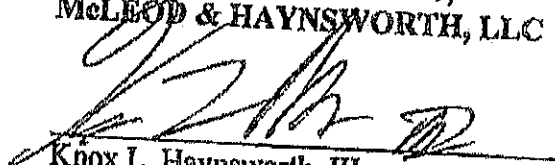
S.C. Code Ann. §62-7-1004 provides, in pertinent part, “[i]n a judicial proceeding involving the administration of a Trust, the Court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the Trust that is the subject of the controversy.” Likewise, S.C. Code Ann. §62-1-111 provides in pertinent part “[i]n a formal proceeding, the Court, as justice and equity may require, may award the costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy.

The Respondents submit that justice and equity require that the costs and expenses incurred by Respondents, to include the attorneys' fees, be charged against the Petitioner James Marshall Shoemaker, III.

This matter is further based upon the pleadings on file with the Court, discovery documents filed with the Court, prior Orders of the Court, prior Memorandums in Support of previous motions filed by Respondents, the Affidavit of Knox L. Haynsworth, III attached hereto and incorporated by reference as Exhibit 1, and such other and further materials as the Court may consider.

Respectfully submitted,

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
June 18, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
James Marshall Shoemaker, Jr.)
(Decedent))
James Marshall Shoemaker, III)
Petitioner)
v)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee,)
Edward Sloan Shoemaker, and)
and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents)

IN THE PROBATE COURT

Case No. 18-ES-23-01729

**PETITIONER'S NOTICE OF MOTION AND
MOTION TO RECUSE AND VACATE**

FILED

OCT 01 2021

**GREENVILLE COUNTY
PROBATE COURT**

To: Knox L Haynsworth, III, attorney for the Respondents:

You will please take notice that, at a date and time to be arranged with the Court and counsel involved, the Petitioner, James Marshall Shoemaker, III, will move for an Order requiring the Hon. Clayton L. Jennings to recuse himself from further proceedings in this matter and in a related case in his Court involving the Estate of Polly Shoemaker (Case No. 20-ES-23-00073). The Petitioner also requests that the Court vacate its previous Orders in this case. This Motion is made pursuant to the South Carolina Rules of Civil Procedure (SCRPC), the Judicial Canons, and the Constitutions of the United States and of South Carolina. The basis for the Motion is set forth below.

The Petitioner and his counsel do not make this Motion lightly. This Motion is not made to impugn Judge Jennings' personal or judicial integrity. Everyone has certain biases. A judge

must be, and appear to be, impartial. Without impartiality the public's confidence in the judicial process can be undermined.

FACTS RELATING TO THIS MOTION

This is a dispute between three brothers involving their parent's Estates. The Petitioner, Marshall Shoemaker, was taken out of his parent's last Wills. This change was made while his father was a hospice patient and occurred about three weeks before he died. Prior to that the Petitioner shared equally along with his two younger brothers in each parent's Estate. Petitioner alleges that, due to various medical conditions at the time, his parents lacked the mental capacity to make a new Will and Trust.

On April 7, 2021, this Court heard the Respondents' Motion for Summary Judgement. On April 22, 2021, Judge Jennings indicated that he would grant the Motion and asked counsel for the Respondent to prepare an Order. On June 15, 2021, Judge Jennings filed an Order granting a Summary Judgment. On July 14, 2021, the Court heard a Motion to Dismiss in the related case involving the Estate of Polly Shoemaker (20-ES-23-00073). Judge Jennings took that matter under advisement and has not yet ruled. On September 15, 2021, Judge Jennings heard two Motions; the first was a Motion to Amend his Order granting Summary Judgment in this case, and the second was Respondents' Motion to recover their attorney's fees. Judge Jennings granted the first Motion and asked counsel for the Respondent to submit an Amended Order. Judge Jennings took the second Motion, involving an award of attorney's fees, under advisement.

Following that hearing, on the evening of September 16, 2021, Judge Jennings emailed counsel and advised, for the first time, that he had an ongoing relationship with an attorney in the Brown, Massey, Evans, McLeod and Haynsworth law firm. Specifically, he is serving as co-counsel with Mr. Stanley McLeod in two cases involving the same client. Mr. McLeod is law partners with Knox Haynsworth, counsel for the Respondents in these actions. A copy of Judge Jennings email is attached as Exhibit 1 to this Motion.

BASIS FOR RECUSAL

Rule 501 of the South Carolina Appellate Court Rules (SCACR) contains the Code of Judicial Conduct. Canon 2 provides that a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. This requires a judge to avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds the perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

It has often been said that "money is the root of all evil". Professor Freeman's treatise on the appearance of impropriety and recusal finds that money's utility when it comes to influencing human behavior is sufficiently well established as to be eligible for judicial notice (62 S.C. L. Rev. 488 2011). In this case some of the particulars of the relationship between Judge Jennings and Mr. McLeod and their client Mr. Gafaary are unknown. What is clear, however, is that there is some sort of financial relationship and Judge Jennings is being paid for his work. Recusal is required when an objective inquiry into the co-counsel relationship would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true *Caperton v A.T. Massey Coal Company* 129 S. Ct. 2252 2009). This is true where the evidence falls short of proof of actual bias. Instead all that is required is evidence showing a risk of actual bias based on objective and reasonable perceptions.

In an important South Carolina case involving money and the payment of attorney's fees, The Judicial Merit Selection Commission found that a family court judge had created an appearance of impropriety by not recusing herself in a divorce case. *Public Hearing on Judicial Qualifications of Judge Segars-Andrews S.C. December 18, 2009*. In that case the judge's husband was a practicing attorney. His law firm and attorneys in the law firm representing the wife in the divorce case before the Court had worked together on a case resulting in a large settlement. This case is similar in that it involves the payment of attorney's fees to Judge Jennings in two cases while working with an attorney in the same law firm that is also representing the Respondents. In fact, the financial relationship between Judge Jennings and

the law firm for the Respondents is more direct; Judge Jennings is paid directly for his work on these cases whereas Judge Segars-Andrews only benefited indirectly from fees earned by her husband. Also, Judge Jennings' "conflict" is currently ongoing and the case involving Judge Segars-Andrews' husband settled several years earlier.

BASIS TO VACATE THE COURT'S PREVIOUS ORDERS

Judge Jennings' disclosure occurred on September 16, 2021. The crux of his disclosure was that he had an ongoing relationship with the law firm that was representing the Respondents in these cases. A review of the Court filings indicates that this "relationship" goes all the way back to April of this year. In fact, Judge Jennings filed his Notice of Appearance the same day he heard, and later granted, the Respondents' Motion for Summary Judgment. Clearly, Judge Jennings felt that his disclosure was necessary and proper. Judge Jennings disclosed this co-counsel relationship because he believed the parties and their lawyers might consider it relevant to the question of disqualification even if he believed that he could continue to be fair and impartial.

As can be seen from the result in Judge Segars-Andrews case, the existence of a co-counsel relationship with a law firm representing parties in a case that was before the Court created an appearance of impropriety. That "conflict" began when the co-counsel relationship began. In these cases the co-counsel relationship began in April, 2021. Accordingly, any relief should not apply prospectively. Instead, all of the Court's Orders which occurred after April should be vacated.

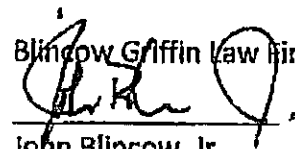
CONCLUSION

From the Petitioner's perspective, while hearing and deciding issues in his case, Judge Jennings is also working on two other cases with the same law firm that is representing the Respondents. From the Petitioner's perspective, one of the issues at play is whether he will be required to pay attorney's fees to a law firm that Judge Jennings is currently working with. The

Petitioner believes there are objective facts which create the reasonable perception that the judge's impartiality may be impaired. Considering the appearance of impropriety, there is a risk that the public's confidence in the judicial system will be undermined. Under the circumstances, the Petitioner respectfully requests that Judge Jennings recuse himself from both of the Petitioner's pending cases. Since the "relationship" that is the basis for the recusal began in April the Petitioner also requests that Judge Jennings' Orders subsequent to April 7, 2021, be vacated.

Respectfully submitted.

Blinco w Griffin Law Firm


John Blincow, Jr.

126 Meeting St.

Charleston, S.C. 29401

843-872-6449

jblincow@blincowgriffin.com

Date: Sept. 28th 2021

FILED

OCT 01 2021



GREENVILLE COUNTY
PROBATE COURT

From: Clayton Jennings clayton@jenningslawfirm.com
Subject: In Re: Estate of James Shoemaker, Jr. and Estate of Polly Shoemaker
Date: September 16, 2021 at 5:08 PM
To: Knox Haynsworth knoxhaynsworth@bmemhlaw.com, John Blincow jblincow@blincowgriffin.com
Cc: Campos-Ivey, Kim KCampos@greenvillecounty.org, Faulkner, Debora DFaulkner@greenvillecounty.org

Mr. Haynsworth and Mr. Blincow:

While thinking about our hearing yesterday related to the Motion to Reconsider and Motion for Attorney's Fees and Costs in the Estate of James Shoemaker, Jr., it occurred to me that I am presently representing a gentleman by the name of Jeff Gaafary and his LLC, G & N Holdings, LLC, in pending actions in the Court of Common Pleas for Greenville County. My co-counsel in the two cases is Attorney Stanley McLeod. Mr. McLeod is a partner in the firm Brown Massey Evans McLeod & Haynsworth, LLC, the same firm of Mr. Haynsworth. Attorney McLeod appeared in the actions around July 2020, and I only appeared in the actions in April 2021 by filing a Notice of Appearance following Mr. Gaafary's request that I represent him.

The two cases are: Congaree Marketplace, LLC vs. Jeff Gafaary, 2020CP2302237; and Congaree Marketplace, LLC vs. G&N Holdings LLC, 2020CP2302242. These cases involve an attempt to foreclose on an alleged lien for past due charges for common area maintenance. They have nothing in common with the Estates of James Shoemaker, Jr. or Polly Shoemaker. You are welcome to review all the filings in these cases if you are curious. There is also a possibility that I will appear in the action of Edwin Francisco vs. Jeff Gaafary, C.A. No. 2020CP2300216. Attorney McLeod is the only attorney of record for the defendants in that case at present. The case involves a commercial tenant with claims against his former landlord, Namouz, LLC (an LLC in which Mr. Gaafary is a member). Like the other two cases, this case does not have anything in common with the Estates of James Shoemaker, Jr. or Polly Shoemaker.

I have never served as co-counsel with Mr. Haynsworth on any case, and until the two cases identified above, I had never served as co-counsel on any case with the firm of Brown Massey Evans McLeod & Haynsworth, LLC. I can assure you that I have been and will continue to be fair and impartial with regard to any rulings or proceedings involving the Estates of James Shoemaker, Jr. or Polly Shoemaker. However, I wanted to disclose these facts as soon as possible.

Please let us know at your earliest convenience whether, after considering the above information, you would like for me to issue a ruling on the motions heard yesterday. I realize that I orally ruled from the bench on the Motion to Amend the prior Order, but I have not made any decision on the Motion for Attorney's Fees and Costs. Again, I am confident that I have been and will remain unbiased. I am willing to continue to hear and issue decisions related to the Estates of James Shoemaker, Jr. or Polly Shoemaker, but I wanted to make sure that I disclosed these matters to you.

We look forward to your response.

Best regards,

Clayton L. Jennings
Jennings Law Firm, LLC
1151 E. Washington St.



James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

FILED

JAN 07 2022

GREENVILLE COUNTY
PROBATE COURT

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT -
APPEAL FROM THE PROBATE COURT
NINTH JUDICIAL CIRCUIT -
Honorable Clayton L. Jennings

James Marshall Shoemaker, III

Case No.: 18-ES-23-01729

Petitioner/Plaintiff,

vs.

Lesley Moore, Esq. As Personal Representative
and Trustee, Edward Sloan Shoemaker, and
Jonathan Evans Shoemaker

NOTICE OF APPEAL

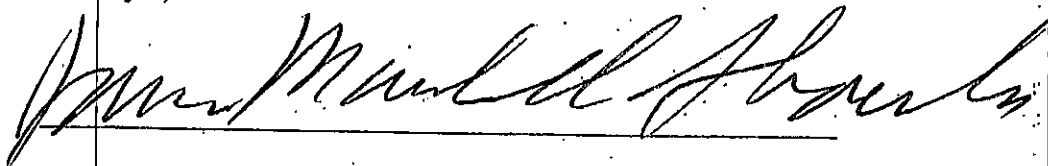
Respondents/Defendants

NOTICE OF APPEAL

James Marshall Shoemaker, III, appeals the Order of the Honorable Clayton Jennings dated December 15, 2021. A filed copy of the Order is attached to this Notice.

James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

January 6, 2022



III

Copies sent to:

Kim Campos-Ivey, ACP
Assistant to Probate Judge Debora A. Faulkner
Judicial Assistant - Estate Litigation
Greenville County Probate Court
301 University Ridge, Suite 1200
Greenville, SC 29601
(864) 467-7179

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT -
APPEAL FROM THE PROBATE COURT
NINTH JUDICIAL CIRCUIT -
Honorable Clayton L. Jennings

James Marshal Shoemaker III,

Case No.: 18-ES-23-01729

Petitioner/Plaintiff;

vs.

Lesley Moore, Esq. As Personal Representative
and Trustee, Edward Sloan Shoemaker, and
Jonathan Evans Shoemaker

STATEMENT OF ISSUES ON APPEAL

Respondents/Defendants

STATEMENT OF ISSUES ON APPEAL

Pursuant to Section 62-1-308(b) of the S.C. probate Code, the Appellant, James Marshall Shoemaker, III, states the following issues for review by the Court of Common Pleas:

1. Did the Lower Court err in refusing to vacate its Order while granting Appellant's Motion to Recuse made on the same grounds?

2. Did the Lower Court err in granting the Respondent's Motion for Summary Judgment by concluding that the affidavit of the Appellant's expert did not create a question of fact on the issue of testamentary capacity?

a) preponderance of evidence standard

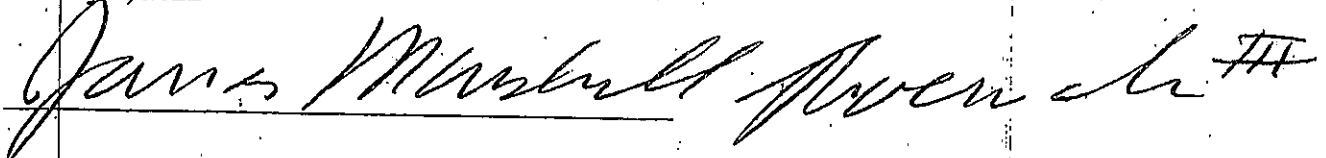
b) mere scintilla of evidence

c) Court found expert said reviewed case law but did not state level of incapacity

- c) expert stated significant cognitive impairment
 - d) expert pointed to evidence that he lacked the requisite mental capacity
2. Did the Lower Court err in granting Respondent's Motion for Summary Judgment by failing to draw all inferences in the light most favorable to the non-moving party?
- a) Court found expert did not state incompetent on June 24, 2018
 - b) expert said impairment during the relevant time period
3. Did the Lower Court err by applying the same legal standard to the deceased's IRA account as opposed to a higher standard to contract?

James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

January 6, 2022

The signature is written in cursive and is underlined. It includes the initials "JMS" at the end.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
James Marshall Shoemaker, Jr.,)
Decedent)
James Marshall Shoemaker, III)
Petitioner)
vs.)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker, and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-23-02955

NOTICE OF MOTION AND
MOTION TO DISMISS APPEAL

TO: JAMES MARSHALL SHOEMAKER, III, PLAINTIFF PRO SE

You will please take notice that Respondents will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing Petitioner's "Appeal" filed with the circuit court on January 10, 2022. The grounds for this Motion are that pursuant to S.C. Code §62-1-308(a), Petitioner was required to file and serve his Notice of Appeal within 10 days after written notice of the underlying decision. The probate court filed its Order on December 15, 2021 written notice was provided on December 16, 2021 (See Exhibit 1) Petitioner's Notice of Appeal (Ex 2) was filed January 10, 2022. Petitioner has failed to comply with the statute and therefore, his appeal must be dismissed. This motion is based upon the pleadings and other documents on file with the court, the attached Exhibits and such other and further materials as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

s/ Knox L. Haynsworth, III
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
January 27, 2022

EXHIBIT

1

Knox Haynsworth

From: Campos-Ivey, Kim <KCampos@greenvillecounty.org>
Sent: Thursday, December 16, 2021 2:39 PM
To: Knox Haynsworth; John Blincow
Subject: Estate of James Marshall Shoemaker, Jr., Case#2018ES2301729
Attachments: 2018ES2301729-ORDERS4.TIF; 2018ES2301729-ORDERS5.TIF

[EXTERNAL]

Good Afternoon,

Please see attached signed Order's, certified copies will be mailed to you.

Thank you,
Kim Campos-Ivey, ACP
Assistant to Probate Judge Debora A. Faulkner
Judicial Assistant - Estate Litigation
Greenville County Probate Court
301 University Ridge, Suite 1200
Greenville, SC 29601
(864) 467-7179

To prevent the transmission of the Covid-19 virus, entrance to the Probate Court will be controlled in order to limit the number of people in the office. All persons entering the offices of the Greenville County Probate Court must wear a facial covering, covering the nose and mouth. If you do not have a facial covering, one will be provided for you. If you are in a high risk group for infection by the virus, rather than an in-person visit, consider safer alternatives, such as calling, emailing, or videoconferencing.

Refer to our web page for the latest Court response to Covid-19 and staff contact information: <https://www.greenvillecounty.org/Probate/Default.aspx>

From: Knox Haynsworth [mailto:knoxhaynsworth@bmemhlaw.com]
Sent: Thursday, December 09, 2021 3:04 PM
To: Faulkner, Debora; John Blincow; Clayton Jennings
Cc: Campos-Ivey, Kim
Subject: RE: In Re: Estate of James Shoemaker, Jr. and Estate of Polly Shoemaker

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Thanks Judge Faulkner. Hope you have a great holiday season as well.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
GREENVILLE COUNTY
PROBATE COURT

DEC 15 2021

IN THE PROBATE COURT
Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III,
Petitioner,
vs.
Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe,
Respondents.

AMENDED ORDER
GRANTING SUMMARY JUDGMENT
TO RESPONDENTS

This Court originally granted summary judgment in favor of Respondents and issued its Order reflecting the same dated June 15, 2021. Pursuant to a timely filed Motion under Rule 59 of the South Carolina Rules of Civil Procedure, Respondents requested the Court alter the language of its Order to change the phrase "Petitioner relies exclusively on the affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." to "Petitioner relies primarily on the affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." In considering the record before it, the Court modifies its Order dated June 15, 2021 granting Respondent's Motion for Summary Judgment as noted below and the Court finds and rules as follows:

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, III instituted a pro se action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long-time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court, certain claims of

Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore. By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John Blincow, Jr. of the firm Blincow Griffin Law, P.C. appeared on behalf of Petitioner. Following lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the last Will and Testament and Trust of James M. Shoemaker, III dated June 24, 2018 (the "Will") and the restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the grounds of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once "the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation." Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew [(1)] his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks, 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 So. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to found his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Ann. §62-7-601.)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

"Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A., 353¹ S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

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"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallas, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)).

III. Analysis

Petitioner relies primarily on the Affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr.. With regard to Dr. Hughes' affidavit, it is noted that the affidavit was not notarized. However, attorney John Blincow represented at the hearing that as an officer of the court, he actually saw Dr. Hughes execute the affidavit. More significantly, Rule 5(d) of the South Carolina Rules of Civil Procedure specifically provides that except as otherwise provided

in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence was adduced explaining why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Additionally, pursuant to Rule 33(b) SCRCP, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The Court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing yet Dr. Hughes has never been listed as a witness. In this matter it is undisputed that the affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker but instead, reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, supra. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that based on a review of the records Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that

his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Ex B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom he shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the state of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it

is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the Wills and Trusts of his parents. The record establishes that decades ago Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021 the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion for Summary Judgment of Respondents is granted; and
2. Lesley Moore is hereby dismissed from this action with prejudice.

7 of 8

AND IT IS SO ORDERED.

December 15, 2021
Greenville, South Carolina



Clayton L. Jennings
Associate Probate Judge

8 *cy*

EXHIBIT

2

James Marshall Shoemaker III
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

2022 JAN 10 AM 10:44
Paul Wickensmar CDC 601 SC

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT -
APPEAL FROM THE PROBATE COURT
NINTH JUDICIAL CIRCUIT -
Honorable Clayton L. Jennings

James Marshall Shoemaker, III

Case No.: 18-ES-23-01729

Petitioner/Plaintiff,

2021-CP-23-02955

vs.

Lesley Moore, Esq. As Personal Representative
and Trustee, Edward Sloan Shoemaker, and
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NOTICE OF APPEAL

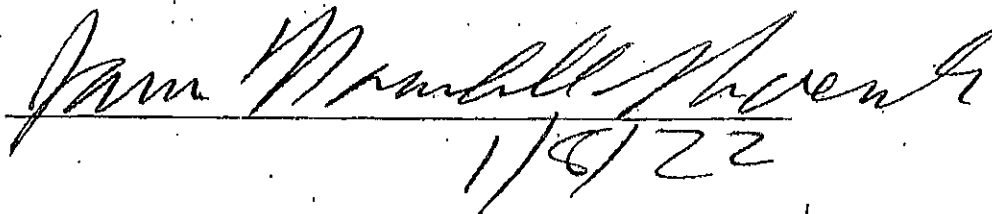
Respondents/Defendants

NOTICE OF APPEAL

James Marshall Shoemaker, III, appeals the Order of the Honorable Clayton Jennings dated December 15, 2021. A filed copy of the Order is attached to this Notice.

James Marshall Shoemaker III
Representing myself
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Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

January 6, 2022


1/6/22

Copies sent to:

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Assistant to Probate Judge Debora A. Faulkner
Judicial Assistant - Estate Litigation
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301 University Ridge, Suite 1200
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22 JUN 10 AM 10:44
Paul W. Shoemaker - COC GVL SC

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT -
APPEAL FROM THE PROBATE COURT
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Honorable Clayton L. Jennings

James Marshal Shoemaker III,

Petitioner/Plaintiff,

vs.

Lesley Moore, Esq. As Personal Representative
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Respondents/Defendants

Case No.: 18-ES-23-01729

2021-CP-23-02955

STATEMENT OF ISSUES ON APPEAL

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Pursuant to Section 62-1-308(b) of the S.C. probate Code, the Appellant, James Marshall Shoemaker, III, states the following issues for review by the Court of Common Pleas:

1. Did the Lower Court err in refusing to vacate its Order while granting Appellant's Motion to Recuse made on the same grounds?
2. Did the Lower Court err in granting the Respondent's Motion for Summary Judgment by concluding that the affidavit of the Appellant's expert did not create a question of fact on the issue of testamentary capacity?
 - a) preponderance of evidence standard
 - b) mere scintilla of evidence
 - c) Court found expert said reviewed case law but did not state level of incapacity

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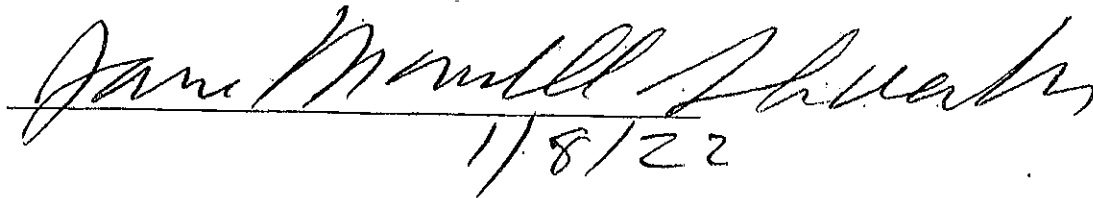
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January 6, 2022


1/8/22

FILED

STATE OF SOUTH CAROLINA DEC 15 2021
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No. 2018-ES-23-01729

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Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker but instead, reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, *supra*. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that based on a review of the records Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that

his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Ex B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom he shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the state of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it

is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the Wills and Trusts of his parents. The record establishes that decades ago Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021 the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion for Summary Judgment of Respondents is granted, and
2. Lesley Moore is hereby dismissed from this action with prejudice.

AND IT IS SO ORDERED.


Clayton L. Jennings
Associate Probate Judge

December 15, 2021
Greenville, South Carolina

8 *cf*

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ORIGINAL

IN THE MATTER OF:

JAMES MARSHALL SHOEMAKER, JR.

CASE NUMBER: 2018ES2301729

JAMES MARSHALL SHOEMAKER, III,
PETITIONER,

DEBORA WINE, MARY HUNTER SLOAN-SHOEMAKER, EDWARD SLOAN
SHOEMAKER, JONATHAN EVANS SHOEMAKER, AND LESLEY MOORE,
RESPONDENTS.

FILED
NOV 12 2019
GREENVILLE COUNTY
PROBATE COURT

Probate hearing taken in the aforementioned matter was
heard before the Honorable Caroline M. Horlbeck taken
before Treasa Hix, Court Reporter and Notary Public, at
Probate Court, Greenville County Square, 301 University
Ridge, Greenville, South Carolina, on the 21st day of
October, 2019, commencing at the hour of 2:27 p.m.

REPORTED BY: Treasa Hix, Reporter

Notary Public for S.C.

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2 1 APPEARANCES: 2 3 MARSHALL SHOEMAKER, Pro Se 4 Flocking Behavior 5 1859 Tecumseh Trail SE 6 Smyrna, Georgia 30080 7 marshall@flockingbehavior.com 8 Petitioner, 9 10 ANNE R. CULBREATH, Esquire 11 Willson Jones Carter & Baxley, P.A. 12 872 South Pleasantburg Drive 13 Greenville, South Carolina 29607 14 arculbreath@wjlaw.net 15 Attorney for Respondent Debora Wine, 16 17 KNOX L. HAYNSWORTH, III, Esquire 18 Brown, Massey, Evans, McLeod & Haynsworth, LLC 19 106 Williams Street 20 Post Office Box 2464 21 Greenville, South Carolina 29602 22 knoxhaynsworth@bmemhlaw.com 23 Attorney for Respondents Mary Hunter Sloan- 24 Shoemaker, Edward Sloan Shoemaker, Jonathan Evans 25 Shoemaker and Lesley Moore.	4 1 THE COURT: 2 Now, we're here today in the matter of James Marshall 3 Shoemaker, Jr. This is case number 2018ES2301729. And 4 just by way of background I do have a Death Certificate 5 for Mr. Shoemaker, Jr. indicating the date of death was 6 July the 14th, 2018. I have a will that was filed on 7 July the 18th, 2018. He was testate. I have a 8 application for Informal Probate of a Will and 9 appointment of a Personal Representative that was filed 10 July the 18th, 2018. I have the inventory and 11 appraisement. And also Affidavit of Publication 12 indicating the Creditor's Notice was published on July 13 the 27th, August the 3rd, and August the 10th, 2018. 14 And the inventory and appraisement indicates a gross 15 value of probate estate in the amount of \$46,540. I 16 have a waiver of statutory requirements and receipt and 17 release signed by Edward Sloan Shoemaker. I have one 18 and the same document signed by Mary S. Shoemaker as 19 co-trustee. And I have the same document signed by 20 Lesley Moore as co-trustee. And I have the same 21 document signed by Mary S. Shoemaker, individually. 22 And I have a waiver of statutory filing requirements 23 signed by Ms. Moore and dated the 25th of April 2019 24 and filed the same date with The Court. I understand 25 that a Petition for Formal Hearing in the Estate of
3 1 INDEX 2 3 colloquy Between Court and Counsel..... 4 4 Certificate of Reporter..... 40 5 6 EXHIBITS: 7 None Introduced 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH 25 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)	5 1 James Shoemaker, Jr. was filed on June the 27th, 2019. 2 And in response we have Debora Wine's Motion to Dismiss 3 pursuant to 12(b)(6) and due to a lack of proper 4 service. The Petitioner has filed a response to this 5 on August 12th, 2019. And the Respondents Mary Hunter 6 Sloan-Shoemaker, Edward Sloan Shoemaker, Jonathan Evans 7 Shoemaker, and Lesley Moore have also filed a Notice to 8 Dismiss Or In The Alternative Motion For A More 9 definite statement. Those are in pursuant to rules 10 10(b), 12(b)(1), 12(b)(6), 12(b), and 12(F). And we 11 are here to deal with those today. I believe this 12 matter was scheduled earlier this year and the 13 Petitioner requested a continuance, and it was granted. 14 All right. So let me see who we have here today. So 15 our petitioner is James Marshall Shoemaker, III; is 16 that correct? 17 MR. SHOEMAKER: 18 Correct. 19 THE COURT: 20 You're here today then, sir? 21 MR. SHOEMAKER: 22 Yes. 23 THE COURT: 24 Are you representing yourself? 25 MR. SHOEMAKER:

6

1 I am.

2 THE COURT:

3 All right. Have you had the opportunity to consult

4 with an attorney?

5 MR. SHOEMAKER:

6 About a hundred of them looking for them to take the

7 case on contingency, 'cause I can't afford to hire one.

8 THE COURT:

9 All right. And so you're representing yourself today?

10 MR. SHOEMAKER:

11 Correct.

12 THE COURT:

13 And do you understand that an attorney has graduated

14 from law school, taken the bar, passed the bar, likely

15 understands things about the rules of evidence, the

16 rules of court, and is familiar with probate law and

17 can probably assist you with this matter?

18 MR. SHOEMAKER:

19 Yes, ma'am.

20 THE COURT:

21 Okay.

22 MR. SHOEMAKER:

23 I -- I know I would be advantaged by having an

24 attorney. I'm hoping to get some traction on my own

25 there if somebody will take it on a contingency basis.

7

1 THE COURT:

2 All right. Do you understand that if you represent

3 yourself today you'll be expected to follow the rules

4 of court, present your case as an attorney would,

5 question witnesses and cross-examine witnesses as an

6 attorney would? Do you understand all of that?

7 MR. SHOEMAKER:

8 I -- I understand what you're saying. I don't know

9 what that means practically speaking.

10 THE COURT:

11 Well, there's a certain way that you have to present

12 your case and make arguments, things like that. We

13 likely won't have witnesses today, so that won't be an

14 issue. But if there are any objections, if you want to

15 make any objections, all of those things would have to

16 be done in accordance with the rules of evidence and

17 the rules of court. And I can't help you with those

18 things, and the other attorneys can't help you either.

19 Do you understand that?

20 MR. SHOEMAKER:

21 Yes, ma'am.

22 THE COURT:

23 Okay. And knowing all of those things and knowing that

24 you're going forward without the assistance of counsel

25 do you still want to go forward today representing

8

1 yourself?

2 MR. SHOEMAKER:

3 Absolutely.

4 THE COURT:

5 All right. And we also have Ms. Wine who is

6 represented by Ms. Culbreath; is that correct?

7 MS. CULBREATH:

8 Yes, Your Honor.

9 THE COURT:

10 All right. And is she present today?

11 MS. CULBREATH:

12 She is not, Your Honor.

13 THE COURT:

14 All right. And the remainder of the respondents are

15 represented by Mr. Haynsworth; is that correct?

16 MR. HAYNSWORTH:

17 Yes, Your Honor --

18 THE COURT:

19 All right.

20 MR. HAYNSWORTH:

21 -- except for the John and Jane Doe respondents.

22 THE COURT:

23 All right. Okay. So everybody except John and Jane

24 Doe. All right. Well, I see that Ms. Wine filed her

25 Motion first. We can start with her. It really is up

9

1 to you--all who we start with.

2 MS. CULBREATH:

3 That's fine, Your Honor, I'm happy to go. Again, Anne

4 Culbreath here for Ms. Wine. Your Honor, we also filed

5 a rule 12(b)(6) Motion in our Motion with our

6 discussion of --

7 THE COURT:

8 Yes, ma'am.

9 MS. CULBREATH:

10 -- service of process. And today the real crux of it

11 is that 12(b)(6) Motion, Your Honor.

12 THE COURT:

13 All right.

14 MS. CULBREATH:

15 because when looking at the Complaint -- or Petition

16 Filed by Mr. Shoemaker there is zero valid claim for

17 relief against Ms. Wine. Ms. Wine is the housekeeper.

18 She is the maid for Mr. and Mrs. Shoemaker. And in

19 reading the Complaint it appears that the Complaint

20 attempts to set forth two Causes of Action so to speak.

21 One asserting an issue for testamentary capacity of Mr.

22 Shoemaker where Mr. Shoemaker attempts to request the

23 court to set aside Will and Trust that had written him

24 out of taking under the estate. And it looks like a

25 second Cause of Action which does not comply with 82-5-

1 303 request that The Court appoint a Guardian ad Litem.
 2 And then further ask that The Court charge that
 3 Guardian ad Litem to take over the Healthcare Power of
 4 Attorney from his two brothers and assign it to someone
 5 else. To hire a team to treat his momma's alleged
 6 valium dependency. To replace the housekeeper and then
 7 to hire a Trust. Your Honor, those assertions in the
 8 Complaint Mr. Shoemaker has failed to state any type of
 9 factual assertion or claim against Ms. Wine. There's
 10 zero assertion in the Complaint that Ms. Wine has an
 11 interest in the Estate or that she is some sort of
 12 beneficiary of the Estate. It seems that the
 13 Petitioner simply doesn't want her to be her (sic)
 14 momma's maid. And there is no assertion under the
 15 Statute that she is a proper party under 62-5-101 with
 16 regard to assigning and providing for a Guardian ad
 17 Litem. If you look at that definition there are six
 18 different people that could serve as a party or that
 19 constitute a party, and Ms. Wine does not count as any
 20 of them. She's not a Protected Person. She's not a
 21 Petitioner, a Guardian, Conservator, or ward, and she's
 22 not a proper party to this. Your Honor, and we would
 23 ask that she be dismissed with prejudice.

24 THE COURT:

25 All right. Thank you, ma'am. Yes, sir, would you like

1 -- let me ask you this: do you want to respond
 2 individually or do you want to hear from both attorneys
 3 and then respond --

4 MR. SHOEMAKER:

5 I'm --

6 THE COURT:

7 -- to everything?

8 MR. SHOEMAKER:

9 -- taking that on right now.

10 THE COURT:

11 All right. Yes, sir. I'll hear from you.

12 MR. SHOEMAKER:

13 Okay. So I -- I wrote it down, you know, in the
 14 interest of being clear. So there -- there are two
 15 facts which are important to consider regarding the
 16 inclusion of Ms. Wine in this case. On December 7th,
 17 2017 my partner, Julie Callaghan who's sitting next to
 18 me, and I drove to Greenville from Atlanta where I live
 19 to take my parents out to lunch as previously arranged
 20 with my father. When we pulled up to the curb we were
 21 confronted in the front yard by Ms. Wine who bluntly
 22 and aggressively stated that the lunch was cancelled
 23 because my father had had a fall that morning. She
 24 then positioned herself between Julie and I and the
 25 front door and acted as if she was going to prohibit us

1 from going inside of the house. I said to her "I'm
 2 going to see my parents." I walked around her, we went
 3 into the house. So for the next hour Julie and I sat
 4 and talked with my parents, and about my father's fall,
 5 and about the fact they couldn't go out to lunch, and
 6 why we were in town that weekend for the Christ Church
 7 football event. So as we were talking during this last
 8 conversation I had with my father face-to-face -- this
 9 is in December of '17. He passed away in July of 2018.
 10 Debora Wine was constantly going in and out of the room
 11 making a lot of noise trying to demand me to come into
 12 my father's bedroom to help her put some sort of bumper
 13 under the bed, and generally interrupting my
 14 interactions with my parents. And finally I had to say
 15 to her "I'm not here to work with you on my father's
 16 bed, I'm here to visit with my parents." The second
 17 incident that concerns me was an undis -- an
 18 undetermined date a couple -- it happened a couple of
 19 years before I was aware of it. But Debora Wine and my
 20 parents spent an evening driving around Atlanta (sic)
 21 removing money from ATM machines because my mother had
 22 gotten a phone call from somebody who purported to be
 23 in the Dominican Republic and that my son, Peter, who's
 24 never been in the Dominican Republic before, since, or
 25 afterwards, had been locked up and this guy was going

1 to help them get him out of jail. So my mother bought
 2 it. For some reason my father bought it. And Ms. Wine
 3 did not have the presence of mind to pick up the phone
 4 and call me or my son's mother. I'm told that my
 5 mother -- I -- I -- I am guessing that my mother put
 6 \$15,000 in an envelope and Fedex'd it to someone in New
 7 York where Debora Wine is from. I do not know if Ms.
 8 Wine participated in this as a co-conspirator, but I
 9 know that she completely failed as a rational
 10 caretaker. Now, my father on the day we visited before
 11 his death in that December which I previously
 12 mentioned, he referred to Ms. Wine like a daughter.
 13 You'll also hear somebody in this room talk about being
 14 -- feeling very close to my parents. It had this --
 15 there was this -- well, I'm not going to go into that.
 16 I'm going to try to stick with the facts. Okay. So
 17 because of this behavior I reported this incident to
 18 the Greenville Police Department probably four weeks
 19 before my father died. I sent them a detailed Email
 20 about the incident. About my concerns that my parents
 21 were incapacitated due to alcoholism and drug
 22 addiction. And I asked the policeman who I had spoken
 23 with on the phone -- on the phone before sending the
 24 Email would he look into it. Three weeks later my
 25 father died and I was -- I forgot about this. It

14

1 potentially -- a potential co-conspirator -- became irrelevant somewhat. Since then, and since the funeral, and all the activity around the funeral, and being with what was talking about the day -- since this January when I read the will and I found that I had been excluded fully and my children excluded in part compared to the traditional way in which they were going to participate, I just thought "okay, she's involved in this." She's part of this family unit if you want to call it that, and she's part of the problem of my parents not being able to take care of themselves, and here's somebody who's intimately involved in her life. And that's why I named her. She is contrary to what you just hear she is included in the Estate in one of more of the documents. She is to inherit \$50,000 based on some contingency on -- I don't recall. It has to do whether or not she's still in my mother's services upon death, so she is not a maid and she's not a housekeeper, she's more than that. And I believe -- excuse me? I believe that she is -- potentially -- a potential co-conspirator with my brothers to isolate my parents from me. The result being with what we're talking about today. And that's her about her that I have -- oh, excuse me. One more thing. I have a green card in my case where Dabara Wine signed receipt of my original pleading, 'cause I sent it to my -- my -- my parents' address 'cause I

15

1 didn't have her address. So, you know, she got the paperwork. It wasn't a failure to serve her. I followed the rules of the Court was you can mail it to them. You can use U.S. Post Office. If they sign the green card they've accepted service.

THE COURT:

2 All right. Ms. Culbreath, any response?

MS. CULBREATH:

3 very briefly, Your Honor. If you are reading the four corners of the complaint there is zero reference at all to Ms. Wine who is the housekeeper who has served in that capacity for many years is anything more than just a housekeeper or maid. This idea that she is some sort of a "co-conspirator" is not in the Complaint. And if it is in the Complaint and it becomes part of the Complaint that will certainly give rise to perhaps a counterclaim. Your Honor, this is a case where they're asserting that testamentary capacity was unclear on a particular day. It has nothing to do with Ms. Wine. Ms. Wine is not a family member, and she more importantly is not a party under the rules with regard to Guardian ad Litem. There is no reason for her to be in this lawsuit other than apparently spite and harassment, and we would ask that she be dismissed.

THE COURT:

16

1 All right. Okay. All right. Then, Mr. Haynsworth, you're next unless you have anything you would like to add.

MR. HAYNSWORTH:

2 I would like to weigh in just as a factual matter, your Honor.

THE COURT:

3 That's fine.

MR. HAYNSWORTH:

4 Ms. Moore who is with me has more intimate knowledge of this than I did, but for what it's worth Ms. Wine has now resigned as Polly Shoemaker's housekeeper. She's not in the mix with his mother any longer.

THE COURT:

5 All right. Thank you for that.

MR. HAYNSWORTH:

6 Well, I'll --

THE COURT:

7 Just out of an abundance of caution do you have anything else you would like to add to -- regarding Ms. Culbreath's argument of anything that Mr. Haynsworth has added?

MR. SHOEMAKER:

8 I'm trying to focus on the facts and -- and the term "spite," and I don't remember the second phrase --

17

THE COURT:

2 If you're going to address The Court you do need to stand. That's one of these rules you have to know.

MR. SHOEMAKER:

3 I -- I respect that. I apologize.

THE COURT:

4 Thank you. That's all right.

MR. SHOEMAKER:

5 I -- I am focused on talking about the facts and whether or not I have a right to move forward with this litigation. So terms such as "spite" and I don't know what -- harassment, I don't think they belong in this interaction. Thank you.

THE COURT:

6 All right. Thank you.

MR. SHOEMAKER:

7 That's all I've got.

THE COURT:

8 Thank you, sir, for that. All right. Mr. Haynsworth, we'll move on to your -- unless you have anything else you would like to add, or we can --

MR. HAYNSWORTH:

9 No, no, ma'am.

THE COURT:

10 -- move on to you. Yes, sir?

1 MR. HAYNSWORTH:

2 Your Honor, may it please The Court.

3 THE COURT:

4 Yes, sir.

5 MR. HAYNSWORTH:

6 Your Honor, as Ms. Culbreath related to, Mr. Shoemaker
7 has challenged his father's will and Trust and he
8 believes that his father was under some type of undue
9 influence at the time that he executed the testamentary
10 documents. He's even put that in his response to my
11 Motion. I don't dispute at all that's what we're here
12 about. That's the problem. He has put in his petition
13 challenging his father's will and Trust a whole bunch
14 of other stuff that doesn't belong in a will contest
15 challenge. His mother is still alive. If he thinks
16 that she is not competent he is certainly able at any
17 point in time -- unlike this will contest where the
18 statute is fast approaching. If he believes his mother
19 is incompetent and he wants to continue to push that
20 issue, he can do it. But he needs to file the proper
21 petition to deal with her competency and her care and
22 not lump it in the challenge to his father's will and
23 Trust. And the rest of my argument about the kicking
24 out his two brothers as Healthcare Power of Attorney
25 and Financial Power of Attorney, and kicking Lesley

1 Moore out as PR and co-trustee of the various trusts,
2 you know, all of that is fine. If he wants to fight
3 that fight, okay, just do it the proper way. Chapter
4 three of the Probate Code deals with the administration
5 of wills. That's what he's fighting about. If he
6 wants to go through chapter five and try to get a
7 conservator appointed for his mother, again, there's a
8 mechanism to do that. So the motion to dismiss is not
9 let's dismiss the whole thing and throw him out of
10 court without getting into the merits. Obviously I
11 think it would be stupid to take that position. What I
12 want dismissed is the stuff that's not properly in this
13 proceeding. I don't think he's pled it properly under
14 the statute, and so that's what we wanted to get
15 dismissed. On the part of my Respondents' Motion for a
16 -- to Dismiss Or In The Alternative To Strike, or for a
17 Motion for A More Definite and Certain Pleading, he is
18 endeavoring to clean up his pleadings in his response to
19 my Motion. I understand that Marshall is Pro Se. I
20 understand that he would not plead it as a lawyer
21 would. And frankly, Your Honor, with his
22 clarifications there's probably enough to respond with
23 a petition. But my overall request is to clean it up
24 where we're dealing with "My dad cut me out because my
25 mom and my brothers convinced him to. He was under

1 undue influence." Fine. We want to have that fight,
2 let's have that fight. That's why we're here. The
3 rest of the stuff, if he wants to push it, it's
4 certainly within his right, but he needs to file the
5 proper pleadings to make those fights. So that's why I
6 ask that those things be dismissed.

7 THE COURT:

8 All right. Thank you, sir. Yes, sir, your response?
9 Or before I go there, Ms. Culbreath, did you have
10 anything you wanted to add to that before I --

11 MS. CULBREATH:

12 No, ma'am.

13 THE COURT:

14 All right. Yes, sir, if you would like to respond.

15 MR. SHOEMAKER:

16 Okay. So the -- the -- the way I understood this is
17 there's sort of three components; Debora Wine,
18 Guardianship, and Estate. I -- I'm going to -- I'm
19 prepared for all three, but I -- I would like to --
20 okay. Just a second. Okay. I'll talk about the
21 Guardianship. I -- I've -- I've proposed to change the
22 financial and medical Guardianship of my mother and
23 that the issue be considered with the will contest.
24 The facts are that my mother number one is incapable of
25 managing her own affairs. Number two, she's vulnerable

1 to manipulation by my brothers. And I will talk about
2 that more. And number three, I believe she's ill-
3 served by her current professional advisors. The facts
4 of my -- my mother being vulnerable and not managing
5 her own affairs, my father died -- I was notified about
6 my father's death by my daughter who was in Vietnam who
7 received a call from her mother, who received a call
8 from my brother. The lines of communication were
9 terrible. And obviously my brother didn't -- didn't
10 care enough to call me up directly and tell me about my
11 father. I started to communicate with my mother a few
12 days before my father's funeral and everything was
13 going good and she was looking forward to seeing me,
14 and my kids, and my ex-wife, and her husband, and Julie
15 to come up to the funeral. A few days before the
16 funeral my mother called up and said "your brother has
17 shown me an Email and you are not welcome to come to
18 the funeral." So a single Email, which has not been
19 produced by the Respondents' counsel, which is
20 purported to have been -- which was provocative and
21 emotional led my mother to make this decision. I did
22 go to the funeral but the entire family with -- with
23 the -- with the exception of Uncle Ed and John, who are
24 in the courtroom, basically shunned me because of this
25 reaction to this Email supposedly. Which will be

1 argued by the respondents' counsel is what led my
 2 father to three weeks before his death -- I'll stick
 3 with the script. Okay. I'm sorry. Let's see, the
 4 facts of my mother's incapacitation which I believe is
 5 due to a long-term Valium addiction is related to my
 6 father's long-term alcohol addiction, and the
 7 personalities involved. And I think the facts of that
 8 are so intricately intertwined with the circumstances
 9 of the death -- of the death-bed will changes that they
 10 should be heard together by the same court, the same
 11 Judge, and maybe the same jury. The Probate of
 12 Greenville, South Carolina according to the website
 13 here is the appropriate venue to hear matters related
 14 to protection of the mentally ill or chemically
 15 dependent. It's also the place for the appointment of
 16 a guardianship. I've also been explained to me by a
 17 friend who's a retired lawyer that there's -- there's a
 18 concept of judicial economy and that when one lawyer
 19 can hear multiple cases that are all interrelated and
 20 save time, and effort, and billable hours than it makes
 21 sense to do so. And I just don't see any point in
 22 going through this whole process twice. That's the
 23 bottom-line on that.

24 THE COURT:
 25 Yes, sir, your response?

1 MR. HAYNSWORTH:
 2 Your Honor, to state the obvious if Mr. Shoemaker wants
 3 to bring a proper Action to allege these other things
 4 and then move to consolidate it, I suppose he could do
 5 that. That's not my issue. My issue is he didn't
 6 plead it properly and he didn't proceed under the
 7 correct Statute. And if he wants to have that fight --
 8 you know if the issue is my mom is not being taken care
 9 of, there are certain things he needs to allege in his
 10 petition, and certain things the Court then has to do
 11 in response to that. And I get what he's saying "Let's
 12 just hear the whole grip I've got all at once." But
 13 you've got to properly get to that point where it can
 14 all be heard at once, and we're not there. The non-
 15 will Contest, Trust challenge needs to go away. And if
 16 it comes back again we have no Statute of Limitations
 17 problem. But it's not proper to just lump it in his
 18 petition in his will causes.

19 THE COURT:
 20 All right. Mr. Shoemaker, let me ask you a couple of
 21 questions. Help me understand how your mother's
 22 capacity -- and I don't know anything about your
 23 mother. I don't know how she's doing, or whether she
 24 needs a guardian, or a Conservator, or whether she --
 25 she might come in here and make perfect sense and bring

1 me all of her financial documents and be just fine. I
 2 don't know. But tell me how that's related to this
 3 issue to your father's estate. How are the two
 4 intertwined so that it really would be in the interest
 5 of judicial economy to hear everything at the same
 6 time? I'm having a hard time with that.

7 MR. SHOEMAKER:
 8 Well, I give you an example. Shortly after I filed my
 9 petition I received from respondents' attorneys this
 10 Motion to Dismiss. And I believe that the -- the
 11 chronology was such that I then received
 12 Interrogatories and a Request for Production that were
 13 very aggressive and broad. I took those
 14 Interrogatories from Mr. Haynsworth, switched the names
 15 around and sent them back to him for my mother, and two
 16 brothers, and Ms. Moore to answer. I responded to the
 17 Interrogatories and Request for Production within the
 18 30-day limitation. I just now received information
 19 about the financial -- the size of my father's estate
 20 in the last few weeks -- weeks. There was a long delay
 21 in getting the -- Mr. -- the respondents' attorneys
 22 response to my Request for Interrogatories and
 23 Production. My claim about my father is based on his
 24 medical condition. In the response to the
 25 Interrogatories and Production I was not given any

1 records from hospice care. I was given some very --
 2 some older records, six months old, for his primary
 3 physician. My understanding about hospice care is that
 4 once a person is taken out of their primary physician's
 5 care the hospice nurse and the hospice caregiver make
 6 the decisions. They log the medications. They log the
 7 activity. I have no information of that. That
 8 information would -- would -- would reflect on what
 9 were the interactions between my father and mother.
 10 There is an interaction between the incapacity and this
 11 notion of a conspiracy which I -- I admit is a
 12 grandiose term. But when Julie and I went to visit my
 13 father three weeks before his death, we were -- we were
 14 shuttled out of his bedroom by my mother. And then
 15 when I pleaded with my mother to please let me say
 16 goodbye to my father, she refused to let me back in his
 17 bedroom. I don't know what conversation she had with
 18 him. So everybody in this mess is -- it's just a huge
 19 mess and it's taken a while to unravel it. And I just
 20 can't see how it would be fair to make me execute two
 21 separate lawsuits here of -- of stuff that is so
 22 overlapped like it is. That's all I've got to say.
 23 Oh, I mean sorry. You asked me a question.

24 THE COURT:
 25 Well, I'm still wondering how the two are related. I

1 don't --
 2 MR. SHOEMAKER:
 3 How the two are related?
 4 THE COURT:
 5 You've included a lot --
 6 MR. SHOEMAKER:
 7 Because I -- I'm sorry.
 8 THE COURT:
 9 -- in your Petition about your mother's capacity, and
 10 it's a bit confusing, you had indicated you wanted a
 11 Guardian ad Litem appointed. And you wanted the
 12 Guardian ad Litem to take over your brothers' -- over
 13 the Healthcare Powers of Attorney. Or you wanted the
 14 Guardian ad Litem to become the agent pursuant to the
 15 Healthcare Power of Attorney and I think a durable
 16 Power of Attorney, and treat your mother's valium
 17 dependency from a Guardian ad Litem. So that's
 18 confusing just in and of itself. It may just be that
 19 you're not quite using the right term, which is that's
 20 what I suspect is going on. But tell me how that's
 21 related to your father's Estate and the allegations of
 22 your father's testamentary incapacity. How are those
 23 two related such that it would be in everybody's best
 24 interest just to come on in for I don't know a couple
 25 of days and just put up your witnesses, and everybody

1 have their say on everything. Not just your dad's
 2 testamentary incapacity, but your mom's capacity as
 3 well.
 4 MR. SHOEMAKER:
 5 Well, there --
 6 THE COURT:
 7 How are those two related? I'm not seeing it.
 8 MR. SHOEMAKER:
 9 Well, the -- the -- the primary relationship other than
 10 my brothers is the attorney who is the Personal
 11 Representative of the Estate and who now is at least
 12 according to the communications I had before I
 13 initiated the lawsuit with her very intimately involved
 14 with running my mother's life. I -- that's Ms. Moore.
 15 I -- I asked of her "well, who are the Medical Powers
 16 of Attorney? who are the Financial Powers of
 17 Attorney?" She communicated that to my mother and then
 18 communicated back to me. And if you'll let me go over
 19 the history of the Estate -- the 20 year history prior
 20 to this change three weeks prior to my father's death,
 21 I can show you how the personalities are related. How
 22 the sequence of events is related.
 23 THE COURT:
 24 So you're saying you think your mom's capacity came
 25 into question three weeks prior to your father's death?

1 MR. SHOEMAKER:
 2 I think my brothers' ability to have to -- to convince
 3 my mother to exclude her oldest son from my father's
 4 funeral, yes, is definitely related to her capacity.
 5 And I think the bigger picture of untreated alcohol --
 6 untreated alcoholism and drug addiction is all over this
 7 experience. And if I -- do you mind if I give you sort
 8 of my -- the -- the facts as I see them on the Estate
 9 issue and how it might be related to this?
 10 THE COURT:
 11 Well, let's kind of -- let's stick with what we have in
 12 front of us.
 13 MR. SHOEMAKER:
 14 Okay.
 15 THE COURT:
 16 How long was hospice interacting with your father --
 17 MR. SHOEMAKER:
 18 I'm -- I'm interested in that --
 19 THE COURT:
 20 -- to your knowledge?
 21 MR. SHOEMAKER:
 22 Oh. I -- I think three months. I've gotten no
 23 response to the Respondents' counsel on Discovery in
 24 that area.
 25 THE COURT:

1 And you think those records are going to include
 2 interactions between your parents?
 3 MR. SHOEMAKER:
 4 Oh, they're definitely going to include the fact that
 5 people were talking about giving my father injections,
 6 which I assume are pain killers, 'cause he was
 7 suffocating to death from his disease.
 8 THE COURT:
 9 Uh-huh.
 10 MR. SHOEMAKER:
 11 And when -- when I saw him briefly when I visited that
 12 final time shortly before his death he seemed in --
 13 sort of "whacked out" basically to use a casual term.
 14 THE COURT:
 15 All right. And to Ms. Wine -- as to Ms. Wine, you
 16 indicated she would -- is she a beneficiary under the
 17 Trust --
 18 MR. SHOEMAKER:
 19 In one of these documents --
 20 THE COURT:
 21 -- is that what you're saying?
 22 MR. SHOEMAKER:
 23 -- and I'm sure these lawyers know better. But in one
 24 of the documents it says she's going to get \$50,000
 25 based on certain contingencies.

1 THE COURT:
 2 And wasn't one of the contingencies that she continued
 3 to work for your mother?
 4 MR. SHOEMAKER:
 5 I'm not positive about that.
 6 THE COURT:
 7 Okay.
 8 MR. SHOEMAKER:
 9 Oh, okay. It's been suggested to me that was only if
 10 my father survived my mother and she continued in his
 11 care that she would get the \$50,000.
 12 THE COURT:
 13 All right. I have not read them all. I've looked at
 14 some of them, but she may not even be a player in all
 15 of this then. Is that --
 16 MR. SHOEMAKER:
 17 A play -- well --
 18 THE COURT:
 19 she may not be a party to any of this. If she doesn't
 20 receive anything, she's not a beneficiary. If she's
 21 not a devisee what's your --
 22 MR. SHOEMAKER:
 23 Well --
 24 THE COURT:
 25 What do you have to say about that?

1 MR. SHOEMAKER:
 2 -- my take on Ms. Wine is the same as my take on Ms.
 3 Moore and indirectly Cary Hall who I copied the Email
 4 about Ms. Wine and the police in the elder fraud
 5 incident, and there was no response from him, and I
 6 copied my brothers, is they are all sort of bit players
 7 in this dysfunctional family environment. And the
 8 reason I was written out of the will is because I was
 9 confronting the truth, which I've been -- for 33 years
 10 I've been trying to get my parents to get -- to -- to
 11 get treatment to no avail. And it only alienated me
 12 from them. But it's in the interest of some of these
 13 professional caregivers who are -- who are on my
 14 father's payroll and are now on the Estate's payroll to
 15 maintain control over first my father and my mother and
 16 make -- and -- and be in the good graces of my two
 17 brothers which have now -- now instead inheriting 3.3
 18 million dollars they're both going to inherit 5 million
 19 dollars. And my daughter -- and my daughter and son
 20 who have spent more time with my parents since they
 21 were alive than either of my brothers or any of their
 22 children, instead of inheriting 1.6 million dollars
 23 they're going to inherit -- they inherited \$500,000.
 24 And I could go into more evidence about how I think the
 25 will -- the changes to the will were hasty and

1 unprofessional. There was no videotape taken. There
 2 was no medical person involved. I'm not even clear on
 3 whether the witnesses were in the room with them. Plus
 4 one of the witnesses, Amos Workman, he notarized his
 5 own signature on the document. And that final document
 6 does not have my father's signature on all four of --
 7 on all the pages like the four previous versions of his
 8 estate. So basically there's a 20 year history of four
 9 different documents and one Revocable will that treat
 10 his three sons in an equal manner and their children.
 11 And three weeks before when I believe he was heavily
 12 medicated, which I can't find out unless I get
 13 cooperation from opposing counsel, he changes his will
 14 and froze me out.
 15 THE COURT:
 16 okay. And tell me how Ms. Wine is related to any of
 17 that in your father's testamentary capacity. Tell me
 18 --
 19 MR. SHOEMAKER:
 20 My -- my father looked -- he -- he -- he referred on
 21 more than one occasion as Ms. Wine was like a daughter.
 22 So perhaps it's been suggested that maybe she ought to
 23 be a witness that I depose and subpoena information
 24 from. I didn't really understand that distinction when
 25 I wrote this Pleading.

1 THE COURT:
 2 other than her being just like a daughter to your
 3 parents, tell me is there anything else regarding Ms.
 4 Wine.
 5 MR. SHOEMAKER:
 6 well, she was probably there the last -- on a daily
 7 basis involved with his healthcare for the last three
 8 months. And as I indicated earlier in my story she was
 9 posing as somewhat of a barrier to me interacting
 10 directly with my parents. And she never called me up
 11 when this elder fraud happened. Success elder fraud
 12 and said "Marshall, your parents are thinking about
 13 sending money to the Dominican Republic. Is your son
 14 in the Dominican Republic?" I mean potentially there
 15 could be a claim there for, I don't know, a lack of
 16 care as a housekeeper. I don't know what they -- I
 17 haven't decided to pursue that really.
 18 THE COURT:
 19 Well, that's not before us today.
 20 MR. SHOEMAKER:
 21 okay.
 22 THE COURT:
 23 All right. Anything else you would like to say?
 24 MR. SHOEMAKER:
 25 No?

1 THE COURT:
 2 Yes.
 3 MR. SHOEMAKER:
 4 Oh, thank you. No, thank you.
 5 THE COURT:
 6 I'll give you-all -- anything else you-all need to
 7 say?
 8 MS. CULBREATH:
 9 Very briefly, Your Honor. If you look at the will that
 10 is attached to the petitioner's Complaint dated June
 11 24, 2018 on page seven you will see the provision that
 12 discusses Ms. Wine, and it is a situation where if
 13 Polly survives Marshall the bequest lapses.
 14 THE COURT:
 15 Okay.
 16 MS. CULBREATH:
 17 She is not a taker under this will, Your Honor. She
 18 has zero to do with any of this.
 19 THE COURT:
 20 Okay. Mr. Haynsworth, anything further?
 21 MR. HAYNSWORTH:
 22 Briefly, Your Honor.
 23 THE COURT:
 24 Yes, sir.
 25 MR. HAYNSWORTH:

1 Just a response to something Mr. Shoemaker said, Judge.
 2 And we're getting into a lot more --
 3 THE COURT:
 4 I know.
 5 MR. HAYNSWORTH:
 6 -- behind the scene's history, but --
 7 THE COURT:
 8 I understand.
 9 MR. HAYNSWORTH:
 10 -- he felt compelled to clarify a statement, and so let
 11 me clarify as well. It should become apparent to the
 12 Court already that there is family dysfunction.
 13 THE COURT:
 14 Uh-huh.
 15 MR. HAYNSWORTH:
 16 Marshall's been estranged from his mom and dad, and his
 17 brother, Sloan, and younger brother, Jonathan, for
 18 years. This Email to which he refers was an Email he
 19 sent saying he was going to kill his brother. That was
 20 the proverbial straw that broke the camel's back as far
 21 as dad is concerned. And when we get into the merits
 22 you'll see that Marshall was in and out of his father's
 23 Estate Plan numerous times over the decades. He has
 24 talked to a hundred lawyers by his own admission about
 25 taking this case.

1 THE COURT:
 2 uh-huh.
 3 MR. HAYNSWORTH:
 4 If he wants to take a shot at everyone in the family
 5 over everything, that is certainly his right. And
 6 quite frankly, Your Honor, to drag his mother through
 7 the claims he's making in his dad's will contest is
 8 going to create a whole other can of worms in the
 9 family. And if he wants to have that fight, I think
 10 it's important that he fight it correctly. That he
 11 file the proper Petition. If he wants to try and force
 12 his mom to come in here and force the Court to appoint
 13 doctors to examine her and create the additional
 14 problems in the family that existed before, that is his
 15 right, but he's got to do it correctly. So I would
 16 simply request that the part of his case that isn't
 17 properly pled be kicked. Bring it back if he wants.
 18 But let's just narrow down our fight to daddy's will
 19 and his Trust.
 20 THE COURT:
 21 Okay. All right, then. Yes, sir?
 22 MR. SHOEMAKER:
 23 Thank you. So this notion of me being, I don't know,
 24 bad son and estranged is completely blown out of
 25 context. The first I learned of my father's Estate

1 Plan was he sent me a letter on August 2nd, 2010. This
 2 is what he said. "I put your children's one-sixth
 3 interest and your one-sixth interest in Trust to
 4 protect," and this is a quote, "and in your case
 5 because that was a period of uncertainty in your life
 6 and marriage." This was -- and he's referring to this
 7 non-revocable insurance Trust in 1988. Ten years
 8 previous. Or twelve years previous. Second thing that
 9 he said in this letter. "If I were doing it today I
 10 would have the entire one-third distributed to you
 11 outright." The rest of the -- the note is very loving.
 12 So that was -- that was 12 years after he wrote his
 13 first formal Estate Plan which is worth 4.9 million
 14 dollars, and which -- which isn't -- which isn't in
 15 play according to legal terminology in this Action
 16 here. For the next -- excuse me. For the next ten
 17 years he -- he created a Revocable Will and Trust that
 18 had three different versions and restatements. The
 19 last of which was in February of 2018. Just over five
 20 months when he died when he reaffirmed the notion of
 21 equity; the sons would be treated in an equal manner.
 22 And I guess we can get into the Email and all of that
 23 stuff too, but the man over 20 years reaffirmed over
 24 and over again I'm going to treat my three sons
 25 equally. So this notion that there was some long-term

1 permanent animus is not true and it's false.
 2 THE COURT:
 3 Okay. All right. Anything else that I --
 4 MS. CULBREATH:
 5 (Shakes head.)
 6 THE COURT:
 7 Okay. I just want to make sure I've looked at
 8 everything I need to look at. I'm going to take this
 9 under advisement. I'm going to have my ruling out to
 10 you-all by the end of the week. And, Mr. Shoemaker,
 11 does Ms. Campos-Ivey have your contact information? I
 12 will likely Email my ruling to the attorneys --
 13 MR. SHOEMAKER:
 14 Yes, ma'am.
 15 THE COURT:
 16 -- and I will include you in that, because I don't want
 17 to talk to them without you.
 18 MR. SHOEMAKER:
 19 Thank you.
 20 THE COURT:
 21 All right. She has your contact information?
 22 MR. SHOEMAKER:
 23 Yes, we're in Email contact. All of this.
 24 THE COURT:
 25 Okay.

1 MR. SHOEMAKER:
 2 Yes.
 3 THE COURT:
 4 All right, then. Okay. And that's what I'm going to
 5 do. I just want to make sure I've looked at the will
 6 and everything I need to look at. And I will have my
 7 ruling out to you by the end of the week. Thank you-
 8 all. We'll be adjourned.
 9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
 10 3:07 P.M.)
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CERTIFICATE OF REPORTER

1
 2
 3 I, TREASA HIX, a Notary Public in and for the State of
 4 South Carolina, do hereby certify that the foregoing 39
 5 pages represents a true and accurate transcript of the
 6 hearing in the Matter of James Marshall Shoemaker, Jr.,
 7 which was taken by me on the 21st day of October, 2029.

8 That I am not related to nor the employee of any of the
 9 parties hereto, nor related to or employed by any attorney
 10 or counsel employed by the parties hereto, nor interested in
 11 the outcome of this action.
 12

13
 14 Treasa Hix, Reporter
 15 Notary Public for South Carolina
 16 Commission Expires: 06/13/29
 17

18
 19 Treasa Hix
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ability 28:2 able 14:9 18:16 Absolutely 8:3 abundance 16:19 accepted 15:5 accurate 40:5 acted 11:25 action 9:20,25 23:3 37:15 40:11 activity 14:2 25:7 ad 10:1,3,16 15:22 26:11,12,14,17 add 16:3,20 17:21 20:10 added 16:22 addiction 13:22 22:5,6 addition 28:6 additional 36:13 address 14:25 15:1 17:2 adjourned 39:8 administration 19:4 admission 35:24 admit 25:11 advantaged 6:23 advisement 38:9 advisors 21:3 affairs 20:25 21:5 Affidavit 4:11 afford 6:7 aforementioned 1:13 agent 26:14 aggressive 24:13 aggressively 11:22 alcohol 22:6 28:5 alcoholism 13:21 28:6 alienated 31:11 alive 18:15 31:21 allegations 26:21 allege 23:3,9 alleged 10:5 Alternative 5:8 19:16 Amos 32:4 amount 4:15	animus 38:1 Anne 2:10 9:3 answer 24:16 apologize 17:5 apparent 35:11 apparently 15:23 APPEARANCES 2:1 appears 9:19 application 4:8 appoint 10:1 36:12 appointed 19:7 26:11 appointment 4:9 22:15 appraisal 4:11,14 approaching 18:18 appropriate 22:13 April 4:23 arculbreath@w... 2:14 area 28:24 argued 22:1 argument 16:21 18:23 arguments 7:12 arranged 11:19 aside 9:23 asked 13:22 25:23 27:15 asserting 9:21 15:18 assertion 10:9,10 10:14 assertions 10:7 assign 10:4 assigning 10:16 assist 6:17 assistance 7:24 assume 29:6 Atlanta 11:18 12:20 ATM 12:21 attached 34:10 attempts 9:20,22 attorney 2:15,23 6:4,13,24 7:4,6	10:4 18:24,25 26:13,15,16 27:10,16,17 40:9 attorneys 7:18 11:2 24:9,21 38:12 August 4:13,13 5:5 37:1 avail 31:11 aware 12:19	34:9,22 bring 23:3,25 36:17 broad 24:13 broke 35:20 brother 21:8,9,16 35:17,17,19 brothers 10:4 14:20 18:24 19:25 21:1 24:16 26:12 27:10 28:2 31:6,17,21 Brown 2:18 bumper 12:12 bunch 18:13	casual 29:13 cause 6:7 9:25 14:24,25 29:6 causes 9:20 23:18 caution 16:19 certain 7:11 19:17 23:9,10 29:25 certainly 15:16 18:16 20:4 36:5 Certificate 3:4 4:4 40:1 certify 40:4 challenge 18:15,22 23:15 challenged 18:7 challenging 18:13 change 20:21 27:20 changes 22:9 31:25 32:13 chapter 19:3,6 charge 10:2 chemically 22:14 children 14:4 31:22 32:10 children's 37:2 Christ 12:6 chronology 24:11 Church 12:6 circumstances 22:8 claim 9:16 10:9 24:23 33:15 claims 36:7 clarifications 19:22 clarify 35:10,11 clean 19:18,23 clear 11:14 32:2 close 13:14 co-conspirator 13:8 14:19 15:14 co-trustee 4:19,20 19:1 Code 19:4 Colloquy 3:3 come 12:11 21:15 21:17 23:25 26:24 36:12 comes 23:16
		B		
		back 23:16 24:15 25:16 27:18 35:20 36:17 background 4:4 bad 36:24 Bar 6:14,14 barrier 33:9 based 14:14 24:23 29:25 basically 21:24 29:13 32:8 basis 6:25 33:7 Baxley 2:11 bed 12:13,16 bedroom 12:12 25:14,17 behavior 2:4 13:17 believe 5:11 14:18 14:18 21:2 22:4 24:10 32:11 believes 18:8,18 belong 17:12 18:14 beneficiary 10:12 29:16 30:20 bequest 34:13 best 26:23 better 29:23 bigger 28:5 billable 22:20 bit 26:10 31:6 blown 36:24 bluntly 11:21 bottom-line 22:23 bought 13:1,2 Box 1:22 2:20 briefly 15:9 29:11		
			C	
			call 12:22 13:4 14:8 21:7,7,10 Callaghan 11:17 called 21:16 33:10 camel's 35:20 Campos-Ivey 38:11 can't 6:7 7:17,18 25:20 32:12 cancelled 11:22 capacity 9:21 15:12,18 23:22 26:9 27:2,24 28:4 32:17 card 14:23 15:5 care 14:9 18:21 21:10 23:8 25:1 25:3,5 30:11 33:16 caregiver 25:5 caregivers 31:13 caretaker 13:10 Carolina 1:1,17,23 2:13,21 22:12 40:4,15 Caroline 1:14 Carter 2:11 Cary 31:3 case 1:6 4:3 6:7 7:4,12 11:16 14:23 15:17 35:25 36:16 37:4 cases 22:19	

commencing 1:18 Commission 40:16 communicate 21:11 communicated 27:17,18 communication 21:8 communications 27:12 compared 14:5 compelled 35:10 competency 18:21 competent 18:16 Complaint 9:15 9:19,19 10:8,10 15:10,14,15,16 34:10 completely 13:9 36:24 comply 9:25 components 20:17 concept 22:18 concerned 35:21 concerns 12:17 13:20 CONCLUDED 39:9 condition 24:24 confronted 11:21 confronting 31:9 confusing 26:10 26:18 Conservator 10:21 19:7 23:24 consider 11:15 considered 20:23 consolidate 23:4 conspiracy 25:11 constantly 12:10 constitute 10:19 consult 6:3 contact 38:11,21 38:23 CONTAIN 3:24 Contest 18:14,17 20:23 23:15 36:7 context 36:25 contingencies 29:25 30:2	contingency 6:7 6:25 14:14 continuance 5:13 continue 18:19 continued 30:2,10 contrary 14:12 control 31:15 conversation 12:8 25:17 convince 28:2 convinced 19:25 cooperation 32:13 copied 31:3,6 corners 15:10 correct 5:16,18 6:11 8:6,15 23:7 correctly 36:10,15 couldn't 12:5 counsel 3:3 7:24 21:19 22:1 28:23 32:13 40:10 count 10:19 Counterclaim 15:17 County 1:2,16 couple 12:18,18 23:20 26:24 court 1:1,15,16 3:3 4:1,24 5:19 5:23 6:2,8,12,16 6:20 7:1,4,10,17 7:22 8:4,9,13,18 8:22 9:7,12,23 10:1,2,24 11:6 11:10 15:3,6,25 16:7,14,18 17:1 17:2,6,14,18,24 18:2,3 19:10 20:7,13 22:10,24 23:10,19 25:24 26:4,8 27:6,23 28:10,15,19,25 29:8,14,20 30:1 30:6,12,18,24 32:15 33:1,18,22 34:1,5,14,19,23 35:3,7,12,13 36:1,12,20 38:2 38:6,15,20,24 39:3	courtroom 21:24 create 36:8,13 created 37:17 Creditor's 4:12 cross-examine 7:5 crux 9:10 Culbreath 2:10 8:6,7,11 9:2,4,9 9:14 15:7,8 18:6 20:9,11 34:8,16 38:4 Culbreath's 16:21 curb 11:20 current 21:3 cut 19:24 D dad 19:24 35:16 35:21 dad's 27:1 36:7 daddy's 36:18 daily 33:6 date 4:5,24 12:18 dated 4:23 34:10 daughter 13:12 21:6 31:19,19 32:21 33:2 day 1:17 13:10 15:19 24:18 40:7 days 21:12,15 26:25 deal 5:11 18:21 dealing 19:24 deals 19:4 death 4:4,5 13:11 14:16 21:6 22:2 22:9 25:13 27:20 27:25 29:7,12 death-bed 22:9 Debora 1:9 2:15 5:2 12:10,19 13:7 14:23 20:17 decades 35:23 December 11:16 12:9 13:11 decided 33:17 decision 21:21 decisions 25:6 Definite 5:9 19:17 definitely 28:4	29:4 definition 10:17 delay 24:20 demand 12:11 Department 13:18 dependency 10:6 26:17 dependent 22:15 depos@legaleag... 1:25 depose 32:23 detailed 13:19 devisee 30:21 didn't 15:1 21:9,9 '23:5,6 32:24 died 13:19,25 21:5 37:20 different 10:18 32:9 37:18 directly 21:10 33:10 Discovery 28:23 discusses 34:12 discussion 9:6 disease 29:7 dismiss 5:2,8 19:8 19:9,16 24:10 dismissed 10:23 15:24 19:12,15 20:6 dispute 18:11 distinction 32:24 distributed 37:10 doctors 36:13 document 4:18,19 4:21 32:5,5 documents 14:13 18:10 24:1 29:19 29:24 32:9 Doe 8:21,24 doesn't 10:13 18:14 30:19 doing 23:23 37:9 dollars 31:18,19 31:22 37:14 Dominican 12:23 12:24 33:13,14 don't 7:8 14:14 16:25 17:11,12 18:11 19:13	22:21 23:22,23 24:2 25:17 26:1 26:24 33:15,16 36:23 38:16 door 11:25 drag 36:6 Drive 2:12 driving 12:20 drove 11:18 drug 13:21 28:6 due 5:3 13:21 22:5 Durable 26:15 dysfunction 35:12 dysfunctional 31:7 E EAGLE 1:21 earlier 5:12 33:8 economy 22:18 24:5 Ed 21:23 Edward 1:9 2:24 4:17 5:6 effort 22:20 either 7:18 31:21 elder 31:4 33:11 33:11 Email 13:19,24 21:17,18,25 31:3 35:18,18 37:22 38:12,23 emotional 21:21 employed 40:9,10 employee 40:8 endeavored 19:18 entire 21:22 37:10 envelope 13:6 environment 31:7 equal 32:10 37:21 equally 37:25 equity 37:21 Esquire 2:10,17 Estate 4:15,25 9:24 10:11,12 14:13 20:18 24:3 24:19 26:21 27:11,19 28:8 32:8 35:23 36:25 37:13 Estate's 31:14

estranged 35:16 36:24	21:11 22:2 24:23 25:9,13,16 28:16 29:5 30:10 31:15 32:20	four 13:18 15:9 32:6,7,8	gross 4:14	32:8 35:6
Evans 1:10 2:18 2:24 5:6	father's 12:4,12 12:15 18:7,13,22 21:6,12 22:6 24:3,19 26:21,22 27:20,25 28:3 31:14 32:6,17 35:22 36:25	frankly 19:21 36:6 fraud 31:4 33:11 33:11	Guardian 10:1,3 10:16,21 15:22 23:24 26:11,12 26:14,17	Hix 1:15,19 40:3 40:14
evening 12:20	February 37:19	friend 22:17	Guardianship 20:18,21,22 22:16	Honor 8:8,12,17 9:3,4,11 10:7,22 15:9,17 16:6 18:2,6 19:21 23:2 34:9,17,22 36:6
event 12:7	FedEx'd 13:6	front 11:21,25 28:12	guess 37:22	Honorable 1:14
events 27:22	feeling 13:14	froze 32:14	guessing 13:5	hoping 6:24
everybody 8:23 25:18 26:25	felt 35:10	fully 14:4	guy 12:25	Horlbeck 1:14
everybody's 26:23	fight 19:2,3 20:1,2 23:7 36:9,10,18	funeral 14:2,2 21:12,15,16,18 21:22 28:4	H	hospice 25:1,3,5,5 28:16
evidence 6:15 7:16 31:24	fighting 19:5	further 10:2 34:20 39:9	Hall 31:3	hour 1:18 12:3
ex-wife 21:14	file 18:20 20:4 36:11	G	happened 12:18 33:11	hours 22:20
examine 36:13	filed 4:6,9,24 5:1,4 5:7 8:24 9:4,16 24:8	generally 12:13	happy 9:3	house 12:1,3
example 24:8	filling 4:22	Georgia 2:6	harassment 15:24 17:12	housekeeper 9:17 10:6 14:17 15:11 15:13 16:12 33:16
exception 21:23	final 29:12 32:5	getting 19:10 24:21 35:2	hard 24:6	huge 25:18
exclude 28:3	finally 12:14	give 15:16 24:8 28:7 34:6	hasty 31:25	hundred 6:6 35:24
excluded 14:4,4	financial 18:25 20:22 24:1,19 27:16	given 24:25 25:1	haven't 33:17	Hunter 1:9 2:23 5:5
excuse 14:18,22 37:16	find 32:12	giving 29:5	Haynsworth 2:17 2:18 8:15,16,20 16:1,4,9,16,21 17:19,22 18:1,5 23:1 24:14 34:20 34:21,25 35:5,9 35:15 36:3	husband 21:14
execute 25:20	fine 9:3 16:8 19:2 20:1 24:1	go 7:25 9:3 12:5 13:15 19:6 20:9 21:22 23:15 27:18 31:24	he's 18:10 19:5,13 23:11 36:7,15 37:6	I
executed 18:9	first 8:25 31:15 36:25 37:13	going 7:24 11:25 12:1,2,10,25 13:15,16 14:6 17:2 20:18 21:13 22:22 26:20 29:1 29:4,24 31:18,23 35:19 36:8 37:24 38:8,9 39:4	head 38:5	I'll 11:11 16:17 20:20 22:2 34:6
EXHIBITS 3:6	five 19:6 37:19	good 21:13 31:16	healthcare 10:3 18:24 26:13,15 33:7	I'm 6:24 9:3 11:5 12:1,15,16 13:4 13:15,16 16:24 20:18,18 22:3 24:6 25:25 26:7 27:7 28:18,18 29:23 30:5 32:2 37:24 38:8,9 39:4
existed 36:14	Flocking 2:4	goodbye 25:16	heard 1:14 22:10 23:14	I've 17:17 20:21 20:21 22:16 23:12 25:22 28:22 30:13 31:9 31:10 38:7 39:5
expected 7:3	focus 16:24	gotten 12:22 28:22	hearing 1:13 4:25 39:9 40:6	idea 15:13
experience 28:7	focused 17:9	graces 31:16	heavily 32:11	III 1:7 2:17 5:15
Expires 40:16	follow 7:3	graduated 6:13	help 7:17,18 12:12 13:1 23:21	ill 22:14
explained 22:16	followed 15:3	grandiose 25:12	here's 14:10	ill- 21:2
F	football 12:7	granted 5:13	hereto 40:9,10	important 11:15 36:10
face-to-face 12:8	force 36:11,12	green 14:23 15:5	hire 6:7 10:5,7	
fact 12:5 29:4	forgot 13:25	Greenville 1:2,16 1:17,23 2:13,21 11:18 13:18 22:12	history 27:19,19	
facts 11:15 13:16 16:24 17:9 20:24 21:3 22:4,7 28:8	formal 4:25 37:13			
factual 10:9 16:5	forth 9:20			
failed 10:8 13:9	forward 7:24,25 17:10 21:13			
failure 15:2	found 14:3			
fair 25:20				
fall 11:23 12:4				
false 38:1				
familiar 6:16				
family 14:7 15:20 21:22 31:7 35:12 36:4,9,14				
far 35:20				
fast 18:18				
father 11:20,23 12:8 13:2,10,19 13:25 18:8 21:5				

importantly 15:21	interrelated 22:19	K	litigation 17:11	MATERIAL 3:24
incapable 20:24	Interrogatories	kicked 36:17	live 11:18	3:25
incapacitance	24:12,14,17,22	kickling 18:23,25	LLC 2:18	matter 1:4,13 4:2
22:4	24:25	kids 21:14	locked 12:25	5:12 6:17 16:5
incapacitated	interrupting 12:13	kill 35:19	log 25:6,6	40:6
13:21	intertwined 22:8	killers 29:6	long 24:20 28:16	matters 22:13
incapacity 25:10	24:4	kind 28:11	long-term 22:5,6	McLeod 2:18
26:22 27:2	intimate 16:10	know 6:23 7:8	37:25	mean 25:23 33:14
incident 12:17	intimately 14:10	11:13 13:7,9	longer 16:13	means 7:9
13:17,20 31:5	27:13	15:1 17:3,11	look 10:17 13:24	mechanism 19:8
include 29:1,4	Intricately 22:8	19:2 23:8,22,23	34:9 38:8 39:6	medical 20:22
38:16	Introduced 3:7	24:2 25:17 26:24	looked 30:13	24:24 27:15 32:2
included 14:12	inventory 4:10,14	29:23 33:15,16	32:20 38:7 39:5	medicated 32:12
26:5	involved 14:7,11	35:4 36:23	looking 6:6 9:15	medications 25:6
inclusion 11:16	22:7 27:13 32:2	knowing 7:23,23	21:13	member 15:20
incompetent 18:19	33:7	knowledge 16:10	looks 9:24	mentally 22:14
INDEX 3:1	irrelevant 14:1	28:20	lot 12:11 26:5 35:2	mentioned 13:12
indicated 26:10	isn't 36:16 37:14	KNOX 2:17	loving 37:11	merits 19:10 35:21
29:16 33:8	37:14	knoxhaynswort...	lump 18:22 23:17	mess 25:18,19
indicates 4:14	isolate 14:20	2:22	lunch 11:19,22	million 31:18,18
indicating 4:5,12	issue 7:14 9:21	L	12:5	31:22 37:13
indirectly 31:3	18:20 20:23 23:5	L 2:17	M	mind 13:3 28:7
individually 4:21	23:5,8 24:3 28:9	lack 5:3 33:15	M 1:14	mix 16:13
11:2	it's 16:11 20:3	lapses 34:13	ma'am 6:19 7:21	mom 19:25 23:8
influence 18:9	22:15 23:17	law 6:14,16	9:8 10:25 17:23	35:16 36:12
20:1	25:18,19 26:10	lawsuit 15:23	20:12 38:14	mom's 27:2,24
Informal 4:8	30:9 31:12 32:22	27:13	machines 12:21	momma's 10:5,14
information 24:18	36:10 38:1	lawsuits 25:21	maid 9:18 10:14	money 12:21
25:7,8 32:23	J	lawyer 19:20	14:16 15:13	33:13
38:11,21	jail 13:1	22:17,18	mail 15:3	months 25:2 28:22
inherit 14:14	James 1:5,7 4:2	lawyers 29:23	maintain 31:15	33:8 37:20
31:18,23	5:1,15 40:6	35:24	making 12:11 36:7	Moore 1:10 2:25
inherited 31:23	Jane 8:21,23	learned 36:25	man 37:23	4:20,23 5:7
inheriting 31:17	January 14:3	led 21:21 22:1	managing 20:25	16:10 19:1 24:16
31:22	John 8:21,23	legal 1:21 37:15	21:4	27:14 31:3
initiated 27:13	21:23	Lesley 1:10 2:25	manipulation 21:1	morning 11:23
injections 29:5	Jonathan 1:10	4:20 5:7 18:25	manner 32:10	mother 12:21 13:1
inside 12:1	2:24 5:6 35:17	let's 19:9 20:2	! 37:21	13:4,5,5 16:13
insurance 37:7	Jones 2:11	22:3 23:11 28:11	marriage 37:6	18:15,18 19:7
interacting 28:16	Jr 1:5 4:3,5 5:1	28:11 36:18	Marshall 1:5,7 2:3	20:22,24 21:4,7
33:9	40:6	letter 37:1,9	4:2 5:15 19:19	21:11,16,21
interaction 17:13	Judge 22:11 35:1	life 14:11 27:14	33:12 34:13	23:23 24:15 25:9
25:10	judicial 22:18 24:5	37:5	35:22 40:6	25:14,15 27:17
interactions 12:14	Julie 11:17,24	limitation 24:18	marshall@flock...	28:3 30:3,10
25:9 29:2	12:3 21:14 25:12	Limitations 23:16	2:7	31:15 36:6
interest 10:11	July 4:6,7,10,12	lines 21:8	Marshall's 35:16	mother's 14:16
11:14 24:4 26:24	12:9	Litem 10:1,3,17	Mary 1:9 2:23	22:4 23:21 26:9
31:12 37:3,3	June 5:1 34:10	15:22 26:11,12	4:18,21 5:5	26:16 27:14
interested 28:18	jury 22:11	26:14,17	Massey 2:18	Motion 5:2,8 8:25
40:10				9:5,5,11 18:11

19:8,15,17,19 24:10 move 17:10,20,25 23:4 multiple 22:19	32:16 33:21 34:15,20 36:21 38:3,7,25 39:4 old 25:2 older 25:2 oldest 28:3 once 23:12,14 25:4 one-sixth 37:2,3 one-third 37:10 opportunity 6:3 opposing 32:13 original 14:24 ought 32:22 outcome 40:11 outright 37:11 overall 19:23 overlapped 25:22	personalities 22:7 27:21 Peter 12:23 Petition 4:25 9:15 18:12,21 19:23 23:10,18 24:9 26:9 36:11 Petitioner 1:8 2:8 5:4,13,15 10:13 10:21 Petitioner's 34:10 phone 12:22 13:3 13:23,23 phrase 16:25 physician 25:3 physician's 25:4 pick 13:3 picture 28:5 place 22:15 Plan 35:23 37:1,13 play 30:17 37:15 player 30:14 players 31:6 plead 19:20 23:6 pleaded 25:15 Pleading 14:24 19:17 32:25 Pleadings 19:18 20:5 Pleasantburg 2:12 please 18:2 25:15 pled 19:13 36:17 Plus 32:3 point 18:17 22:21 23:13 police 13:18 31:4 policeman 13:22 Polly 16:12 34:13 posing 33:9 position 19:11 positioned 11:24 positive 30:5 Post 1:22 2:20 15:4 potential 14:19 potentially 14:19 33:14 Power 10:3 18:24 18:25 26:15,16 Powers 26:13	27:15,16 PR 19:1 practically 7:9 prejudice 10:23 prepared 20:19 presence 13:3 present 7:4,11 8:10 previous 32:7 37:8 37:8 previously 11:19 13:11 primary 25:2,4 27:9 prior 27:19,20,25 Pro 2:3 19:19 probably 6:17 13:18 19:22 33:6 probate 1:1,13,16 4:8,15 6:16 19:4 22:11 problem 14:8 18:12 23:17 problems 36:14 proceed 23:6 proceeding 19:13 process 9:10 22:22 produced 21:19 Production 24:12 24:17,23,25 professional 21:3 31:13 prohibit 11:25 proper 5:3 10:15 10:22 18:20 19:3 20:5 23:3,17 36:11 properly 19:12,13 23:6,13 36:17 proposed 20:21 protect 37:4 Protected 10:20 protection 22:14 proverbial 35:20 providing 10:16 provision 34:11 provocative 21:20 Public 1:15,20 40:3,15 Publication 4:11	published 4:12 pulled 11:20 purported 12:22 21:20 pursuant 5:3,9 26:14 pursue 33:17 push 18:19 20:3 put 12:12 13:5 18:10,12 26:25 37:2
N	P	Q	R	
named 14:11 names 24:14 narrow 36:18 need 17:2 34:6 38:8 39:6 needs 18:20 20:4 23:9,15,24 never 12:24 33:10 New 13:6 noise 12:11 non- 23:14 non-revocable 37:7 notarized 32:4 Notary 1:15,20 40:3,15 note 37:11 Notice 4:12 5:7 notified 21:5 notion 25:11 36:23 37:20,25 number 1:6 4:3 20:24,25 21:2 numerous 35:23 nurse 25:5	P.A 2:11 p.m 1:18 39:10 page 34:11 pages 32:7 40:5 pain 29:6 paperwork 15:2 parents 11:19 12:2 12:4,14,16,20 13:14,20 14:9,20 14:25 29:2 31:10 31:20 33:3,10,12 part 14:5,7,8 15:15 19:15 36:16 participate 14:6 participated 13:8 particular 15:19 parties 40:9,10 partner 11:17 party 10:15,18,19 10:22 15:21 30:19 passed 6:14 12:9 payroll 31:14,14 people 10:18 29:5 perfect 23:25 period 37:5 permanent 38:1 person 10:20 25:4 32:2 Personal 4:9 27:10	question 7:5 25:23 27:25 questions 23:21 39:9 quite 26:19 36:6 quote 37:4 QUOTED 3:24,25	R 2:10 rational 13:9 reaction 21:25 read 3:25 14:3 30:13 reading 9:19 15:9 reaffirmed 37:20 37:23 real 9:10 really 8:25 24:4 32:24 33:17 reason 13:2 15:22 31:8 recall 14:15 receipt 4:16 14:24 receive 30:20 received 21:7,7 24:9,11,18 records 25:1,2 29:1 reference 15:10 referred 13:12 32:20 referring 37:6 refers 35:18 reflect 25:8 refused 25:16 regard 10:16	

15:21 regarding 11:15 16:20 33:3 related 18:6 22:5 22:13 24:2 25:25 26:3,21,23 27:7 27:21,22 28:4,9 32:16 40:8,9 relationship 27:9 release 4:17 relief 9:17 remainder 8:14 remember 16:25 removing 12:21 replace 10:6 reported 1:19 13:17 Reporter 1:15,19 3:4 40:1,14 represent 7:2 Representative 4:9 27:11 represented 8:6 8:15 representing 5:24 6:9 7:25 represents 40:5 REPRODUCED 3:25 Republic 12:23,24 33:13,14 request 9:22 10:1 19:23 24:12,17 24:22 36:16 requested 5:13 requirements 4:16 4:22 resigned 16:12 respect 17:5 respond 11:1,3 19:22 20:14 responded 24:16 Respondent 2:15 Respondents 1:11 2:23 5:5 8:14,21 19:15 21:19 22:1 24:9,21 28:23 response 5:2,4 15:7 18:10 19:18 20:8 22:25 23:11	24:22,24 28:23 31:5 35:1 rest 18:23 20:3 37:11 restatements 37:18 result 14:20 retired 22:17 Revocable 32:9 37:17 Ridge 1:17 right 5:14 6:3,9 7:2 8:5,10,14,19 8:23,24 9:13 10:25 11:9,11 15:7 16:1,1,15 17:7,10,15,19 20:4,8,14 23:20 26:19 29:15 30:13 33:23 36:5 36:15,21 38:3,21 39:4 rise 15:16 room 12:10 13:13 32:3 rule 9:5 rules 5:9 6:15,16 7:3,16,17 15:3 15:21 17:3 ruling 38:9,12 39:7 running 27:14 S S 4:18,21 S.C 1:20 sat 12:3 save 22:20 saw 29:11 saying 7:8 23:11 27:24 29:21 35:19 says 29:24 scene's 35:6 scheduled 5:12 school 6:14 script 22:3 Se 2:3,5 19:19 second 9:25 12:16 16:25 20:20 37:8	see 5:14 8:24 12:2 22:3,21 25:20 28:8 34:11 35:22 seeing 21:13 27:7 sending 13:23 33:13 sense 22:21 23:25 sent 13:19 14:25 24:15 35:19 37:1 separate 25:21 sequence 27:22 serve 10:18 15:2 served 15:11 21:3 service 5:4 9:10 15:5 services 14:16 set 9:20,23 seven 34:11 Shakes 38:5 she's 10:20,20,21 14:6,7,8,15,17 16:12 20:25 21:2 23:23 29:24 30:20,20 Shoemaker 1:5,7 1:10,10 2:3,24 2:24,25 4:3,5,17 4:18,21 5:1,6,7 5:15,17,21,25 6:5,10,18,22 7:7 7:20 8:2 9:16,18 9:22,22 10:8 11:4,8,12 16:23 17:4,8,16 18:6 20:15 23:2,20 24:7 26:2,6 27:4 27:8 28:1,13,17 28:21 29:3,10,18 29:22 30:4,8,16 30:22 31:1 32:19 33:5,20,24 34:3 35:1 36:22 38:10 38:13,18,22 39:1 40:6 Shoemaker's 16:12 shortly 24:8 29:12 shot 36:4 show 27:21 shown 21:17	shunned 21:24 shuttled 25:14 sic 10:13 12:20 sign 15:4 signature 32:5,6 signed 4:17,18,19 4:21,23 14:24 simply 10:13 36:16 single 21:18 sir 5:20 10:25 11:11 17:19,25 18:4 20:8,8,14 22:25 34:24 36:21 sitting 11:17 situation 34:12 six 10:17 25:2 size 24:19 Sloan 1:9 2:24 4:17 5:6 35:17 Sloan- 2:23 Sloan-Shoemaker 1:9 5:6 Smyrna 2:6 somebody 6:25 12:22 13:13 14:10 somewhat 14:1 33:9 son 12:23 28:3 31:19 33:13 36:24 son's 13:4 sons 32:10 37:21 37:24 sorry 22:3 25:23 26:7 sort 10:11 12:12 15:13 20:17 28:7 29:13 31:6 South 1:1,17,23 2:12,13,21 22:12 40:4,15 speak 9:20 SPEAKER 3:25 speaking 7:9 spent 12:20 31:20 spite 15:23 16:25 17:11	spoken 13:22 Square 1:16 stand 17:3 start 8:25 9:1 started 21:11 state 1:1 10:8 23:2 40:3 stated 11:22 statement 5:9 35:10 Statute 10:15 18:18 19:14 23:7 23:16 statutory 4:16,22 stick 13:16 22:2 28:11 story 33:8 straw 35:20 Street 2:19 Strike 19:16 stuff 18:14 19:12 20:3 25:21 37:23 stupid 19:11 subpoena 32:23 Success 33:11 suffocating 29:7 suggested 30:9 32:22 suppose 23:4 supposedly 21:25 sure 29:23 38:7 39:5 survived 30:10 survives 34:13 suspect 26:20 switched 24:14 T take 6:6,25 10:3 11:19 14:9 19:11 26:12 31:2,2 36:4 38:8 taken 1:13,14 6:14 23:8 25:4,19 32:1 40:7 taker 34:17 talk 13:13 20:20 21:1 38:17 talked 12:4 35:24 talking 12:7 14:21

17:9 29:5 team 10:5 Tecumseh 2:5 tell 21:10 24:2 26:20 32:16,17 33:3 ten 37:7,16 term 16:24 25:12 26:19 29:13 terminology 37:15 terms 17:11 terrible 21:9 testamentary 9:21 15:18 18:9 26:22 27:2 32:17 testate 4:7 thank 10:25 16:15 17:7,13,15,19 20:8 34:4,4 36:23 38:19 39:7 that's 9:3 14:11,21 16:8 17:3,7,17 18:11,12 19:5,12 19:14 20:2,5 22:22 23:5 24:2 25:22 26:17,19 26:20 27:14 33:19 39:4 there's 7:11 10:9 19:7,22 20:17 22:17,17 32:8 they're 15:17 29:4 31:18,23 they've 15:5 thing 14:23 19:9 37:8 things 6:15 7:12 7:15,18,23 20:6 23:3,9,10 think 17:12 19:11 19:13 22:7 26:15 27:24 28:2,5,22 29:1 31:24 36:9 thinking 33:12 thinks 18:15 thought 14:6 three 13:24 19:4 20:17,19 21:2 22:2 25:13 27:20 27:25 28:22	32:10,11 33:7 37:18,24 throw 19:9 time 18:9,17 22:20 24:6,6 29:12 31:20 times 35:23 today 4:2 5:11,14 5:20 6:9 7:3,13 7:25 8:10 9:10 14:21 33:19 37:9 told 13:4 town 12:6 traction 6:24 traditional 14:5 Trail 2:5 transcript 3:24 40:5 Treasa 1:15,19 40:3,14 treat 10:5 26:16 32:9 37:24 treated 37:21 treatment 31:11 true 38:1 40:5 Trust 9:23 10:7 18:7,13,23 23:15 29:17 36:19 37:3 37:7,17 Trusts 19:1 truth 31:9 try 13:16 19:6 36:11 trying 12:11 16:24 31:10 twelve 37:8 twice 22:22 two 9:20 10:4 11:14 18:24 20:25 24:3,15 25:20,25 26:3,23 27:7 31:16 type 10:8 18:8	Uncle 21:23 unclear 15:18 understand 4:24 6:13 7:2,6,8,19 19:19,20 23:21 32:24 35:8 understanding 25:3 understands 6:15 understood 20:16 undetermined 12:18 undis 12:17 undue 18:8 20:1 unit 14:7 University 1:16 unprofessional 32:1 unravel 25:19 untreated 28:5,6 use 15:4 29:13	20:3 23:2,7 36:4 36:9,11,17 ward 10:21 wasn't 15:2 30:2 way 4:4 7:11 14:5 19:3 20:16 we'll 17:20 39:8 we're 4:2 14:21 18:11 19:24 20:2 23:14 35:2 38:23 website 22:12 week 38:10 39:7 weekend 12:6 weeks 13:18,24 22:2 24:20,20 25:13 27:20,25 32:11 weigh 16:5 welcome 21:17 went 12:2 25:12 whacked 29:13 what's 30:21 who's 11:17 12:23 14:10 22:17 Williams 2:19 Wills 19:5 Willson 2:11 Wine 1:9 2:15 8:5 8:24 9:4,17,17 10:9,10,19 11:16 11:21 12:10,19 13:2,7,8,12 14:24 15:11,19 15:20 16:11 20:17 29:15,15 31:2,4 32:16,21 33:4 34:12 Wine's 5:2 witness 32:23 witnesses 7:5,5,13 26:25 32:3,4 won't 7:13,13 wondering 25:25 work 12:15 30:3 Workman 32:4 worms 36:8 worth 16:11 37:13 written 9:23 31:8 wrote 11:13 32:25 37:12	X Y yard 11:21 year 5:12 27:19 32:8 years 12:19 15:12 31:9 35:18 37:7 37:8,12,17,23 York 13:7 you- 39:7 you-all 9:1 34:6,6 38:10 you'll 7:3 13:13 27:18 35:22 you're 5:20 6:9 7:8,24 16:2 17:2 26:19 27:24 29:21 you've 23:13 26:5 younger 35:17
		V valid 9:16 Valium 10:6 22:5 26:16 value 4:15 various 19:1 venue 22:13 versions 32:7 37:18 videotape 32:1 Vietnam 21:6 visit 12:16 25:12 visited 13:10 29:11 vulnerable 20:25 21:4		Z zero 9:16 10:10 15:10 34:18
		W waiver 4:16,22 walked 12:2 want 7:14,25 10:13 11:1,2 14:8 19:12 20:1 38:7,16 39:5 wanted 19:14 20:10 26:10,11 26:13 wants 18:19 19:2,6		0 06/13/29 40:16
	U U.S 15:4 Uh-huh 29:9 35:14 36:2 un 29:12 uncertainty 37:5		1 1.6 31:22 10(b) 5:10 106 2:19 10th 4:13 12 37:12 12(b) 5:10 12(b)(1) 5:10 12(b)(6) 5:3,10 9:5 9:11 12(f) 5:10 12th 5:5 14th 4:6 15,000 13:6 17 12:9 1859 2:5 18th 4:7,10 1988 37:7	2 2:27 1:18 20 27:19 32:8

37:23	864-467-1373 1:24		
2010 37:1	864-587-7050 1:24		
2017 11:17	872 2:12		
2018 4:6,7,10,13			
12:9 34:11 37:19	9		
2018ES2301729			
1:6 4:3			
2019 1:18 4:23 5:1			
5:5 40:7			
21st 1:17 40:7			
24 34:11			
2464 2:20			
25th 4:23			
27th 4:13 5:1			
29602 2:21			
29606 1:23			
29607 2:13			
2nd 37:1			
3			
3.3 31:17			
3:07 39:10			
30 24:18			
30080 2:6			
301 1:16			
303 10:1			
33 31:9			
39 40:4			
3rd 4:13			
4			
4 3:3			
4.9 37:13			
40 3:4			
46,540 4:15			
5			
5 31:18			
50,000 14:14 29:24			
30:11			
500,000 31:23			
5682 1:22			
6			
62-5-9:25			
62-5-101 10:15			
7			
7th 11:16			
8			

STATE OF SOUTH CAROLINA FILED IN THE PROBATE COURT

COUNTY OF GREENVILLE MAY 19 2021 CASE NO: 2018ES2301729
GREENVILLE COUNTY PROBATE COURT

ORIGINAL

IN THE MATTER OF:

JAMES MARSHALL SHOEMAKER, JR., Deceased

JAMES MARSHALL SHOEMAKER, III,
PETITIONER,

MARY HUNTER SLOAN SHOEMAKER, EDWARD SLOAN SHOEMAKER,
JONATHAN EVANS SHOEMAKER, and LESLEY MOORE,
RESPONDENTS.

Probate hearing taken in the aforementioned matter was heard before the Honorable Clayton L. Jennings taken before Treasa Hix, Court Reporter and Notary Public, at Probate Court, Greenville County Square, 301 University Ridge, Greenville, South Carolina, on the 7th day of April, 2021, commencing at the hour of 2:06, p.m.

REPORTED BY: Treasa Hix, Reporter
Notary Public for S.C.

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Ex. A

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2

1 THE COURT:

2 We are here today in the matter of James Marshall
3 Shoemaker, III. The petitioner is James Marshall
4 Shoemaker -- I'm sorry. We're here today in the matter
5 of James Marshall Shoemaker, Jr.; correct?

6 MR. BLINCOV:

7 That's correct.

8 THE COURT:

9 The Petitioner is James Marshall Shoemaker, III. The
10 Respondents are Mary Hunter Sloan Shoemaker, Edward
11 Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley
12 Moore, and John and Jane -- or Jun Doe. And we are
13 here on a Motion for Summary Judgment filed by the
14 Respondents. The Respondents are represented by Mr.
15 Knox Haynsworth, III. And the Petitioner is
16 represented by Mr. John Blincow (pronounces Blen co).
17 Am I pronouncing your last name correctly?

18 MR. BLINCOV:

19 That's it. Yes, sir. That's correct.

20 THE COURT:

21 Very well. Respondents provided notice of today's
22 hearing and Mr. Haynsworth, I'll let you proceed.

23 MR. HAYNSWORTH:

24 Your Honor, as a housekeeping matter, and I can address
25 it on the back end or the front end. I received an

3

2

1 INDEX

2
3 Colloquy between The Court and Counsel..... 4
4
5 Certificate of Reporter..... 35
6

7 EXHIBITS:

8 (None marked)
9
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11
12
13
14
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16
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18
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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
25 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

4

1 Affidavit and a Memo opposing my Motion, I guess,
2 yesterday. I wasn't sure whether the court had that or
3 not. I have some thoughts as to whether that Affidavit
4 is proper and can be considered.

5 THE COURT:

6 I received it today, and I did notice that the
7 Affidavit did not have any signature or execution by a
8 notary public, if you're referring to that issue?

9 MR. HAYNSWORTH:

10 That is, Your Honor. And we're sort of -- on that
11 there are a couple of issues if -- why we're talking
12 about it. And I've got cases I'll hand up and a copy
13 for Mr. Blincow that address these issues. It's got to
14 be notarized. Under rule 5 it is crystal clear an
15 opposing Affidavit has got to be filed two days before
16 the hearing. This was not. This Motion was brought
17 June of '19. Mr. Blincow appeared May of 2020. I've
18 never ever, ever received any Interrogatory Answer
19 updating listing any expert witness. Now, obviously had
20 I known about this guy I would have gone and deposed
21 him and would have been able to address it. But for
22 the reason that he's never been identified in Discovery
23 given the length of time, and rule 5, and the fact it
24 is not notarized, I don't think it can be considered
25 for purposes of our hearing today. That's my two cents

5

1 worth on that issue, obviously. But the important
2 opinion is yours, but I wanted to get that out to the
3 extent the Affidavit is -- has been filed or --
4 THE COURT:
5 All right. I'll let Mr. Blincow respond to that after
6 you have already proceeded with your arguments.
7 MR. HAYNSWORTH:
8 Okay.
9 THE COURT:
10 You may proceed.
11 MR. HAYNSWORTH:
12 Okay. All right, Judge. Would it be possible --
13 THE COURT:
14 It's okay with me if everyone else is okay with removal
15 of Mr. Haynsworth's mask,
16 MR. BLINCOW:
17 It's okay with me.
18 MR. HAYNSWORTH:
19 I figure you're the one in the line of fire and you've
20 got the plexiglass --
21 THE COURT:
22 And I've had --
23 MR. HAYNSWORTH:
24 -- and the distance.
25 THE COURT:

6

1 -- one shot, and I've got a plexiglass shield. And so
2 I'm about 12 feet from you, so I'm protected.
3 MR. HAYNSWORTH:
4 I'll try not to project any further than --
5 THE COURT:
6 All right.
7 MR. HAYNSWORTH:
8 -- six feet. Your Honor, I don't know if you've had a
9 chance to read our Memo or the Affidavits filed with
10 the Motion, but essentially Marshall Shoemaker, one of
11 three children, has challenged his father's Estate and
12 Trust and brought a lawsuit contending that the will
13 and Trust should not be considered proper because
14 they're the product of undue influence and lack of
15 testamentary capacity. I have submitted, Your Honor,
16 you know, ten give or take Affidavits, including from
17 Mr. Shoemaker's physician, Danny Grover out at IMA, who
18 saw Mr. Shoemaker I believe eight days before the
19 testamentary documents that bring us here today. And
20 to a man and a woman, as the case may be, all of the
21 Affidavits I submitted specifically address
22 testamentary capacity, and specifically address those
23 people's firsthand knowledge of Jim Shoemaker's
24 competency. And, Judge, probably the most significant
25 fact for you to consider in this overall case is the

7

1 claim initially that Mr. Shoemaker brought contending
2 that he and his brothers have always been treated
3 equally by their father. That the only possible
4 explanation for Marshall being cut out of his father's
5 Estate plan is undue influence brought to bear by his
6 two younger brothers, Sloan and Jonathan, and by his
7 mother, Polly, and that his dad was out of his mind.
8 And that's the only possible reason that he could have
9 cut Marshall out. Well, Judge, through discovery, and
10 it's there before you, that's just a misrepresentation
11 to the Court. Marshall Shoemaker was not cut out for
12 the very first time in June of '18. A decade earlier
13 Marshall Shoemaker was completely cut out by both his
14 mother and father. He has been -- at times been
15 treated equally with his brothers, but at other times
16 been treated completely different. The deposition
17 testimony of Marshall Shoemaker and the emails that he
18 sent -- to sort of give you, I guess, the penultimate
19 reason of what happened, in our submissions, Judge,
20 there's an email that Marshall sent his younger brother
21 Sloan essentially threatening to kill Sloan if Sloan
22 came to Marshall's son Peter's graduation. Sloan shows
23 up at his mom and dad's house instead of at graduation
24 having flown to Atlanta. "What are you doing here?"
25 "Oh, I got this email from Marshall." That email

8

1 tipped off the parents. And it was what I phrase "the
2 straw that broke the camel's back this latest time."
3 There had been a series of episodes of dissension
4 between Marshall and his family. It began in high
5 school and continued off and on until the present day.
6 Lesley Moore has been sued. I'm not exactly sure what
7 the claims are against Ms. Moore, but just like his
8 brothers it has forced Ms. Moore to put her malpractice
9 carrier on notice. It's forced the family to spend
10 tens of thousands of dollars to basically chase down
11 rabbit holes. For the very first time yesterday we see
12 the first bit of potential evidence speaking to these
13 issues. Up until yesterday there was nothing Mr.
14 Shoemaker had submitted at all over the entire course
15 of this lawsuit that took issue with or presented any
16 evidence, scintilla or otherwise, to refute the
17 evidence we've submitted to the Court, which is that on
18 the day he executed the documents Jim Shoemaker had
19 testamentary capacity to do that. As Your Honor is
20 aware it takes less capacity to draft a will than to
21 draft a contract saying "Give me a hundred dollars and
22 I'll build you a wall." It doesn't require very much
23 at all. And importantly what it requires is knowledge
24 of the condition on the day the documents were
25 executed. There is case law, Your Honor, and I forget

9

11

1 the name of the case, but it's a guy who lives in a
2 hollow tree log out in the woods. It's a very, very
3 old case. But the gist of it was you can be crazy as a
4 bed bug, but on the day that you did your documents as
5 long as you knew the objects of your bounty -- and I
6 won't properly articulate the other two criteria. But,
7 again, the point is if you have enough capacity the day
8 you do the documents, that's it. That's what you look
9 to. And there is zero evidence. Zero evidence in this
10 record from the Petition speaking to anything the day
11 the documents were done. On the other hand, Judge, Ms.
12 Moore, who's seated right here, gave a lengthy
13 Affidavit with exhibits attached to it explaining
14 firsthand from her sitting there talking to him and
15 witnessing it the competency of both Mr. and Mrs.
16 Shoemaker. Their long-time -- the Shoemaker's long-
17 time accountant, Martha Louise Ramage Lewis, gave an
18 Affidavit. It was discussed with her over the years
19 the estrangement that existed between Marshall and his
20 family. This was no great surprise that Marshall was
21 cut out. And, Judge I guess, you know, in point of
22 fact there's just no evidence to support their claims
23 period. And there is an enormous amount of evidence to
24 support our position that not only was the documents
25 not the subject of undue influence and that Mr.

1 Carolina Supreme Court opinion from 2003. It says "The
2 standard of proof in an undue influence case is
3 unmistakable and convincing evidence. There must be
4 more than a scintilla of evidence in order to defeat a
5 Motion for Summary Judgment. A heightened standard for
6 Summary Judgment is required." So even if the
7 Affidavit submitted in opposition is considered
8 notwithstanding the defects in it, it still doesn't
9 address the legal standard, nor if you read it does it
10 say Mr. Shoemaker lacked testamentary capacity.
11 Whereas all my Affidavits, including from his
12 physician, say he had testamentary capacity. So for
13 those reasons, Your Honor, we believe that the
14 respondents are entitled to judgment as a matter of
15 law. And unless you have any questions for me right
16 now I'll sit down.

17 THE COURT:

18 Not yet.

19 MR. HAYNSWORTH:

20 Okay.

21 THE COURT:

22 Mr. Blincow.

23 MR. BLINCOW:

24 May it please the Court. Good afternoon, Judge. My
25 name is John Blincow and I do represent the Petitioner,

10

1 Shoemaker had capacity. But frankly, Judge, that this
2 lawsuit was not brought for the legitimate purpose of
3 challenging those documents, but was instead brought as
4 a continuation of the family strife that's existed
5 between Marshall and his two brothers, and his mom, and
6 dad. As you may recall, Judge, twice before in this
7 one case the Court has had to sanction Mr. Shoemaker
8 for his conduct. And in my humble opinion this whole
9 lawsuit is just a bigger version of that. It's a job
10 to stick his family. And it has no basis in fact and
11 it has no basis in law. And final point I would like
12 to make before I side down and shut up: to the extent,
13 Your Honor, that the Affidavit that's been submitted
14 untimely and unnotarized is considered, it doesn't
15 address the standard of care that they need to meet.
16 It's not a scintilla of evidence in a proceeding
17 attacking a will for undue influence or lack of
18 capacity. And I don't want to misquote, so let me --
19 bear with me, Your Honor. I don't want to --

20 THE COURT:

21 Take your time.

22 MR. HAYNSWORTH:

23 -- spout off a quote that's inaccurate. And, Your
24 Honor, I'm quoting from Russell versus Wachovia Bank
25 353S.C.208, 578S.E.2d329. It's a Supreme -- south

12

1 Marshall Shoemaker, III. If I could start and address
2 a couple of things that have been mentioned, and then
3 I'll get to the merits of my argument. First of all
4 there is this contention that the Affidavit should not
5 be considered because it's not notarized. I witnessed
6 Dr. Hughes sign the Affidavit. I'm an officer of this
7 court. I know who he is, and I watched him sign it. I
8 think when it comes down to standing on some sort of
9 procedural rule or letting the case turn on their
10 merits, I think we need let the case turn on its merits
11 rather than kicking the party out of court because an
12 Affidavit has not been notarized by a notary, and
13 instead has been witnessed by a lawyer. And I'm
14 telling you I watched him sign that Affidavit. There's
15 just no question about that. And the law is clear that
16 these cases need to turn on their merits and not some
17 technicality. And we've avoided getting into --
18 whatever the history has been with regard to Marshall
19 and his family really is not relevant. If there was a
20 period of time when Marshall was out of the will, so to
21 speak, that was followed by long stretches of time
22 where there's letters from Mr. Shoemaker, the dad, to a
23 son ending with "love, dad." There's no question that
24 he was to share equally with his two brothers until
25 June the 24th before he died in July. There's no

13

1 question about that. So here we are at Summary
2 Judgment. We've got to get over this hump, and to do
3 that we cite to the Affidavit of Dr. Thomas Hughes. He
4 is a board certified neurologist. He has reviewed the
5 medical records. The way this went, Your Honor, is Mr.
6 Shoemaker had this terrible idiopathic pulmonary
7 fibrosis and had it for years and years. And in May
8 he, in consultation with his family and his doctors,
9 decided to become a hospice patient. And he was at
10 home but his disease was such that he had skilled
11 nurses who were doing assessments, so we have a number
12 of records. In June -- in July, excuse me, signed a
13 new will on June 21st. On July 5th has a real episode
14 and ends up through the emergency room and in the Saint
15 Francis Hospital for five days. So we've got a good
16 stack of records from that admission. And then back
17 home and in the care of another hospice, and so we have
18 the assessments from all of those nurses. And Dr.
19 Hughes has looked at those records and can opine that
20 Mr. Shoemaker had cognitive impairment. Seventy
21 percent of the folks that have idiopathic pulmonary
22 fibrosis have cognitive impairment in some form or
23 fashion. And if you think about it being a spectrum on
24 one hand you could -- if you forget where you put your
25 car keys on one end, and full blown dementia and you're

14

1 not sure what world you're in on the other hand, the
2 line for testamentary capacity is somewhere between
3 those two extremes. And he can say he clearly had
4 cognitive impairment. This is a progressive disease.
5 It's a situation where you get a little worse each day.
6 He had it for years. And so this doctor can go as far
7 as saying he had substantial cognitive impairment. And
8 there are a number of examples of that in those medical
9 records. For example, we know that when he signed this
10 new will at the end of June he was on supplemental
11 oxygen all the time, six liters a minute. We know he
12 went and got -- went to the emergency room on July 5th
13 and came home on 15 liters of oxygen a minute. Clearly
14 a fact finder could infer that if he needed 15 liters
15 of oxygen on -- in early July, six liters at the end of
16 June would not have been nearly enough in order for the
17 brain to function. And we acknowledge it's a high bar.
18 We can read the cases. There's no question
19 testamentary capacity is a high bar. But there are
20 examples where the disease was getting the better of
21 Mr. Shoemaker. If he spilled his medicine and became
22 so angry and irate that the nurses and the pharmacist
23 made a note of it, that it wasn't just anger, it was
24 sort of irrational, that is the disease talking. If he
25 was so agitated that the nurse had to give several

15

1 units of Morphine just to get him to a baseline, that
2 is evidence of significant impairment. And so at the
3 end of the day, yes, there may be ten Affidavits from
4 Mr. Shoemaker's primarily law partners that witnessed
5 him signing the new will, but there's also evidence
6 going the other way. And the Court is going to have to
7 weigh that evidence. And in order to grant the motion
8 the Court will just have to reject the other evidence.
9 There's evidence going both ways in this case. You
10 know we could argue that it better falls to a medical
11 expert than a law partner. And Mr. Shoemaker had been
12 retired for years and years. And naturally you sort of
13 lose touch with your friends and so forth. The folks
14 that witnessed the will being signed in June had seen
15 him less and less and less over the years, and had a
16 smaller sample size to pick from. Never mind the fact
17 that the easiest thing to do would have been to say
18 "Hey, before we make a big decision like this let's get
19 a doctor to look at him and check neurological status."
20 That could have been done and wasn't. So I think at
21 the end of the day the question -- the evidence stacks
22 up on one side, but there's evidence that stacks on the
23 other side. And in order for a fact finder to decide
24 whether he had testamentary capacity in June when he
25 made this new will, you're going to have to weigh all

16

1 of the evidence. And that is something that should be
2 done at a full trial on the merits and not at Summary
3 Judgment.
4 THE COURT:
5 Let me ask you: what evidence do you have of undue
6 influence? I mean all you've cited so far is this
7 purported Affidavit of an expert which really relates
8 to mental capacity. And in addition that Affidavit
9 only opines that there was quote "some level of
10 cognitive impairment."
11 MR. BLINCOV:
12 I think -- I don't have it right -
13 THE COURT:
14 So let me go back to my question. What evidence do you
15 have of any undue influence?
16 MR. BLINCOV:
17 I'm not going to answer the question. I meant to
18 mention earlier that that heightened burden of proof
19 applies to an undue influence claim, and not to a
20 testamentary capacity claim.
21 THE COURT:
22 All right.
23 MR. BLINCOV:
24 But there is evidence that Mr. Shoemaker had a meeting
25 with the other two sons and the stockbroker, and there

17

1 was discussion of "This is my plan." And I think both
2 of the brothers said that was the first time they
3 really understood what sort of Estate was -- had been
4 built up over the years. This son was excluded from
5 that meeting. There are --
6 THE COURT:
7 What does that have to do with undue influence?
8 MR. BLINCOV:
9 Well --
10 THE COURT:
11 Or specifically bearing upon the testator's
12 testamentary act of signing a will or an Estate for --
13 I mean a Trust Agreement for Estate planning purposes?
14 MR. BLINCOV:
15 Yeah, I get your question, and it doesn't. You're
16 correct. And I've told my client that maybe from a
17 lawyer's perspective anytime you've got that clear and
18 convincing standard, that's a tough road. And we
19 understand that that claim is not as good for us as the
20 testamentary capacity claim. I would also acknowledge
21 that what we've put forth in our response to the Motion
22 and in the Affidavit all deals with testamentary
23 capacity and not undue influence.
24 THE COURT:
25 Do you wish to dismiss the claim for undue influence or

18

1 --
2 MR. BLINCOV:
3 I would rather not dismiss it --
4 THE COURT:
5 Okay.
6 MR. BLINCOV:
7 -- but I acknowledge that the response is what it is,
8 and the burden of proof is what it is.
9 THE COURT:
10 Okay. Can you tell me why attorney Moore is still a
11 defendant in this Action?
12 MR. BLINCOV:
13 Well, only that she is the Trustee of the Estate.
14 THE COURT:
15 Well, I don't think she's named as a Trustee. She's
16 named individually.
17 MR. BLINCOV:
18 I don't have it in front of me. I think that when I
19 entered an appearance -- if I -- I've tried to make it
20 clear that I was appearing for the Petitioner. There's
21 no question no one has any claim against Ms. Moore. I
22 don't think we've ever said that. She's a Trustee of
23 the Estate is at issue.
24 THE COURT:
25 Okay. So for clarity are you informing The Court that

19

1 there's no claim against attorney Moore for
2 professional liability or malpractice?
3 MR. BLINCOV:
4 Never has been, and never have we alleged that.
5 THE COURT:
6 Okay. So her involvement in the case according to the
7 Petitioner relates solely to her role or capacity as a
8 Trustee of the Trust or Persons? Representative of the
9 Estate?
10 MR. BLINCOV:
11 Correct.
12 THE COURT:
13 Okay. Tell me what evidence you have related to the
14 lack of mental capacity of Mr. Shoemaker, the decedent.
15 Is it all --
16 MR. BLINCOV:
17 It's --
18 THE COURT:
19 -- found in the Affidavit of your expert?
20 MR. BLINCOV:
21 Well, I think the Affidavit of the expert points to the
22 evidence which exists. You know as a practical matter
23 Ms. Shoemaker lives in Atlanta and the two brothers
24 lived in New York and Colorado, and nobody was really
25 involved day-to-day with either parent. So what we are

20

1 pointing to is the good bit of records -- as I
2 mentioned there's I want to say daily assessment by a
3 nurse beginning in May until he passes away in July.
4 And in there is evidence of the disease talking.
5 Idiopathic pulmonary fibrosis is this terrible,
6 aggressive lung disease, and it -- there's no
7 treatment. And it was a -- the day he had it I think
8 it was -- you know his prognosis was he was going to
9 die from this disease. But what the doctor can talk
10 about and what the nurses could talk about is evidence
11 in those records that supports here is a guy -- well, I
12 should have said this earlier. You know you've got to
13 have oxygen to the brain for it to function normally.
14 And, you know, if you get blue in the lips and short of
15 breath, taking off your pajamas in the morning, that is
16 evidence that you've got impaired oxygen to the brain
17 --
18 THE COURT:
19 Is that a symptom of hypoxemia?
20 MR. BLINCOV:
21 Yes.
22 THE COURT:
23 And what's the difference between that and anoxia, or a
24 lack of oxygen?
25 MR. BLINCOV:

21

23

1 I don't -- I would rather -- I don't know.

2 THE COURT:

3 okay.

4 MR. BLINCOV:

5 But the point is there's no question he had this
6 disease. There's no question it was progressive.
7 There's no question he was getting worse. And towards
8 the end when he decides "I'm going to become a hospice
9 patient, sign a Do Not Resuscitate Order, and live out
10 these days at home," there's assessments which support
11 that his impairment was as the doctor said substantial.
12 Now, the doctor can't -- I don't know that -- only the
13 ultimate fact finder can say is -- was his impairment
14 on June the 24th, was it on this side or that side of
15 the line for testamentary capacity. Knox is right.
16 Dr. Hughes can't say that. He never saw the patient.
17 Never evaluated him. But he can point to plenty of
18 places where the disease is talking. And the disease
19 is saying "he's not of his right mind before he passed
20 away."

21 THE COURT:

22 Is the standard for execution of a Trust the same as
23 for execution of a will? Or is the Trust Agreement
24 contractual in nature and requiring a higher level of
25 mental capacity?

22

1 MR. BLINCOV:

2 I don't know the answer to that question. I would like
3 to research it. I've always taken the will and the
4 Trust together. Meaning they were signed on the same
5 day, I've sort of lumped them and considered that both
6 were the issue is did he have testamentary capacity on
7 June the 24th to sign both. Does that answer the -- in
8 other words I've never --

9 THE COURT:

10 I understand what you're saying. My final question to
11 you is: in the purported Affidavit of Mr. Thomas
12 Hughes, or Dr. Thomas Hughes, M.D., the only conclusion
13 I see is a conclusion of Dr. Hughes that Mr. Shoemaker
14 quote "had some level of cognitive impairment." Does
15 that clear the hurdle for the standard of summary
16 judgment if a doctor and your expert cannot opine that
17 the testator or settlor of a Trust lacked capacity to
18 understand the objects of his affection, or what assets
19 he had, or anything like that, then how could the jury
20 reach that conclusion?

21 MR. BLINCOV:

22 I totally get what you're -- I think the answer is
23 this. There exists evidence that a fact finder would
24 have to weigh and consider to find testamentary
25 capacity. There's ten Affidavits on one side of the

1 scale, and on the other there is evidence of impaired
2 cognition of diminished brain power. And that is going
3 to have to be weighed, and that's not proper at summary
4 judgment.

5 THE COURT:

6 And --

7 MR. BLINCOV:

8 I don't know that an expert -- I think you could object
9 if an expert said he did or didn't have testamentary
10 capacity because ultimately the fact finder is going to
11 have to weigh all of that out. In other words I -- for
12 better or worse Dr. Hughes can only go so far. I
13 believe he says in the Affidavit "substantial cognitive
14 impairment." Clearly had it. And because it's
15 progressive and because he was at end stage of his
16 disease, it was substantial. I don't know that anybody
17 -- a doctor can say substantial cognitive impairment is
18 on one side of the line or the other. But the point is
19 there's evidence to weigh and consider to decide that.

20 THE COURT:

21 And what about Mr. Haynsworth's argument that the
22 Affidavit of Dr. Hughes should not be considered
23 because it was not filed 48 hours prior to this
24 hearing?

25 MR. BLINCOV:

24

1 I would admit the rule says what it says. We go back
2 to I think that these cases need to turn on their
3 merits as opposed to a technicality. We would be happy
4 to hold everything in abeyance. Let Mr. Haynsworth
5 take the deposition, or wait two days and then -- or
6 submit reargument, or whatever. I ended up after work
7 yesterday going to his house and he signed it. Then I
8 raced back to the office and faxed or emailed it, so
9 there's no question about that. But that's an awfully
10 severe remedy under the circumstances.

11 THE COURT:

12 okay. All right. Mr. Haynsworth.

13 MR. HAYNSWORTH:

14 May it please the court. Judge, let me work backwards.
15 Rule 5's there for a reason. You know if we're just
16 going to say "well, technicality, let's don't worry
17 about that because the system's geared to resolved it
18 on the merits," then why have any rules? I mean it
19 couldn't be clearer. And it's not like this is I filed
20 an Affidavit and you had a hearing a week later. My
21 Motion's been pending since November, Judge, of last
22 year. I mean anybody can figure out if one side's got
23 ten Affidavits, including from the guy's doctor, you're
24 going to need something to refute that other than the
25 Petitioner's self-serving testimony. So I cannot

7 (Pages 21 to 24)

29

1 opinion on the circumstances surrounding the execution
2 of the will. In this case, Judge, just like in the
3 Russell case, even if you overlook the other problems
4 with the Affidavit, that doctor never laid eyes on Jim
5 Shoemaker. Jim Shoemaker's doctor, who gave you an
6 Affidavit that he had capacity, is his long-term family
7 doctor. No one knows Jim Shoemaker better than Jim
8 Shoemaker's long time family doctor. This guy was
9 hired to create an Affidavit to try and gum up this
10 Summary Judgment Motion. His Affidavit, even if you
11 consider it, is not a weight of an evidence issue. It
12 is no evidence, and it's certainly not sufficient
13 evidence given the plaintiff's heightened burden to
14 overcome the evidence before the Court entitling us to
15 Summary Judgment.
16 THE COURT:
17 And let me ask you what I asked Mr. Blincow, and that
18 is: do you know what the mental capacity -- what mental
19 capacity is required for execution of a Trust Agreement
20 versus a Last Will and Testament? Is there a
21 difference because the Trust is contractual in nature,
22 or is it the same?
23 MR. HAYNSWORTH:
24 Your Honor, I will parrot Mr. Blincow's --
25 MR. BLINCOW:

30

1 (Talking over each other.)
2 MR. HAYNSWORTH:
3 Yeah, you got us both there.
4 THE COURT:
5 You might want to ask the person beside you.
6 MR. HAYNSWORTH:
7 (Confers with Lesley Moore.)
8 THE COURT:
9 And I should know the answer to that but I don't know
10 --
11 MR. HAYNSWORTH:
12 We believe after consultation, Your Honor, it is the
13 same standard.
14 THE COURT:
15 All right.
16 MR. BLINCOW:
17 Well, then I was right and didn't even know it.
18 MR. HAYNSWORTH:
19 So -- yeah. So the two blind hogs have now confirmed
20 that we have --
21 THE COURT:
22 Okay.
23 MR. HAYNSWORTH:
24 -- had the right the law.
25 THE COURT:

31

1 Okay. Well, Mr. Blincow, any response?
2 MR. BLINCOW:
3 Yeah. Please. My memory wasn't good but it is what I
4 recall. After I appeared -- and if you look at the
5 caption that I used when we filed this filing
6 yesterday, Lesley R. Moore, Esquire, the defendant, is
7 sued as Personal Representative as -- and Trustee. So
8 --
9 THE COURT:
10 Well, this is a Brief filed. I mean it doesn't --
11 MR. BLINCOW:
12 I'm just --
13 THE COURT:
14 Changing that in the caption doesn't really change the
15 substance of the original Petition --
16 MR. BLINCOW:
17 Fair --
18 THE COURT:
19 -- or complaint.
20 MR. BLINCOW:
21 Fair enough. But when I stepped in there was never any
22 question that this -- she was a party by virtue of the
23 fact she was the Trustee.
24 THE COURT:
25 Okay. Was your client alleging any wrong doing as

32

1 Trustee or Personal Representative?
2 MR. BLINCOW:
3 No.
4 THE COURT:
5 All right. All right.
6 MR. BLINCOW:
7 Well, he was, but -- he was. Whatever, his Petition
8 says what it says, but I'm saying that now our position
9 is that she's a party simply by virtue of the fact
10 she's the Trustee.
11 THE COURT:
12 All right. And is there any evidence of any wrong
13 doing by Ms. Moore as Personal Representative or
14 Trustee?
15 MR. BLINCOW:
16 No, sir.
17 THE COURT:
18 All right.
19 MR. BLINCOW:
20 And I --
21 THE COURT:
22 I just wanted to clarify.
23 MR. BLINCOW:
24 Yeah, I do. I really do think this Russell case is an
25 undue influence case. And so to the extent they

9 (Pages 29 to 32)

1 concluded that a doctor's testimony didn't change the
2 result, that was not a testamentary capacity situation.
3 I think the law is clear on that.

4 THE COURT:

5 All right.

6 MR. BLINCOV:

7 You know it says, I believe in the line, the
8 highlighted parts -- I've read this case, but I don't
9 have it in front of me. But there's a heightened
10 standard for undue influence, but that is not the case
11 for testamentary capacity. So we take the position
12 that the doctor's Affidavit doesn't count because a
13 different level of proof is -- would not be accurate.
14 You know it would be just -- we could argue that an
15 Affidavit from a lay person is not as important as
16 someone who knows what they're talking about when they
17 talk about chronic idiopathic pulmonary fibrosis with
18 hypoxic respiratory failure. There is evidence that
19 the deceased lacked testamentary capacity, and that
20 needs to be weighed and considered.

21 THE COURT:

22 All right. Well, this is an interesting case and set
23 of facts, and I'm going to have to give it careful
24 deliberation and consideration. And I can tell you at
25 first glance it doesn't appear to be evidence

1 sufficient to withstand summary judgment on a cause of
2 action for undue influence. But I'm going to have to
3 do my homework and give everything proper consideration
4 before reaching any decision on this matter. I
5 appreciate both sides informing the court of all of the
6 relevant facts, and circumstances, and supplementing
7 the Motion with appropriate Affidavits. And so you've
8 both done an excellent job, and I appreciate that. And
9 I'm going to weigh through these materials and have a
10 decision hopefully within the next week or so.

11 MR. HAYNSWORTH:

12 Thank you. I appreciate it.

13 MR. BLINCOV:

14 Thank you.

15 THE COURT:

16 Thank you very much. We're adjourned.

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
18 2:55 P.M.)

1 CERTIFICATE OF REPORTER

2
3 I, Treasa Hix, a Notary Public in and for the State of
4 South Carolina, do hereby certify that the foregoing hearing
5 was taken before me on the date and at the time and location
6 stated on page 1 of this transcript.

7 That the deponent was duly sworn to testify to the
8 truth, the whole truth, and nothing but the truth.

9 That I am not related to nor the employee of any of the
10 parties hereto, nor related to or employed by any attorney
11 or counsel employed by the parties hereto, nor interested in
12 the outcome of this action.

13
14
15 Treasa Hix, Reporter

16 Notary Public for S.C.

17 Commission Expires: 6/13/29
18
19
20
21
22
23
24
25

Treasa Hix

A abeyance 24:4 able 4:21 25:9,13 Absent 28:21 accountant 9:17 accurate 33:13 accused 27:11 acknowledge 14:17 17:20 18:7 act 17:12 action 18:11 34:2 35:12 addition 16:8 address 3:24 4:13 4:21 6:21,22 10:15 11:9 12:1 adjourned 34:16 administering 26:24 admission 13:16 admit 24:1 affection 22:18 affiants 25:7 Affidavit 4:1,3,7 4:15 5:3 9:13,18 10:13 11:7 12:4 12:6,12,14 13:3 16:7,8 17:22 19:19,21 22:11 23:13,22 24:20 25:1,19,22,25 26:6,14 27:23 28:3 29:4,6,9,10 33:12,15 Affidavits 6:9,16 6:21 11:11 15:3 22:25 24:23 34:7 aforementioned 1:12 afternoon 11:24 aggressive 20:6 agitated 14:25 Agreement 17:13 21:23 29:19 Ah 27:16 ain't 25:25 28:1 allegation 26:21 allegations 27:20 alleged 19:4	alleging 31:25 allowed 27:3 amount 9:23 and/or 27:5 anger 14:23 angry 14:22 anoxia 20:23 answer 4:18 16:17 22:2,7,22 30:9 anybody 23:16 24:22 anytime 17:17 appear 33:25 appearance 18:19 APPEARANCES 2:1 appeared 4:17 31:4 appearing 18:20 Appellants 28:15 applies 16:19 appreciate 34:5,8 34:12 approach 28:6 appropriate 34:7 April 1:16 argue 15:10 28:15 33:14 argument 12:3 23:21 25:20 28:13 arguments 5:6 articulate 9:6 articulated 26:17 asked 29:17 assessment 20:2 assessments 13:11 13:18 21:10 assets 22:18 Atlanta 7:24 19:23 attached 9:13 27:20 attacking 10:17 attention 28:4 attorney 2:8,17 18:10 19:1 26:23 35:10 Attorneys 2:4 avoided 12:17 aware 8:20 26:12	awfully 24:9 B back 3:25 8:2 13:16 16:14 24:1 24:8 28:4 backwards 24:14 Bank 10:24 bar 14:17,19 based 28:25 baseline 15:1 basically 8:10 basis 10:10,11 bear 7:5 10:19 bearing 17:11 bed 9:4 began 8:4 beginning 20:3 believe 6:18 11:13 23:13 25:1 30:12 33:7 beneficiaries 27:8 better 14:20 15:10 23:12 29:7 big 15:18 bigger 10:9 bit 8:12 20:1 Blen 3:16 Blinchow 2:3,4 3:6 3:16,18 4:13,17 5:5,16 11:22,23 11:25 16:11,16 16:23 17:8,14 18:2,6,12,17 19:3,10,16,20 20:20,25 21:4 22:1,21 23:7,25 25:5 27:25 29:17 29:25 30:16 31:1 31:2,11,16,20 32:2,6,15,19,23 33:6 34:13 Blinchow's 28:11 29:24 blind 30:19 blown 13:25 blue 20:14 28:2 bmemhlaw.com 2:16 board 13:4	bounty 9:5 Box 1:22 2:14 brain 14:17 20:13 20:16 23:2 breath 20:15 Brief 31:10 bring 6:19 broke 8:2 brother 7:20 brothers 7:2,6,15 8:8 10:5 12:24 17:2 19:23 27:3 brought 4:16 6:12 7:1,5 10:2,3 Brown 2:12 bug 9:4 build 8:22 built 17:4 bunch 27:25 burden 16:18 18:8 29:13 C camel's 8:2 can't 21:12,16 capacity 6:15,22 8:19,20 9:7 10:1 10:18 11:10,12 14:2,19 15:24 16:8,20 17:20,23 19:7,14 21:15,25 22:6,17,25 23:10 26:3,13 27:2 29:6,18,19 33:2 33:11,19 caption 31:5,14 car 13:25 care 10:15 13:17 careful 33:23 Carolina 1:1,16,23 2:6,15 11:1 35:4 carrier 8:9 27:15 case 1:2 6:20,25 8:25 9:1,3 10:7 11:2 12:9,10 15:9 19:6 25:6 25:14 26:5 28:5 29:2,3 32:24,25 33:8,10,22 cases 4:12 12:16	14:18 24:2 cause 27:15 34:1 cents 4:25 certainly 29:12 Certificate 2:5 35:1 certified 13:4 certify 35:4 cetera 27:11,11 challenged 6:11 challenging 10:3 chance 6:9 change 31:14 33:1 changed 26:20 Changing 31:14 Charleston 2:6 chase 8:10 check 15:19 children 6:11 27:8 chronic 33:17 circumstances 24:10 29:1 34:6 cite 13:3 cited 16:6 claim 7:1 16:19,20 17:19,20,25 18:21 19:1 26:19 claims 8:7 9:22 clarify 32:22 clarity 18:25 Clayton 1:13 clear 4:14 12:15 17:17 18:20 22:15 33:3 clearer 24:19 clearly 14:3,13 23:14 client 17:16 31:25 cloud 27:6 cognition 23:2 cognitive 13:20,22 14:4,7 16:10 22:14 23:13,17 Colloquy 2:3 Colorado 19:24 comes 12:8 28:3 commencing 1:17 Commission 35:17 compensated 26:24

competency 6:24 9:15 competent 26:18 28:20 Complaint 31:19 completely 7:13 7:16 concluded 33:1 34:17 conclusion 22:12 22:13,20 condition 8:24 26:4,5,10 conduct 10:8 Confers 30:7 confirmed 30:19 consider 6:25 22:24 23:19 26:1 29:11 consideration 33:24 34:3 considered 4:4,24 6:13 10:14 11:7 12:5 22:5 23:22 33:20 consultation 13:8 30:12 CONTAIN 2:24 contending 6:12 7:1 contention 12:4 continuation 10:4 continued 8:5 contract 8:21 contractual 21:24 29:21 convincing 11:3 17:18 copy 4:12 28:10,11 28:11,12 correct 3:5,7,19 17:16 19:11 correctly 3:17 26:17 couldn't 24:19 counsel 2:3 27:6 28:1 35:11 count 33:12 County 1:2,15 couple 4:11 12:2	course 8:14 court 1:1,14,15 2:3 3:1,8,20 4:2,5 5:4,9,13,21,25 6:5 7:11 8:17 10:7,20 11:1,17 11:21,24 12:7,11 15:6,8 16:4,13 16:21 17:6,10,24 18:4,9,14,24,25 19:5,12,18 20:18 20:22 21:2,21 22:9 23:5,20 24:11,14 26:23 27:9,13,21 28:7 29:14,16 30:4,8 30:14,21,25 31:9 31:13,18,24 32:4 32:11,17,21 33:4 33:21 34:5,15 crazy 9:3 create 29:9 criteria 9:6 crystal 4:14 cut 7:4,9,11,13 9:21 D dad 7:7 10:6 12:22 12:23 dad's 7:23 daily 20:2 Danny 6:17 date 35:5 day 1:16 8:5,18,24 9:4,7,10 14:5 15:3,21 20:7 22:5 25:13,17 26:4,6,11,14 day-to-day 19:25 days 4:15 6:18 13:15 21:10 24:5 deals 17:22 decade 7:12 deceased 1:4 33:19 decedent 19:14 decide 15:23 23:19 decided 13:9 decides 21:8 decision 15:18	34:4,10 defeat 11:4 defects 11:8 defend 27:22 defendant 18:11 26:21 31:6 deliberation 33:24 dementia 13:25 deponent 35:7 depos@legaleng... 1:25 depose 25:7,12 deposed 4:20 deposition 7:16 24:5 depositions 27:25 didn't 23:9 25:24 25:25 30:17 33:1 die 20:9 died 12:25 difference 20:23 29:21 different 7:16 33:13 diminished 23:2 disagree 28:18 Discovery 4:22 7:9 25:3,7,10 discussed 9:18 discussion 17:1 disease 13:10 14:4 14:20,24 20:4,6 20:9 21:6,18,18 23:16 dismiss 17:25 18:3 dissension 8:3 distance 5:24 doctor 14:6 15:19 20:9 21:11,12 22:16 23:17 24:23 25:19 29:4 29:5,7,8 doctor's 33:1,12 doctors 13:8 28:16 documents 6:19 8:18,24 9:4,8,11 9:24 10:3 26:4,8 26:11 Doc 3:12 doesn't 8:22 10:14	11:8 17:15 26:2 31:10,14 33:12 33:25 doing 7:24 13:11 27:12 31:25 32:13 dollars 8:10,21 don't 4:24 6:8 10:18,19 16:12 18:15,18,22 21:1 21:1,12 22:2 23:8,16 24:16 25:12 27:17 30:9 33:8 Dr 12:6 13:3,18 21:16 22:12,13 23:12,22 draft 8:20,21 dragging 27:21 duly 35:7 duties 27:7 E EAGLE 1:21 earlier 7:12 16:18 20:12 28:5 early 14:15 earning 27:4 easiest 15:17 Edward 1:9 3:10 eight 6:18 28:14 either 19:25 email 7:20,25,25 emailed 24:8 emails 7:17 emergency 13:14 14:12 employed 35:10 35:11 employee 35:9 ended 24:6 ends 13:14 enormous 9:23 entered 18:19 entire 8:14 entitled 11:14 entitling 29:14 episode 13:13 episodes 8:3 equally 7:3,15	12:24 Esquire 2:3,11 31:6 essentially 6:10 7:21 Estate 6:11 7:5 17:3,12,13 18:13 18:23 19:9 26:8 27:10 estrangement 9:19 et 27:11,11 evaluated 21:17 Evans 1:9 2:12 3:11 evidence 8:12,16 8:17 9:9,9,22,23 10:16 11:3,4 15:2,5,7,8,9,21 15:22 16:1,5,14 16:24 19:13,22 20:4,10,16 22:23 23:1,19 25:22 26:5 27:17 29:11 29:12,13,14 32:12 33:18,25 exactly 8:6 examination 28:21 examined 28:19 example 14:9 examples 14:8,20 excellent 34:8 excluded 17:4 excuse 13:12 27:23 27:24 excusing 25:15 execute 28:20 executed 8:18,25 26:4,11 execution 4:7 21:22,23 29:1,19 exhibits 2:7 9:13 existed 9:19 10:4 exists 19:22 22:23 expert 4:19 15:11 16:7 19:19,21 22:16 23:8,9 25:11 28:2,15,21 28:24,25 experts 28:19,19 Expires 35:17

explained 26:12	23:10	graduation 7:22	holes 8:11	3:15 12:1
explaining 9:13	fire 5:19	7:23	hollow 9:2	IMA 6:17
explanation 7:4	first 7:12 8:11,12	grant 15:7	home 13:10,17	impaired 20:16
explore 26:15	12:3 17:2 33:25	great 9:20 26:14	14:13 21:10	23:1
extent 5:3 10:12	firsthand 6:23	Greenville 1:2,15	homework 34:3	impairment 13:20
32:25	9:14 26:10	1:16,23 2:15	Honor 3:24 4:10	13:22 14:4,7
extremes 14:3	five 13:15 28:14	Griffin 2:4	6:8,15 8:19,25	15:2 16:10 21:11
eyes 25:20 29:4	flip 28:13	Grover 6:17	10:13,19,24	21:13 22:14
	flown 7:24	guess 4:1 7:18	11:13 13:5 29:24	23:14,17
	folks 13:21 15:13	9:21	30:12	important 5:1
	followed 12:21	gum 29:9	Honorable 1:13	26:2 28:12 33:15
	forced 8:8,9	guy 4:20 9:1 20:11	hopefully 34:10	importantly 8:23
	forcing 27:21	25:24 29:8	hospice 13:9,17	inaccurate 10:23
	foregoing 35:4	guy's 24:23 28:2	21:8	including 6:16
	forget 8:25 13:24		Hospital 13:15	11:11 24:23 27:8
	form 13:22		hour 1:17	incompetent 28:22
	forth 15:13 17:21		hours 23:23	INDEX 2:1
	found 19:19		house 7:23 24:7	individually 18:16
	Francis 13:15		housekeeping 3:24	infer 14:14
	frankly 10:1		Hughes 12:6 13:3	influence 6:14 7:5
	friends 15:13		13:19 21:16	9:25 10:17 11:2
	front 3:25 18:18		22:12,12,13	16:6,15,19 17:7
	33:9		23:12,22	17:23,25 27:2
	fulfil 27:7		Huh-uh 27:18	28:17,23,25
	full 13:25 16:2		humble 10:8	32:25 33:10 34:2
	function 14:17		hump 13:2	informing 18:25
	20:13		hundred 8:21	34:5
	further 6:4 28:25		Hunter 1:9 3:10	initially 7:1
	34:17		hurdle 22:15	interaction 26:15
			hypoxemia 20:19	interested 35:11
			hypoxic 33:18	interesting 33:22
				Interrogatories
				25:10
				Interrogatory
				4:18
				involved 19:25
				25:16,17
				involvement 19:6
				irate 14:22
				irrational 14:24
				issue 4:8 5:1 8:15
				18:23 22:6 27:23
				29:11
				issues 4:11,13 8:13
				it's 4:13 5:14,17
				7:10 8:9 9:1,2
				10:9,16,25 12:5
				14:5,17 19:17
				23:14 24:19
				25:22 29:12

J jab 10:9 James 1:4,6 3:2,3 3:5,9 Jan 3:12 Jane 3:12 jblincow@blinc... 2:7 Jennings 1:13 Jim 6:23 8:18 29:4 29:5,7,7 Job 34:8 John 2:3 3:12,16 11:25 27:12,25 Jonathan 1:9 3:11 7:6 Jr 1:4 2:3 3:5 Judge 5:12 6:24 7:9,19 9:11,21 10:1,6 11:24 24:14,21 25:4,21 25:23 27:18 28:3 28:12 29:2 judgment 3:13 11:5,6,14 13:2 16:3 22:16 23:4 27:6 28:18 29:10 29:15 34:1 July 12:25 13:12 13:13 14:12,15 20:3 jump 26:18 June 4:17 7:12 12:25 13:12,13 14:10,16 15:14 15:24 21:14 22:7 26:23 jury 22:19	20:12,14 21:1,12 22:2 23:8,16 24:15 25:10 27:14 29:18 30:9 30:9,17 33:7,14 knowledge 6:23 8:23 26:10 known 4:20 27:1 knows 29:7 33:16 Knox 2:11 3:15 21:15 25:12,23 kuoxhaynsworth 2:16 L L 1:13 2:11 lack 6:14 10:17 19:14 20:24 27:1 lacked 11:10 22:17 33:19 laid 25:19 29:4 latest 8:2 26:7 law 2:4 8:25 10:11 11:15 12:15 15:4 15:11 30:24 33:3 lawsuit 6:12 8:15 10:2,9 27:12,16 lawyer 12:13 lawyer's 17:17 lay 33:15 legal 1:21 11:9 27:19 legitimate 10:2 length 4:23 lengths 26:15 lengthy 9:12 Lesley 1:9 3:11 8:6 27:1,9,11 30:7 31:6 let's 15:18 24:16 letters 12:22 letting 12:9 level 16:9 21:24 22:14 33:13 Lewis 9:17 26:9 liability 19:2 line 5:19 14:2 21:15 23:18 33:7 lips 20:14 list 25:11,11,24	listing 4:19 27:24 liters 14:11,13,14 14:15 little 14:5 live 21:9 lived 19:24 lives 9:1 19:23 LLC 2:12 location 35:5 log 9:2 long 9:5 12:21 25:4 29:8 long- 9:16 long-term 29:6 long-time 9:16 look 9:8 15:19 31:4 looked 13:19 lose 15:13 Louise 9:17 26:8 love 12:23 loyalty 27:7 lumped 22:5 lung 20:6 M M.D 22:12 making 27:20 malpractice 8:8 19:2 27:14 man 6:20 26:11 27:24 managing 26:25 marked 2:8 Marshall 1:4,6 3:2 3:3,5,9 6:10 7:4 7:9,11,13,17,20 7:25 8:4 9:19,20 10:5 12:1,18,20 27:15 Marshall's 7:22 Martha 9:17 26:8 Mary 1:9 3:10 mask 5:15 Massey 2:12 MATERIAL 2:24 2:25 materials 34:9 matter 1:3,12 3:2 3:4,24 11:14	19:22 34:4 McLeod 2:12 mean 16:6 17:13 24:18,22 31:10 Meaning 22:4 meant 16:17 medical 13:5 14:8 15:10 28:16,24 medicine 14:21 meet 10:15 meeting 2:5 16:24 17:5 Memo 4:1 6:9 memory 31:3 mental 16:8 19:14 21:25 29:18,18 mentally 28:22 mention 16:18 28:1 mentioned 12:2 20:2 merits 12:3,10,10 12:16 16:2 24:3 24:18 mind 7:7 15:16 21:19 minute 14:11,13 misquote 10:18 misrepresentation 7:10 mom 7:23 10:5 Moore 1:9 3:12 8:6,7,8 9:12 18:10,21 19:1 26:20 27:1,9,17 30:7 31:6 32:13 Moore's 26:6,14 morning 20:15 Morphine 15:1 mother 7:7,14 27:2 Motion 3:13 4:1 6:10 11:5 15:7 17:21 25:4 29:10 34:7 Motion's 24:21	named 18:15,16 naturally 15:12 nature 21:24 29:21 nearly 14:16 need 10:15 12:10 12:16 24:2,24 25:1,21 needed 14:14 25:6 25:8,16 needs 33:20 neglect 25:15 neither 28:18,25 neurological 15:19 neurologist 13:4 never 4:18,22 15:16 19:4,4 21:16,17 22:8 25:19 29:4 31:21 new 13:13 14:10 15:5,25 19:24 normally 20:13 notarized 4:14,24 12:5,12 25:25 notary 1:14,20 4:8 12:12 35:3,16 note 14:23 notice 3:21 4:6 8:9 27:15 notwithstanding 11:8 November 24:21 number 13:11 14:8 nurse 14:25 20:3 nurses 13:11,18 14:22 20:10
K keys 13:25 kicking 12:11 kill 7:21 kind 25:15 know 9:5 25:5,16 25:17 27:1 know 6:8,16 9:21 12:7 14:9,11 15:10 19:22 20:8	let's 15:18 24:16 letters 12:22 letting 12:9 level 16:9 21:24 22:14 33:13 Lewis 9:17 26:9 liability 19:2 line 5:19 14:2 21:15 23:18 33:7 lips 20:14 list 25:11,11,24	Marshall's 7:22 Martha 9:17 26:8 Mary 1:9 3:10 mask 5:15 Massey 2:12 MATERIAL 2:24 2:25 materials 34:9 matter 1:3,12 3:2 3:4,24 11:14	N name 3:17 9:1 11:25	O object 23:8 objects 9:5 22:18 obviously 4:19 5:1 office 1:22 2:14 24:8 officer 12:6 Oh 7:25 okay 5:8,12,14,14 5:17 11:20 18:5 18:10,25 19:6,13 21:3 24:12 30:22

31:1,25 old 9:3 once 25:6 opine 13:19 22:16 opines 16:9 opinion 5:2 10:8 11:1 28:22 29:1 opportunity 25:6 opposed 24:3 opposing 4:1,15 25:1 opposition 11:7 order 11:4 14:16 15:7,23 21:9 original 31:15 outcome 35:12 overall 6:25 overcome 29:14 overlook 29:3 oxygen 14:11,13 14:15 20:13,16 20:24	26:10 27:3,5,9 31:7 32:1,13 personally 26:21 perspective 17:17 Peter's 7:22 Petition 4:16 9:10 26:22 31:15 32:7 Petitioner 1:7 2:8 3:3,9,15 11:25 18:20 19:7 25:2 Petitioner's 24:25 pharmacist 14:22 phrase 8:1 physician 6:17 11:12 pick 15:16 places 21:18 plaintiff's 29:13 plan 7:5 17:1 planning 17:13 26:8 Pleadings 26:20 please 11:24 24:14 31:3 plenty 21:17 plexiglass 5:20 6:1 point 9:7,21 10:11 21:5,17 23:18 pointing 20:1 points 19:21 Polly 7:7 position 9:24 32:8 33:11 possible 5:12 7:3,8 Post 1:22 2:14 potential 8:12 power 23:2 practical 19:22 prejudice 27:4 present 8:5 presented 8:15 presently 26:24 primarily 15:4 prior 23:23 probably 6:24 Probate 1:1,12,14 problematic 26:1 problems 25:14,15 25:16 29:3 procedural 12:9	proceed 3:22 5:10 proceeded 5:6 proceeding 10:16 product 6:14 professional 19:2 prognosis 20:8 progressive 14:4 21:6 23:15 project 6:4 pronounces 3:16 pronouncing 3:17 proof 11:2 16:18 18:8 33:13 proper 4:4 6:13 23:3 34:3 property 9:6 protected 6:2 provided 3:21 28:24 provision 28:14 public 1:14,20 4:8 35:3,16 pulmonary 13:6 13:21 20:5 33:17 purported 16:7 22:11 purpose 10:2 25:3 purposes 4:25 17:13 28:12 put 8:8 13:24 17:21 27:14	paced 24:8 Ramage 9:17 26:8 reach 22:20 reaching 34:4 read 2:25 6:9 11:9 14:18 33:8 reading 26:22 real 13:13 really 12:19 16:7 17:3 19:24 31:14 32:24 reargument 24:6 reason 4:22 7:8,19 24:15 25:11 reasons 11:13 recall 10:6 31:4 received 3:25 4:6 4:18 record 9:10 records 13:5,12,16 13:19 14:9 20:1 20:11 referenced 28:5 referring 4:8 refute 8:16 24:24 regard 12:18 reject 15:8 related 19:13 35:9 35:10 relates 16:7 19:7 relevant 12:19 34:6 remedy 24:10 removal 5:14 remove 27:9 REPORTED 1:19 Reporter 1:14,19 2:5 35:1,15 represent 11:25 27:13 Representative 19:8 27:5,10 31:7 32:1,13 represented 3:14 3:16 27:12 REPRODUCED 2:25 requested 25:5 requests 26:18 require 8:22	required 11:6 26:13 29:19 requires 8:23 requiring 21:24 research 22:3 resolve 25:14 resolved 24:17 respiratory 33:18 respond 5:5 Respondent 2:17 Respondents 1:10 3:10,14,14,21 11:14 response 17:21 18:7 31:1 responsibilities 27:19 result 33:2 Resuscitate 21:9 retained 28:1 retired 15:12 reviewed 13:4 Revocable 26:25 Ridge 1:15 right 5:5,12 6:6 9:12 11:15 16:12 16:22 21:15,19 24:12 26:6 28:13 30:15,17,24 32:5 32:5,12,18 33:5 33:22 road 17:18 role 19:7 room 13:14 14:12 rule 4:14,23 12:9 24:1,15 rules 24:18 25:17 Russell 10:24 28:4 29:3 32:24
P p.m 1:17 34:18 page 26:22 28:13 35:6 pajamas 20:15 parent 19:25 parents 8:1 parrot 29:24 parties 35:10,11 partner 15:11 partners 15:4 parts 33:8 party 12:11 31:22 32:9 passed 21:19 passes 20:3 patient 13:9 21:9 21:16 pay 27:21 pending 24:21 penultimate 7:18 people 26:9 27:20 people's 6:23 percent 13:21 period 9:23 12:20 person 30:5 33:15 personal 19:8		Q question 12:15,23 13:1 14:18 15:21 16:14,17 17:15 18:21 21:5,6,7 22:2,10 24:9 31:22 questions 11:15 34:17 quite 25:18 quote 10:23 16:9 22:14 QUOTED 2:24,25 quoting 10:24		S S.C 1:20 35:16 Saint 13:14 sample 15:16 sanction 10:7 saw 6:18 21:16 saying 8:21 14:7 21:19 22:10 32:8 says 11:1 23:13 24:1,1 28:15
		R R 31:6 rabbit 8:11		

32:8,8 33:7 scale 23:1 school 8:5 scintilla 8:16 10:16 11:4 seated 9:12 second 26:19 see 8:11 22:13 28:24 seen 15:14 self-interest 27:4 self-serving 24:25 sense 25:8 sent 7:18,20 series 8:3 services 27:5 serving 27:9 set 25:18 33:22 settle 22:17 seven 26:22 Seventy 13:20 severe 24:10 share 12:24 she's 18:15,15,22 32:9,10 shield 6:1 Shoemaker 1:4,6 1:9,9,9 3:3,4,5,9 3:10,11,11 6:10 6:18 7:1,11,13 7:17 8:14,18 9:16 10:1,7 11:10 12:1,22 13:6,20 14:21 15:11 16:24 19:14,23 22:13 25:20 26:16 29:5 29:7 Shoemaker's 6:17 6:23 9:16 15:4 26:3,5,22 29:5,8 short 20:14 shot 6:1 shows 7:22 shut 10:12 side 10:12 15:22 15:23 21:14,14 22:25 23:18 side's 24:22 sides 34:5	sign 12:6,7,14 21:9 22:7 signature 4:7 signed 13:12 14:9 15:14 22:4 24:7 significant 6:24 15:2 signing 15:5 17:12 simply 32:9 sir 3:19 32:16 sit 11:16 sitting 9:14 26:6 situation 14:5 25:12 33:2 six 6:8 14:11,15 size 15:16 skilled 13:10 Sloan 1:9,9 3:10 3:11 7:6,21,21 7:21,22 smaller 15:16 solely 19:7 son 7:22 12:23 17:4 sons 16:25 sorry 3:4 sort 4:10 7:18 12:8 14:24 15:12 17:3 22:5 South 1:1,16,23 2:6,15 10:25 35:4 speak 12:21 26:2 SPEAKER 2:25 speaking 8:12 9:10 specifically 6:21 6:22 17:11 spectrum 13:23 spend 8:9 spilled 14:21 spout 10:23 Square 1:15 stack 13:16 stacks 15:21,22 stage 23:15 standard 10:15 11:2,5,9 17:18 21:22 22:15 30:13 33:10	standing 12:8 start 12:1 State 1:1 35:3 stated 35:6 status 15:19 stepped 31:21 stick 10:10 stockbroker 16:25 straw 8:2 Street 2:5,13 stretches 12:21 strife 10:4 subject 9:25 28:16 submissions 7:19 submit 24:6 submitted 6:15,21 8:14,17 10:13 11:7 25:23 substance 31:15 substantial 14:7 21:11 23:13,16 23:17 sudden 27:16 sued 8:6 26:20 27:15 31:7 sufficient 29:12 34:1 Summary 3:13 11:5,6 13:1 16:2 22:15 23:3 28:18 29:10,15 34:1 supplemental 14:10 supplementing 34:6 support 9:22,24 21:10 supports 20:11 Supreme 10:25 11:1 sure 4:2 8:6 14:1 26:16 28:8 surprise 9:20 surrounding 29:1 susceptible 28:23 sworn 35:7 symptom 20:19 system 27:19 system's 24:17	T take 6:16 10:21 24:5 33:11 taken 1:12,13 22:3 35:5 takes 8:20 talk 20:9,10 33:17 talking 4:11 9:14 14:24 20:4 21:18 30:1 33:16 tasked 26:24 technicality 12:17 24:3,16 tell 18:10 19:13 33:24 telling 12:14 ten 6:16 15:3 22:25 24:23 25:23 tens 8:10 terrible 13:6 20:5 Testament 29:20 testamentary 6:15 6:19,22 8:19 11:10,12 14:2,19 15:24 16:20 17:12,20,22 21:15 22:6,24 23:9 26:3,13 33:2,11,19 testator 22:17 28:16,19,20,21 28:22 testator's 17:11 testified 28:16,20 testify 35:7 testimony 7:17 24:25 28:17,24 33:1 Thank 34:12,14 34:16 that's 3:7,19,19 4:25 7:8,10 9:8,8 10:4,13,23 17:18 23:3 24:9 25:18 25:21 there's 7:20 9:22 12:14,22,23,25 14:18 15:5,9,22	18:20 19:1 20:2 20:6 21:5,6,7,10 22:25 23:19 24:9 33:9 they're 6:14 25:15 26:12 33:16 thing 15:17 28:8 things 12:2 26:2 think 4:24 12:8,10 13:23 15:20 16:12 17:1 18:15 18:18,22 19:21 20:7 22:22 23:8 24:2 32:24 33:3 Thomas 13:3 22:11,12 thought 28:12 thoughts 4:3 thousands 8:10 threatening 7:21 three 6:11 26:1 throwing 25:14 time 4:23 7:12 8:2 8:11 9:17 10:21 12:20,21 14:11 17:2 25:4,8,25 29:8 35:5 times 7:14,15 tipped 8:1 today 3:2,4 4:6,25 6:19 today's 3:21 told 17:16 totally 22:22 touch 15:13 tough 17:18 transcript 2:24 35:6 Trea 1:14,19 35:3,15 treated 7:2,15,16 treatment 20:7 tree 9:2 trial 16:2 tried 18:19 Trust 6:12,13 17:13 19:8 21:22 21:23 22:4,17 26:25 27:11 29:19,21

Trustee 18:13,15 18:22 19:8 27:5 27:10 31:7,23 32:1,10,14 truth 35:8,8,8 try 6:4 29:9 trying 25:8 turn 12:9,10,16 24:2 28:4 twice 10:6 two 4:15,25 7:6 9:6 10:5 12:24 14:3 16:25 19:23 24:5 26:2,9 27:16 28:15 30:19 typo 27:18	wall 8:22 want 10:18,19 20:2 30:5 wanted 5:2 25:7 32:22 wasn't 4:2 14:23 15:20 25:1 31:3 watched 12:7,14 way 13:5 15:6 ways 15:9 we're 3:4 4:10,11 24:15 25:13,14 34:16 we've 8:17 12:17 13:2,15 17:21 18:22 27:25 week 24:20 34:10 weigh 15:7,25 22:24 23:11,19 25:22 34:9 weighed 23:3 33:20 weighing 25:22 weight 29:11 went 13:5 14:12 14:12 what's 20:23 26:13 who's 9:12 25:19 Williams 2:13 wish 17:25 wishes 26:16 withstand 28:18 34:1 witness 4:19 25:24 26:9 witnessed 12:5,13 15:4,14 witnesses 28:15 witnessing 9:15 woman 6:20 26:12 won't 9:6 woods 9:2 words 22:8 23:11 work 24:6,14 working 26:7 works 27:19 world 14:1 worry 24:16 worse 14:5 21:7	23:12 worth 5:1 wrong 26:19 27:12 27:22 31:25 32:12 X Y yeah 17:15 30:3,19 31:3 32:24 year 24:22 years 9:18 13:7,7 14:6 15:12,12,15 17:4 27:16 yesterday 4:2 8:11 8:13 24:7 31:6 York 19:24 you'll 28:5,13 you're 4:8 5:19 13:25 14:1 15:25 17:15 22:10,22 24:23 25:11 you've 5:19 6:8 16:6 17:17 20:12 20:16 34:7 younger 7:6,20 Z zero 9:9,9 27:23 27:24 0 1 1 35:6 106 2:13 12 6:2 126 2:5 15 14:13,14 18 7:12 19 4:17 26:23 2 2:06 1:17 2:55 34:18 2003 11:1 2018ES2301729 1:2 2020 4:17 2021 1:16	21st 13:13 2464 2:14 24th 12:25 21:14 22:7 27 26:23 29401 2:6 29602 2:15 29606 1:23 3 301 1:15 35 2:5 353S.C.208,578... 10:25 4 4 2:3 48 23:23 5 5 4:14,23 5's 24:15 5682 1:22 5th 13:13 14:12 6 6/13/29 35:17 7 7th 1:16 8 864-467-1373 1:24 864-587-7050 1:24
ultimate 21:13 ultimately 23:10 unable 27:7 understand 17:19 22:10,18 understood 17:3 undue 6:14 7:5 9:25 10:17 11:2 16:5,15,19 17:7 17:23,25 27:2 28:17,23,25 32:25 33:10 34:2 units 15:1 University 1:15 unmistakable 11:3 unnotarized 10:14 untimely 10:14 update 4:19			
U			
V			
v 28:4 version 10:9 versus 10:24 25:23 29:20 virtue 31:22 32:9			
W			
Wachovia 10:24 28:4 wait 24:5 waited 25:4			

25

1 believe that the need for an opposing Affidavit wasn't
2 something that the Petitioner figured out well before
3 now. Again, the whole purpose of Discovery -- and I
4 waited a long time. Judge, after I filed my Motion
5 before I requested a hearing because I knew Mr. Blinco
6 once he got in the case he needed an opportunity to do
7 Discovery. If he wanted to depose any of my Affiants,
8 he needed to have time to do that. No sense in trying
9 to get a hearing before he had been able to do his
10 Discovery. You know Interrogatories are there for a
11 reason. If you're going to list an expert, list it so
12 Knox can go depose him so we don't get in the situation
13 we're in now where on the day that we should be able to
14 resolve this case we're throwing in problems that are
15 not excusing or neglect kind of problems. They're
16 problems that everyone involved knew or needed, and
17 everyone involved knew what the rules were, yet a day
18 before this hearing that's been set for quite a while
19 we get this Affidavit from a doctor who's never laid
20 eyes on Mr. Shoemaker, and an argument with you that
21 that's enough. That what we need to do, Judge, is
22 weigh -- it's weighing the evidence. "My Affidavit
23 versus the ten that Knox submitted." Well, Judge,
24 again, you didn't list the guy as a witness. You
25 didn't file the Affidavit on time, it ain't notarized.

26

1 All three are very problematic. If you consider it, it
2 still doesn't speak to two very important things;
3 testamentary capacity and what Mr. Shoemaker's
4 condition was the day he executed the documents. The
5 only evidence in this case of Mr. Shoemaker's condition
6 that day is Ms. Moore's Affidavit who was sitting right
7 there with him and had been working on the latest
8 Estate planning documents, and Martha Louise Ramage
9 Lewis, and then the two witness. All of those people
10 have firsthand personal knowledge of his condition the
11 day the documents were executed. And to a man and a
12 woman all of them explained that they're aware of
13 what's required for testamentary capacity. That he had
14 it that day. Ms. Moore's Affidavit goes into great
15 lengths to explore her interaction with Mr. and Mrs.
16 Shoemaker to make sure that those were their wishes.
17 They were -- articulated them correctly. They were
18 competent to make those requests. Let me jump for a
19 second too. It is wrong to claim that any of these
20 Pleadings were changed as to Ms. Moore. She was sued
21 as a defendant personally. And the allegation is, I'm
22 reading from page seven of Mr. Shoemaker's Petition
23 filed June 27 of '19 in this court, "The attorney is
24 presently tasked with and compensated for administering
25 the will and managing my father's Revocable Trust.

27

1 Lesley Moore knew or should have known my father's lack
2 of capacity and the undue influence of my mother and
3 brothers, and yet did nothing and allowed her personal
4 prejudice and her self-interest in earning fees for
5 services as Personal Representative, Trustee, and/or
6 counsel to the same to cloud her judgment. As such she
7 is unable to fulfill her fiduciary duties of loyalty to
8 all beneficiaries, including me and my children. The
9 Court remove Lesley Moore from serving as Personal
10 Representative of my father's Estate and Trustee of any
11 Trust," et cetera, et cetera. Lesley has been accused
12 of wrong doing in this lawsuit. John represented some
13 facts to this court, and let me represent some facts.
14 I know for a fact she had to put her malpractice
15 carrier on notice 'cause she got sued by Marshall in
16 this lawsuit. And two years later all of a sudden "Ah,
17 we don't have any evidence against Ms. Moore. That was
18 just a typo." Huh-uh, Judge. That is not how the
19 legal system works. And there are responsibilities
20 attached for making allegations against people, and
21 dragging them into court, and forcing them to pay to
22 defend themselves when they did nothing wrong. On
23 this Affidavit issue, again, I -- there is zero excuse
24 for not listing that man before now. Zero excuse.
25 We've done a bunch of depositions since John Blinco

28

1 was retained as counsel, and I ain't heard mention one
2 of any expert until out of the blue this guy's
3 Affidavit comes in. And finally, Judge, if I could
4 turn your attention back to the Russell v. Wachovia
5 case that I referenced earlier -- in fact if you'll let
6 me approach enough to hand it to you --
7 THE COURT: I
8 sure thing.
9 MR. HAYNSWORTH:
10 -- I can give you a copy. I have highlighted
11 identically on your copy, Mr. Blinco's copy, and my
12 copy what I thought was important, Judge. For purposes
13 of my argument right now if you'll flip over to page
14 five of eight, and I've highlighted a provision that
15 says "Appellants argue that two expert witnesses, both
16 medical doctors, testified the testator was subject to
17 undue influence, and that this testimony is enough to
18 withstand Summary Judgment." We disagree. Neither of
19 the experts examined the Testator. Both experts
20 testified the Testator was competent to execute a will.
21 Absent examination of the Testator by the expert on
22 opinion that the Testator was mentally incompetent, and
23 therefore more susceptible to undue influence, we fail
24 to see how expert medical testimony can be provided as
25 to undue influence. Further neither expert based his

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
 COUNTY OF GREENVILLE)

ORIGINAL

IN THE MATTER OF:

JAMES MARSHALL SHOEMAKER, JR., Deceased

FILED

DEC 17 2021

CASE NUMBER:

2018ES2301729

GREENVILLE COUNTY
 PROBATE COURT

JAMES MARSHALL SHOEMAKER, III,
 PETITIONER,

LESLEY MOORE as Personal Representative and
 Trustee, EDWARD SLOAN SHOEMAKER & JONATHAN EVANS SHOEMAKER,
 RESPONDENTS.

Probate hearing taken in the aforementioned matter was
 heard before the Honorable Clayton L. Jennings taken before
 Treasa Hix, Court Reporter and Notary Public, at Probate
 Court, Greenville County Square, 301 University Ridge,
 Greenville, South Carolina, on the 10th day of November,
 2021, commencing at the hour of 2:11, p.m.

REPORTED BY: Treasa Hix, Reporter
 Notary Public for S.C.

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2 1 APPEARANCES: 2 3 JOHN BLINCOW, JR., Esquire 4 Blincow Griffin Attorneys At Law 5 126 Meeting Street. 6 Charleston, South Carolina 29401 7 jblincow@blincowgriffin.com 8 Attorney for Petitioner, 9 10 11 KNOX L. HAYNSWORTH, III, Esquire 12 Brown, Massey, Evans, McLeod, & Haynsworth, LLC 13 106 Williams Street 14 Post Office Box 2464 15 Greenville, South Carolina 29602 16 knoxhaynsworth@bmemhlaw.com 17 Attorney for Respondent. 18 19 20 21 22 23 24 25	4 1 THE COURT: 2 All right. Good afternoon. We are here in the matter 3 of James Marshall Shoemaker, Jr. case number 4 2018FS2301729. And we are here today on Petitioner's 5 Motion and Motion to Recuse and Vacate seeking the 6 reversal of yours truly and seeking an order vacating 7 the prior Order of the The Court granting Summary 8 Judgment to the Respondents. It appears that the 9 interested parties are present. Mr. John Blincow 10 represents the Petitioner, and he is present. And Mr. 11 Knox Haynsworth, III is present on behalf of the 12 Respondents. So, Mr. Blincow, I'll let you tell me 13 about your Motion. 14 MR. BLINCOW: 15 Yes, sir. May it please The Court and good afternoon. 16 My name is John Blincow and I represent the Petitioner 17 Marshall Shoemaker, III. As you know we have filed a 18 Motion in this court asking you to recuse yourself from 19 hearing this case and in a related case involving the 20 same parties and the Estate of Mrs. Polly Shoemaker. 21 The basis of our Motion is as you set out to us in an 22 email in September where you described being in a co- 23 counsel relationship with a lawyer name Stanley McLeod. 24 Mr. McLeod and Mr. Haynsworth are law partners. And on 25 that basis we filed our Motion and implicated Canon 2
3 1 INDEX 2 3 Colloquy Between The Court and Counsel..... 4 4 Certificate of Reporter..... 41 5 6 EXHIBITS: 7 (None marked) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH 25 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)	5 1 of the Code of Profession -- of the model rules which 2 is codified and made part of our South Carolina 3 Appellate Court rules. And Canon 2 is the rule that 4 says, Judge, that a Judge shall act at all times in a 5 manner that promotes public confidence and the 6 integrity and impartiality of the judiciary. This 7 requires a Judge to avoid impropriety and the 8 appearance of impropriety. So that is the basis of our 9 Motion. The test for appearance of impropriety is -- 10 the test for appearance of impropriety is whether the 11 conduct would create in reasonable minds a perception 12 that the Judge violated this code or engaged in other 13 conduct that reflects adversely on the Judge's honesty, 14 impartiality, temperament, or fitness to serve as a 15 Judge. So that's the test. And, you know, the facts 16 are can a Judge hear a case involving a law firm while 17 simultaneously working with that law firm on other 18 cases in a different court? That's the crux of it. 19 The first thing that occurred to me, and I guess it was 20 because I was in law school with -- it was a family 21 Court Judge named Judge Segars-Andrews and she had a 22 husband who was a lawyer in Mount Pleasant and she 23 heard a family Court case a divorce case, and it 24 turns out that her husband had been co-counsel with the 25 lawyer for the wife in that family Court case. And it

6

1 went round and round but it ended up in the -- at the
 2 Judicial Merit Selection Committee -- Committee. And
 3 they decided that she needed -- she should have recused
 4 herself based on the relationship her husband had with
 5 lawyers for one of the parties. And the failure to do
 6 that ended up -- and the committee voted unanimously
 7 that her conduct not recusing herself created an
 8 imperpearance -- an appearance of impropriety. And
 9 then voted seven to three finding that she lacked the
 10 required ethical fitness to continue on the bench. And
 11 so they didn't clear her and she was not reappointed by
 12 the General Assembly and isn't a judge today. She
 13 appealed that finding by the Judicial Merit Selection
 14 Committee to the Supreme Court, and they denied her
 15 request and didn't give her any relief. Judge, this
 16 case is even stronger in terms of the relationship
 17 between the Court and lawyers for one party in that in
 18 Judge Segars' case it was an indirect relationship.
 19 She benefitted because her husband got legal fees for
 20 working on a case with lawyers for one party, as
 21 opposed to in this case you benefitting directly from
 22 working on a case with Mr. Haynsworth's law partner.
 23 And the other thing is that this case, ours, there's an
 24 ongoing relationship. In other words Judge Segars-
 25 Andrews testified that she didn't even remember that

7

1 her husband had worked with lawyers for the wife in a
 2 case before her, and in our case it's an ongoing
 3 situation. After I filed my Motion I did a little
 4 further digging and found a couple of authorities I
 5 would like to hand up (counsel hands up documents).
 6 You know our -- the guidepost of these model rules of
 7 judicial conduct are model rules. The first thing I
 8 handed up the Ohio Supreme Court interpreting the same
 9 rules that we have found that a part-time referee
 10 should disqualify himself in a proceeding in which a
 11 party is represented by an attorney with whom the part-
 12 time referee co-counsels on related -- on unrelated
 13 cases in private practice when a co-counsel case is
 14 ongoing or when a co-counsel case has been completed
 15 and the fees have not been fully earned -- have been
 16 fully earned but not received. The corollary rule is a
 17 part time referee should disqualify him or herself in a
 18 proceeding in which a party is represented by a law
 19 partner when a co-counsel case is ongoing or when a co-
 20 counsel case has been completed and the fees earned but
 21 not received. So I think that is on all fours with the
 22 situation that we have here. And if you look at the
 23 last page of what I handed up the basis, they're
 24 construing the same rules. And this Supreme Court of
 25 Ohio says "Potential conflicts abound because of the

8

1 personal, professional, and financial aspects of the
 2 relationship." In other words it's not just a
 3 financial relationship. You could have a personal
 4 relationship with Mr. McLeod. You could think he's a
 5 good lawyer. You could appreciate working with him,
 6 and that gives an appearance of an impropriety or the
 7 perception that you might be partial to one side or the
 8 other. So again it's not just the fact that there's a
 9 financial relationship. There's that and potential
 10 conflicts abound because there's a personal and
 11 professional relationship.
 12 THE COURT:
 13 And tell me again where is that? You mentioned on the
 14 last page you pointed out?
 15 MR. BLINCOW:
 16 Yeah, the last page, the second paragraph and page --
 17 THE COURT:
 18 And there were multiple items you handed up. The first
 19 one --
 20 MR. BLINCOW:
 21 Yeah, yeah. Okay. So the first --
 22 THE COURT:
 23 -- is the Supreme Court of Ohio.
 24 MR. BLINCOW:
 25 Right. If you go to page three --

9

1 THE COURT:
 2 Page three.
 3 MR. BLINCOW:
 4 -- of that --
 5 THE COURT:
 6 So the second to last page?
 7 MR. BLINCOW:
 8 Second to last page. Excuse me. The second paragraph,
 9 six -- five -- five lines down is where it says
 10 "Potential conflict -- conflicts abound because of the
 11 personal, professional, and financial aspects of the
 12 relationship." That is a co-counsel relation -- a
 13 part-time judge being in a co-counsel relationship with
 14 a lawyer while also hearing a case when that lawyer's
 15 firm represents one side or the other.
 16 THE COURT:
 17 And in this case it was a case where --
 18 MR. BLINCOW:
 19 It doesn't say.
 20 THE COURT:
 21 Well, it says "when attorneys co-counsel on cases and
 22 divide fees even though they are not partners or
 23 associates in a firm there's a professional
 24 relationship which could give an appearance of
 25 impartiality."

1 MR. BLINCOW:

2 That's right.

3 THE COURT:

4 Okay.

5 MR. BLINCOW:

6 And the corollary applies here, which is recusal is proper if Mr. McLeod was representing the Respondents, and recusal is proper for the same reasons if one of Mr. McLeod's partners or associates is representing a party in a case before you.

11 THE COURT:

12 Okay.

13 MR. BLINCOW:

14 And they do go on if you look at page three, question two, they make a distinction if Mr. McLeod and Mr. Haynsworth were partners in the sense that they shared office space that would not be a relationship that would be improper. But because they are not just sharing office space and they are a true partnership the same reasons that would apply would make recusal appropriate -- if Mr. McLeod were representing Respondents would make it appropriate because his law partner is representing the Respondents here.

24 THE COURT:

25 Okay.

1 MR. BLINCOW:

2 All right. And the last thing if you'll look at the next thing I handed up. It's a one-page document and it's our Opinion 12-2013. In Ohio the Supreme Court rides herd over advisory opinions for the judiciary. And in there I guess there's a committee -- an advisory committee on standards for judicial conduct. And they issued an Opinion 12-2013. And this is the closest thing I could find in South Carolina. You know if you think about it most Judges aren't part-time. This was a case where there was a Judge who was becoming a Judge and the issue was could he receive fees for work with another lawyer? And The Court said "Yes, you could do that." But if you look at the last paragraph "until all the fees are paid the Judge should not preside in cases in which the attorney with whom the Judge is sharing fees appears as counsel."

18 THE COURT:

19 Okay.

20 MR. BLINCOW:

21 So I think, you know, it's -- our position is pretty straight forward. Under the rules of Canon 2 and an appearance of impropriety should a court recuse itself when a law firm -- when The Court is working with a law firm as co counsel while at the same time hearing a

1 case where one side is represented by that same firm. We think the result that is compelled is that The Court should step aside. And beyond that, I mean all of these cases talk about The Court has the discretion to -- I'm -- this is Blincow paraphrasing but if it's a close call perhaps the best thing and the most judicious thing and the proper thing is to exercise discretion and step aside. So I think here we've got both. I think if you look at this it's a situation where the Court really -- the law compels The Court to step aside. But even if the Court doesn't agree with that, the proper thing to do and exercise of its discretion is to step aside and let someone else hear the case.

15 THE COURT:

16 All right. Thank you. Mr. Haynsworth?

17 MR. HAYNSWORTH:

18 Thank you, Judge Jennings. Judge, I think the law compels you to continue to hear the case that you are in the middle of hearing. Let me work a little backwards on some of what Mr. Blincow handed up. These cases out of Ohio, I didn't have a chance to read them but very quickly but it appears to me that that case, beyond being an Ohio case, is dealing with a situation where the Judge and in our example, me, are splitting

1 Fees with one another. That was obviously not the situation. You and I have no cases in which we are representing co-counsel. As I understand it from Mr. McLeod it was not a situation, also one of the cases Mr. Blincow referenced, where he was involved and you're being hired. You-all both got hired independently by the client. And that's the extent of you-all's connection. Nothing I have seen Mr. Blincow hand up or talk about speaks to that situation. They speak to much more obvious conflicts or the appearances of conflicts. One comment, Judge, and it's an objection I've got to the Motion that was filed. Yet again it's been represented in the document filed with this court Marshall Shoemaker was treated equally by his family except for the last Will. That's just factually inaccurate. And that inaccuracy is part of the Motions that we brought before you. Beyond my editorial comment on that, Judge, let me speak to a couple of the cases that Mr. Blincow cited in his Motion. One of the cases that he quoted from is the A.T. Massey U.S. Supreme Court case. And he attempted to analogize that case as somehow involving money that if a Judge is being paid money by a litigant before it somehow creates this impropriety. You know, read the case, Judge. The head of Massey Coal gave three

14 1 million dollars to the Judge's election campaign to get 2 a particular Judge elected who ruled in his favor when 3 the Appeals Court heard an adverse decision against 4 Massey Coal. And this opinion from the U.S. Supreme 5 Court goes on to talk about what an extraordinary case 6 it was, and that due process clause incorporated in the 7 common law rule that a Judge must recuse himself when 8 he has a direct personal substantial pecuniary interest 9 in the case. It's apples and oranges, Judge. It's not 10 South Carolina law. It's not a South Carolina Judge, 11 and to the extent it stands for anything. It has 12 nothing to do with the situation before you. The Judge 13 Segars-Andrews case, Judge, let me make a couple of 14 comments on that. I pulled and read the complete 15 report of Canon's qualifications that Mr. Blincow cited 16 from. A couple of things I think it's important to 17 consider. When she denied the Motion to recuse 18 herself, that was appealed. South Carolina Court of 19 Appeals concluded that Judge Segars-Andrews was correct 20 in her interpretation of the law concerning the merits 21 of the case and her recusal. So I don't want this 22 court to think that Judge Andrews did anything wrong 23 and a higher court said she should have recused 24 herself. That's not at all what happened, and that 25 wasn't the Court's opinion. She got mired in the	16 1 All right. Thank you. And let me ask some questions 2 first of Mr. Blincow. 3 MR. BLINCOW: 4 All right. 5 THE COURT: 6 Case law in South Carolina says that "The party seeking 7 disqualification must do more than merely allege bias 8 on the Judge's behalf. The party must present some 9 evidence of judicial prejudice or bias." 10 MR. BLINCOW: 11 Yeah. 12 THE COURT: 13 "When an appellant offers no evidence to support his 14 claim of partiality the trial Judge is correct to deny 15 a Motion for recusal." Where is the evidence? You 16 haven't alleged any evidence of judicial prejudice or 17 bias, so I'm going to give you the opportunity now to 18 -- 19 MR. BLINCOW: 20 Yeah. 21 THE COURT: 22 -- demonstrate it. 23 MR. BLINCOW: 24 Here's the difference. The case that you're quoting 25 from was an Ex Parte communication case. It was a
15 1 politics of how Judges get dealt with down in Columbia. 2 and the fact that her husband got a huge fee. And I 3 think this is correct. I think the difference there, 4 Judge, is her husband -- excuse me. She had ruled on 5 an issue that was adverse to the very litigant or his 6 relative. I may have that wrong. Maybe his son. In 7 this situation there is nothing. There is no other 8 case that Stanley McLeod, or you, or I have involving 9 Marshall Shoemaker. There is no extra judicial 10 dealings that you are having that have any bearing on 11 this. And no other than to try and leverage the fact 12 that you are a practicing attorney as well as a Judge, 13 and you obviously are in practice with other attorneys, 14 there is not an issue here involving recusal. You have 15 dealt impartially with the parties. Your obligation 16 obviously is to continue to do that. And I think you 17 do both sides a disservice if you were to exercise your 18 discretion and recuse yourself, because both of us now 19 have to start over again on a lot of what we've been 20 through. And that's not fair to the litigants. It's 21 not efficient for the judicial system, and there's no 22 reason to go there. So for those reasons, Your Honor, 23 I would respectfully request you deny Mr. Blincow's 24 Motion. 25 THE COURT:	17 1 Canon 3, not a Canon 7 appearance of impropriety case, 2 and here's the difference. If I called you this 3 afternoon and said "Judge, I've got a flat tire on the 4 interstate I'm going to be 30 minutes late" -- 5 THE COURT: 6 Well, this is Segars-Andrews' case I just quoted. This 7 is Simpson v. Simpson 377S.C.519 Court of Appeals South 8 Carolina -- 9 MR. BLINCOW: 10 Right. 11 THE COURT: 12 -- ZOOS. 13 MR. BLINCOW: 14 So then my answer would be after The Court of Appeals 15 came the Judicial Merit Selection Committee that found 16 unanimously that she should have recused herself based 17 on the relationship her husband had with lawyers for 18 the wife. And after that she appealed to the Supreme 19 Court -- let me get this right. And the Supreme Court 20 denied her request and did not give her any relief. 21 I've got it right here. 22 THE COURT: 23 But, again, I'll ask what is the evidence of judicial 24 prejudice or bias in this case? 25 MR. BLINCOW:

18

1 well, when you're relying on an appearance of
 2 impropriety you don't have to show actual impropriety,
 3 it's just the perception. What we're relying on is
 4 exactly what you relayed to the parties which is "I'm
 5 in a co-counsel relationship with a lawyer in a firm
 6 while at the same time hearing a case with that firm
 7 where one of the parties is represented by that firm."
 8 The rule on appearance of impropriety is intentionally
 9 vague 'cause you're never going to be able to come up
 10 with all the scenarios where that could happen. The
 11 test is clear in our state of what the analysis should
 12 be on appearance of impropriety. It doesn't have
 13 anything to do with showing actual bias or anything
 14 actually improper. Going back again -- and I don't
 15 think there's any question about that. The test is
 16 whether the conduct would create in reasonable minds a
 17 perception that the Judge may have a reason to be
 18 impartial -- or partial.

19 THE COURT:
 20 Okay.

21 MR. BLINCOW:
 22 Does that answer the question?

23 THE COURT:
 24 Well, I'm not sure that

25 MR. BLINCOW:

19

1 Let me --

2 THE COURT:
 3 Hold on. Let me finish. I'm not sure what you're
 4 saying about if there's a mere appearance of
 5 impropriety that that stands alone and disqualifies the
 6 Judge. And it appears to me in the case law I have
 7 reviewed that you must show more than that. That under
 8 judicial Canon rule 3E(1) our Supreme Court has stated
 9 that "The movement or Petitioner must show some
 10 evidence of the bias or prejudice of the Judge." And
 11 I'm citing that case of Simpson v. Simpson which was
 12 citing and quoting Lyvers, I-y-v-e-r-s, v. Lyvers. And
 13 again in 1998 in the case of Roche v. Young Brothers,
 14 Inc. our Supreme Court has said in a dispute involving
 15 judicial Canon rule 3E(1)(a) if there is no evidence of
 16 judicial prejudice a Judge's failure to disqualify
 17 himself will not be reversed on appeal. A Judge's
 18 impartially might reasonably be questioned when his
 19 factual findings are not supported by the record. So,
 20 I mean, I can research that issue more, but you're
 21 telling me that no evidence of prejudice or bias is
 22 necessary if there's a mere appearance of impropriety?

23 MR. BLINCOW:
 24 Under the appearance of impropriety test it was well-
 25 established and understood that proof of actual

20

1 misconduct is not required.

2 THE COURT:
 3 Okay. What are you citing?

4 MR. BLINCOW:
 5 That is this John Freeman Law Review article that cites
 6 to -- I'll find it for us. Something at page 1918.
 7 I'll have to -- well, it's footnoted at footnote 24.
 8 See id. at 1918. So I've just got to figure out what
 9 the --

10 THE COURT:
 11 Well, I'll let you --

12 MR. BLINCOW:
 13 I can --

14 THE COURT:
 15 -- submit that to The Court following the hearing, if
 16 you would?

17 MR. BLINCOW:
 18 Sure.

19 THE COURT:
 20 Now, and tell me this: our Court of Appeals and/or
 21 Supreme Court may find conduct of a Judge to be --
 22 well, let me state it a different way. The committee
 23 on, what, Judicial --

24 MR. BLINCOW:
 25 Fitness, maybe.

21

1 THE COURT:
 2 -- Fitness can find in one case that conduct may
 3 disqualify a Judge, and our Court of Appeals may find
 4 that the same conduct does not disqualify a Judge.
 5 Whose opinion controls here?

6 MR. BLINCOW:
 7 Well, the fact that our Supreme Court let stand the
 8 Judicial Fitness Committee's decision would mean that
 9 the decision that recusal was proper, they -- the
 10 Supreme Court let that stand.

11 THE COURT:
 12 Well, refused to hear the case; right?

13 MR. BLINCOW:
 14 Correct.

15 THE COURT:
 16 So the Supreme Court issued no finding, no decision, no
 17 opinion on the matter?

18 MR. BLINCOW:
 19 The Supreme Court was given the opportunity to say is
 20 The Court of Appeals right or is the Judicial Merit
 21 Selection Committee, which came later, are they right;
 22 and they left it alone. And she was not reelected or
 23 what didn't get out of the committee so that she could
 24 be reelected by the General Assembly.

25 THE COURT:

1 All right. You allege in your Motion that it is "clear
2 that there is some sort of financial relationship and
3 Judge Jennings is being paid for his work." Why is
4 that clear?

5 MR. BLINCOV:

6 Well, again, in your email you say you're in a co-
7 counsel relationship. I think we heard today that you
8 were hired by Mr. Gafaary, and I assume you're getting
9 paid for your work so you've got two cases pending.
10 You mention in there there may be a chance for a third
11 co-counsel relationship. I am assuming that you're
12 getting paid for your work. I'm not suggesting that
13 that's improper but that creates a relationship -- a
14 co-counsel relationship with Mr. McLeod and his firm.

15 THE COURT:

16 And what if a Judge is not being paid, has not billed
17 any time for something, and has not appeared in court
18 or done any work on a file?

19 MR. BLINCOV:

20 Well, I can see it both ways. You --

21 THE COURT:

22 Well, I'm telling you --

23 MR. BLINCOV:

24 If you were working pro bono --

25 THE COURT:

1 to submit an Affidavit that was unnotarized. In your
2 opinion would that show bias or prejudice to you or
3 your client, or would that appear to bias or prejudice
4 Mr. Haynsworth and his clients?

5 MR. BLINCOV:

6 It was the decision to consider the Affidavit was
7 favorable to us. But the last thing you do when you're
8 trying to get at whether recusal is proper is to add up
9 the number of times you've ruled for one side or
10 against one side. That's not the analysis. The
11 analysis is can it be -- would a reasonable person say
12 this is -- this creates an appearance of a relationship
13 and we would be better off because we got -- at the end
14 of the day the last thing the Court wants to do is to
15 appear to be unfair. And so that's -- that -- yeah.
16 But, again, you don't want to add up when you've ruled
17 against us three times so that must mean you're
18 impartial. It's not that. It's the relationship that
19 you disclosed that we're hanging our hat on.

20 THE COURT:

21 All right.

22 MR. BLINCOV:

23 Does answer the -- I feel like I'm rambling.

24 THE COURT:

25 I believe so. Now, again, and applying Canon 3E(1)

1 Let me just disclose this to you right now. I have
2 filed a Notice of Appearance in the cases I have
3 referred you to. I have not billed an hour, or a point
4 one of an hour on either of the files. Have not been
5 paid a dime. Have not recorded any time in either
6 case. Does that change your perspective or your
7 conclusion?

8 MR. BLINCOV:

9 It doesn't. There's still a co-counsel relationship.
10 And, you know, if you're sitting over here you're
11 thinking this court is working with Mr. McLeod in some
12 fashion while at the same time hearing a case where the
13 respondents are represented by Mr. McLeod's law
14 partner. And that dredges up all sorts of risks of --
15 it creates an appearance of an impropriety and dredges
16 up risks of conflicts abound where there could be the
17 perception that you might be partial one way and not
18 another.

19 THE COURT:

20 All right. Now, as I recall we had a hearing on a
21 Motion for Summary Judgment in the matter of James
22 Marshall Shoemaker, Jr., and at that hearing I allowed
23 you to submit your only Affidavit you submitted
24 approximately an hour before the hearing in violation
25 of rule 6 of the rules of Civil Procedure. Allowed you

1 South Carolina Supreme Court has stated that "The
2 movement or Petitioner must show some evidence of the
3 bias or prejudice of a Judge." And I'm quoting the
4 Lyvers v. Lyvers case. And immediately

5 MR. BLINCOV:

6 I've got --

7 THE COURT:

8 -- prior to that The Court said that the party seeking
9 disqualification must do more than merely allege bias
10 on a Judge's behalf. The party must present some
11 evidence of judicial prejudice or bias.

12 MR. BLINCOV:

13 Okay. And you mentioned that way back in an email
14 where we were trying to decide if a hearing was
15 "necessary." I can find it. There is a distinction
16 between the general where there is some -- we're
17 relying on the general rule and the model rules and not
18 one of the specific rules for which we may have to show
19 actual bias. Does that make any sense at all? I --

20 THE COURT:

21 Which rule are you relying on?

22 MR. BLINCOV:

23 The general -- let me see if I can --

24 THE COURT:

25 Canon 2?

1 MR. BLINCOW:
2 Canon 7, but it goes further. I just need to find --
3 excuse me. I'm sorry. Yeah, we are relying on the
4 general standard of disqualification in Canon 3C(1)
5 that a Judge or referee should disqualify himself in
6 which his or her impartiality might reasonably be
7 questioned. Four specific instances in which a Judge
8 or referee's impartiality might be questioned are 3C(1)
9 A through D. I think that the A through D requires
10 proof of specific bias as you were asking, and the
11 general one does not.
12 THE COURT:
13 All right. And Simpson v. Simpson I'm quoting the
14 opinion I cited earlier. It says that "Husband argues
15 Judge Segars-Andrews' own statements about the need to
16 disclose a previous working relationship between her
17 husband's law partner and wife's counsel might
18 reasonably question her impartiality. Husband fails
19 however to provide any evidence of how the former
20 relationship actually resulted in some prejudice or
21 bias in Judge Segars-Andrews' ruling. Thus Judge
22 Segars-Andrews is correct to deny husband's request for
23 recusal." Isn't that a holding which reflects that you
24 have to not only -- if you're arguing the appearance of
25 impartiality that you also have to show evidence of how

1 the improper relationship or the relationship of
2 counsel resulted in some prejudice or bias?
3 MR. BLINCOW:
4 Well, we know how Judge Segars-Andrews' case came out.
5 THE COURT:
6 I have the case. We --
7 MR. BLINCOW:
8 Right.
9 THE COURT:
10 -- know what the committee said.
11 MR. BLINCOW:
12 Right.
13 THE COURT:
14 But what matters more again, the committee or our
15 Appellant Courts?
16 MR. BLINCOW:
17 Well, Judge Andrews --
18 THE COURT:
19 What controls?
20 MR. BLINCOW:
21 the latter or the more -- the Judicial Merit Committee
22 that decided that she clearly should have recused
23 herself, and the failure to do so meant that she was
24 ethically unfit trumps over the Court of Appeals.
25 Especially when you consider that Judge Segars-Andrews

1 said "Gosh, that's a terrible ruling. We need to take
2 it to the Supreme Court." And the Supreme Court let it
3 stand.
4 THE COURT:
5 Well, they didn't even consider it. They just refused
6 to hear the case; isn't that right?
7 MR. BLINCOW:
8 She asked them to hear it. And they read her papers
9 and said for one reason or another we will let the
10 decision stand and she's no longer a Judge.
11 THE COURT:
12 All right. Mr. Haynsworth, I'm going to let you
13 follow-up with -- you've heard these questions, and any
14 comments or arguments you would like to make I would
15 like to hear.
16 MR. HAYNSWORTH:
17 Briefly, Your Honor, I just would like to make it
18 clear, Judge, the failure to recuse Judge Segars-
19 Andrews if you read through this is a lot more than
20 just what we're talking about. But specifically what
21 we're talking about she said on the record. Judge
22 Segars-Andrews vehemently insisted that she could not
23 sit the situation right for Mr. Simpson, and that her
24 only alternative was to let him have a new trial. When
25 she failed to provide him that with that alternative

1 and gave only a perfunctory explanation that she was
2 relying on opposing counsel's submission she created an
3 atmosphere of distrust. So what happened is, is she
4 decides "Oh, gosh, I've got a conflict 'cause of a
5 situation of my husband's. I hate to do this to ya'll,
6 'cause it's really going to mess you both up, but I'm
7 going to have to. There's no way I can fix this."
8 Okay? And then she did a one-eighty. The opposing
9 side submitted an Affidavit with Nathan Crystal that
10 said "Well, I'm an expert in all of this and you don't
11 have to recuse yourself," and she changed her mind.
12 That was the problem with her. Not that there's this
13 conflict she had and it rose to the level of you don't
14 get to be a Judge anymore because of it. She went out
15 of her way to point out "I can't be fair. I can't undo
16 what's happened." And then after basically on her own
17 Motion saying she was going to recuse herself she
18 changed her mind based on an Affidavit from the other
19 side. It's just a completely different situation than
20 what we have here. On the issue of what trumps what,
21 Mr. Blincow's just wrong. The Appellant Court decision
22 as to whether she should recuse herself is the highest
23 court decision on that issue. Her appealing whether
24 she got gigged to be a Judge again is not the issue
25 that was going up on appeal. What went up on appeal

1 was the recusal, and that's been decided as Your Honor
 2 has already addressed with us. And finally, your
 3 Honor, just to swing it back to South Carolina law
 4 Zurich tried to get justice told and it disqualified
 5 herself in asbestos -- a bunch of asbestos cases down
 6 in Richland County. And I happened to stumble across
 7 her Order denying their Motion and just wanted to cite
 8 a couple of the relevant provisions from our law. Oh,
 9 Lord, bear with me, Your Honor. Just a couple of
 10 relevant citations from that case, Your Honor. And I'm
 11 quoting "It is not enough for a party seeking
 12 disqualification to simply allege" -- this is exactly
 13 what you said. "To simply allege bias. The party must
 14 show some evidence of that bias or prejudice." And the
 15 site of that is Roache v. Young Brothers
 16 322S.C.753045.E.2nd311. It's a 1988 Supreme Court
 17 opinion. Another relevant provision from a case,
 18 Judge, I think is this: and that is "The standard for
 19 establishing prejudice is high." That's a citation
 20 from Gralian v. State. All I have is the Westlaw site
 21 for it, which is 9844641. It's a Court of Appeals 2008
 22 case.

23 THE COURT:
 24 Mr. Blincow's saying if there's an appearance of
 25 impropriety that the rule is that there's no need to

1 show actual prejudice or bias.

2 MR. HAYNSWORTH:
 3 I don't think that's the rule. But if it were it has
 4 to be a reasonable objective appearance of impropriety.
 5 If you want to just say "hey, the rule is Judge if it
 6 looks like you might be impartial you must recuse,"
 7 then the extent to which that appearance goes would
 8 never end. Give you an example. Say our children were
 9 in fifth grade together, or whatever grade together.
 10 You know, we may see each other at -- you could
 11 arguably come in here and say that Judge and Knox's
 12 children are in the same class and they're together at
 13 events for the kids, and that's the appearance of
 14 impropriety. So any Judge who has children with any of
 15 the litigants that appear before that Judge must recuse
 16 themselves because that would create an appearance of
 17 impropriety. You could extend that, you know, to the
 18 nth degree and someone could take the position "Well,
 19 no, no, that looks like it might be improper." And so
 20 then you're going to have no one's going to be able to
 21 hear anything because someone's going to think it looks
 22 like maybe there's the appearance of impropriety 'cause
 23 there's some connection between either the lawyer and
 24 the Judge, the litigant, or Mr. Blincow's point, other
 25 people that the lawyer works for. But when you get

1 down to final analysis I think you've got to, as Your
 2 Honor asked, give the Court some evidence or what you
 3 contend is evidence of some impropriety. You can't
 4 just say "You've got a conflict and when in doubt
 5 recuse." That's not the standard. It's not fair to us
 6 if to go that route. So, you know, I just wanted to
 7 reference those couple of South Carolina cases, Your
 8 Honor, and I'll be happy to answer any questions the
 9 Court may have for me.

10 THE COURT:
 11 And, Mr. Blincow, you're aware that when
 12 disqualification is not required the South Carolina
 13 Code of Judicial Conduct holds that "A Judge shall hear
 14 and decide matters assigned to the Judge." And that is
 15 quantifying the Canon 3D(1).

16 MR. BLINCOW:
 17 Yeah, that's right if there's no issue that creates an
 18 appearance of impropriety then yes.

19 THE COURT:
 20 All right. Well, are you aware of any cases where a
 21 Judge issues a decision but should be -- should have
 22 the prior Order vacated because the Judge was involved
 23 in a case as co-counsel but received no compensation
 24 directly or indirectly from his or her involvement in a
 25 case as co-counsel with a firm whose other attorney is

1 involved in the case in which the Judge rendered an
 2 opinion?

3 MR. BLINCOW:
 4 Let's see if this answer the question. I think that if
 5 recusal is appropriate based on the relationship that
 6 we've been talking about, then it would be appropriate
 7 for that recusal to relate back to when you -- when the
 8 co-counsel relationship was created which as you
 9 mentioned in your email was in April, which was before
 10 The Court heard and ruled on Summary Judgment.

11 THE COURT:
 12 It was not before The Court heard the Motion. The
 13 Court ruled on the Motion two months later.

14 MR. BLINCOW:
 15 Okay.

16 THE COURT:
 17 And you're arguing your Motion to Recuse and Vacate
 18 that money is the root of all evil, and there's no
 19 money involved in this case. If I do have to appear in
 20 court at some future date and bill my client for time
 21 spent on the matter, then money could become an issue.
 22 And you are alleging in your Motion that there is some
 23 sort of financial relationship and that I'm being paid
 24 for my work in these other matters, and that's not
 25 true. Or at least I haven't done anything and haven't

34

1 been paid or billed anything. All right.

2 MR. BLINCOW:

3 Yes.

4 THE COURT:

5 Is it possible that -- I don't know. Can you provide

6 to The Court, Mr. Blincow, case law or other

7 controlling Canons, or regulations, or anything of the

8 sort that would demonstrate to The Court that a co-

9 counsel relationship creates the appearance of

10 impropriety even if there's no payment being made or no

11 financial advantage or gain for the Judge? And that

12 not only is that in and of itself creating the

13 appearance of propriety, but that you do not -- based

14 on the mere appearance of impropriety there needs to be

15 no actual demonstration of prejudice or bias by that

16 Judge?

17 MR. BLINCOW:

18 I've done a poor job of -- there is a distinction

19 between the showing of actual prejudice --

20 THE COURT:

21 How long would you need to be able to submit case law

22 on that --

23 MR. BLINCOW:

24 Sometime next week --

25 THE COURT:

35

1 -- issue?

2 MR. BLINCOW:

3 Yeah, either next week sometime.

4 THE COURT:

5 Why not this week?

6 MR. BLINCOW:

7 Tomorrow's Thursday.

8 THE COURT:

9 Okay. You've already done the research; right?

10 MR. BLINCOW:

11 I have.

12 THE COURT:

13 So is there any reason you couldn't submit that later

14 this week?

15 MR. BLINCOW:

16 No.

17 THE COURT:

18 Okay. And Mr. Haynsworth I give you the opportunity to

19 research the same, and I hate to drag this out but I'm

20 going to need to take this matter under advisement. I

21 want to make sure that I do the right thing. I don't

22 think on the one hand that I need to participate in

23 this case if there is an actual appearance of

24 impropriety, and that I must recuse myself even if

25 there's no actual allegation or demonstration of actual

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1 prejudice or bias. And, of course, I don't want to

2 proceed in that matter. At the same time when we

3 consider the amount of time and effort spent by the

4 parties in this Action and everything that went into

5 the Motion for Summary Judgment and these other

6 Motions, which have not yet been ruled upon as Mr.

7 Haynsworth pointed out, my recusal could also have a

8 very harmful effect on the litigants in this matter.

9 So it's a difficult issue. And so if you can clarify

10 it for me with some -- what I've just requested --

11 MR. BLINCOW:

12 Yes, sir.

13 THE COURT:

14 -- I would be most appreciative. Anything else? Mr.

15 Haynsworth wants to speak.

16 MR. HAYNSWORTH:

17 Well, I just want to make sure I understand, Your

18 Honor, you're -- so as I understand it you're expecting

19 from Mr. Blincow, if it's out there and he can find it,

20 case law that it's just the appearance, not the

21 THE COURT:

22 That the --

23 MR. HAYNSWORTH:

24 -- evidence of --

25 THE COURT:

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1 that if there's an appearance of propriety the

2 petitioner seeking recusal does not then have to show

3 as these other cases have required that there is actual

4 -- there has been actual prejudice or bias by the

5 Judge.

6 MR. HAYNSWORTH:

7 All you've got to do is suggest it in there for what it

8 is versus we've got to have --

9 THE COURT:

10 Well, I guess, he's -- if I understand it right he's

11 saying that serving as co-counsel with another member

12 of an attorney's firm is maybe prima facie or per say

13 demonstration of the appearance of impropriety.

14 MR. HAYNSWORTH:

15 But to fit your facts which is no -- we've got what

16 he's already relied on about money. That's factually

17 different. So what we're looking for is --

18 THE COURT:

19 I guess even if the Judge has not been compensated.

20 MR. HAYNSWORTH:

21 Yes, sir.

22 THE COURT:

23 But even if he wants to -- or if any of you can show a

24 case where there has been compensation but -- whether

25 there's been compensation or not, I would love to see

1 the case.
 2 MR. BLINCOW:
 3 All right. And that clearly would be right on point,
 4 but and I'm -- and I know we're done, but you wouldn't
 5 want it to turn on the fact that I haven't been
 6 compensated and then next month you send out a bill,
 7 and then next month you hear --
 8 THE COURT:
 9 But that could affect --
 10 MR. BLINCOW:
 11 a Motion.
 12 THE COURT:
 13 -- your Motion to Vacate the prior Order.
 14 MR. BLINCOW:
 15 Yep.
 16 THE COURT:
 17 So it could be that maybe you're arguing I shouldn't --
 18 maybe there's some basis and I'm just -- this is for
 19 the sake of argument --
 20 MR. BLINCOW:
 21 Yeah. Right.
 22 THE COURT:
 23 -- that there's some basis for me to recuse myself for
 24 any further proceedings in any of these cases. But
 25 since I haven't been paid a dime, or billed any time,

1 Yes. If you can find it that would be very helpful.
 2 Okay?
 3 MR. BLINCOW:
 4 Yes, sir.
 5 THE COURT:
 6 All right. Thank you, gentlemen.
 7 MR. HAYNSWORTH:
 8 Thank you, YOUR HONOR.
 9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
 10 3:05 P.M.)
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1 or appeared in court, or done anything in the two cases
 2 I referenced as having a co-counsel relationship with
 3 Mr. Haynsworth's firm on, that maybe the prior order
 4 which you're challenging should remain in full force
 5 and effect and not be vacated.
 6 MR. BLINCOW:
 7 Yeah.
 8 THE COURT:
 9 So, you know, that issue may be relevant. The issue of
 10 compensation may be relevant to your Motion to vacate.
 11 MR. HAYNSWORTH:
 12 Do you want, Your Honor, mine by Friday and his by
 13 Friday? Is that where we're at?
 14 THE COURT:
 15 Well, let's do it this. How about by next Tuesday?
 16 MR. HAYNSWORTH:
 17 Okay.
 18 THE COURT:
 19 If you could submit it to Ms. Campos-Ivey. And I
 20 believe you've got my direct email here at the Court
 21 you can submit it. It doesn't have to be a formal
 22 brief, but any use --
 23 MR. BLINCOW:
 24 Some authority if we can find it?
 25 THE COURT:

1 CERTIFICATE OF REPORTER
 2
 3 I, Treasa Hix, a Notary Public in and for the State of
 4 South Carolina, do hereby certify that the foregoing hearing
 5 was taken before me on the date and at the time and location
 6 stated on page 1 of this transcript.
 7 That I am not related to nor the employee of any of the
 8 parties hereto, nor related to or employed by any attorney
 9 or counsel employed by the parties hereto, nor interested in
 10 the outcome of this action.
 11
 12
 13 Treasa Hix, Reporter
 14 Notary Public for S.C.
 15 Commission Expires: 6/13/29
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A				
A.T 13:21	14:18 17:18	appealing 29:23	aspects 8:1 9:11	34:15 36:1 37:4
able 18:9 31:20	Appeals 14:3,19	Appeals 14:3,19	Assembly 6:12	bill 33:20 38:6
34:21	17:7,14 20:20	17:7,14 20:20	21:24	billed 22:16 23:3
abound 7:25 8:10	21:3,20 27:24	21:3,20 27:24	assigned 32:14	34:1 38:25
9:10 23:16	30:21	30:21	associates 9:23	Blinco 2:3,4 4:9
act 5:4	appear 24:3,15	appear 24:3,15	10:9	4:12,14,16 8:15
action 36:4 41:10	31:15 33:19	31:15 33:19	assume 22:8	8:20,24 9:3,7,18
actual 18:2,13	appearance 5:8,9	appearance 5:8,9	assuming 22:11	10:1,5,13 11:1
19:25 25:19 31:1	5:10 6:8 8:6 9:24	5:10 6:8 8:6 9:24	atmosphere 29:3	11:20 12:5,21
34:15,19 35:23	11:23 17:1 18:1	11:23 17:1 18:1	attempted 13:21	13:5,8,19 14:15
35:25,25 37:3,4	18:8,12 19:4,22	18:8,12 19:4,22	attorney 2:8,17	16:2,3,10,19,23
add 24:8,16	19:24 23:2,15	19:24 23:2,15	7:11 11:16 15:12	17:9,13,25 18:21
addressed 30:2	24:12 26:24	24:12 26:24	32:25 41:8	18:25 19:23 20:4
advantage 34:11	30:24 31:4,7,13	30:24 31:4,7,13	attorney's 37:12	20:12,17,24 21:6
adverse 14:3 15:5	31:16,22 32:18	31:16,22 32:18	attorneys 2:4 9:21	21:13,18 22:5,19
adversely 5:13	34:9,13,14 35:23	34:9,13,14 35:23	15:13	22:23 23:8 24:5
advisement 35:20	36:20 37:1,13	36:20 37:1,13	authorities 7:4	24:22 25:5,12,22
advisory 11:5,6	appearances 2:1	appearances 2:1	authority 39:24	26:1 27:3,7,11
affect 38:9	13:10	13:10	avoid 5:7	27:16,20 28:7
Affidavit 23:23	appeared 22:17	appeared 22:17	aware 32:11,20	32:11,16 33:3,14
24:1,6 29:9,18	39:1	39:1		34:2,6,17,23
aforementioned	appears 4:8 11:17	appears 4:8 11:17	B	35:2,6,10,15
1:14	12:23 19:6	12:23 19:6	back 18:14 25:13	36:11,19 38:2,10
afternoon 4:2,15	appellant 16:13	appellant 16:13	30:3 33:7	38:14,20 39:6,23
17:3	27:15 29:21	27:15 29:21	backwards 12:21	40:3
agree 12:11	Appellate 5:3	Appellate 5:3	based 6:4 17:16	Blinco's 15:23
allegation 35:25	apples 14:9	apples 14:9	29:18 33:5 34:13	29:21 30:24
allege 16:7 22:1	applies 10:6	applies 10:6	basically 29:16	31:24
25:9 30:12,13	apply 10:20	apply 10:20	basis 4:21,25 5:8	bono 22:24
alleged 16:16	applying 24:25	applying 24:25	7:23 38:18,23	Box 1:22 2:14
alleging 33:22	appreciate 8:5	appreciate 8:5	bear 30:9	Brief 39:22
allowed 23:22,25	appreciative 36:14	appreciative 36:14	bearing 15:10	Briefly 28:17
alternative 28:24	appropriate 10:21	appropriate 10:21	becoming 11:11	Brothers 19:13
28:25	10:22 33:5,6	10:22 33:5,6	behalf 4:11 16:8	30:15
amount 36:3	approximately	approximately	25:10	brought 13:17
analogize 13:22	23:24	23:24	believe 24:25	Brown 2:12
analysis 18:11	April 33:9	April 33:9	39:20	bunch 30:5
24:10,11 32:1	aren't 11:10	aren't 11:10	Bench 6:10	
and/or 20:20	arguably 31:11	arguably 31:11	benefitted 6:19	C
Andrews 6:25	argues 26:14	argues 26:14	benefitting 6:21	call 12:6
14:22 27:17	arguing 26:24	arguing 26:24	best 12:6	called 17:2
28:19	33:17 38:17	33:17 38:17	better 24:13	campaign 14:1
answer 17:14	argument 38:19	argument 38:19	beyond 12:3,24	Campos-Ivey
18:22 24:23 32:8	arguments 28:14	arguments 28:14	13:17	39:19
33:4	article 20:5	article 20:5	bias 16:7,9,17	can't 29:15,15
anymore 29:14	asbestos 30:5,5	asbestos 30:5,5	17:24 18:13	32:3
appeal 19:17	aside 12:3,8,11,13	aside 12:3,8,11,13	19:10,21 24:2,3	Canon 4:25 5:3
29:25,25	asked 28:8 32:2	asked 28:8 32:2	25:3,9,11,19	11:22 17:1,1
appealed 6:13	asking 4:18 26:10	asking 4:18 26:10	26:10,21 27:2	19:8,15 24:25
			30:13,14 31:1	25:25 26:2,4

cites 20:5	compensated 37:19 38:6	14:13,16 30:8,9 32:7	Crystal 29:9	dispute 19:14
citing 19:11,12 20:3	compensation 32:23 37:24,25 39:10	course 36:1	D	disqualification 16:7 25:9 26:4 30:12 32:12
Civil 23:25	complete 14:14	court 1:1,15,16 3:3 4:1,7,15,18 5:3,18,21,23,25 6:14,17 7:8,24 8:12,17,22,23 9:1,5,16,20 10:3 10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	D 26:9,9	disqualified 30:4
claim 16:14	completed 7:14,20	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	date 33:20 41:5	disqualifies 19:5
clarify 36:9	completely 29:19	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	day 1:16 24:14	disqualify 7:10,17 19:16 21:3,4 26:5
class 31:12	concerning 14:20	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	dealing 12:24	disservice 15:17
clause 14:6	concluded 14:19 40:9	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	dealings 15:10	distinction 10:15 25:15 34:18
Clayton 1:15	conclusion 23:7	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	dealt 15:1,15	distrust 29:3
clear 6:11 18:11 22:1,4 28:18	conduct 5:11,13 6:7 7:7 11:7 18:16 20:21 21:2 21:4 32:13	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	Deceased 1:4	divide 9:22
clearly 27:22 38:3	confidence 5:5	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	decide 25:14 32:14	divorce 5:23
client 13:7 24:3 33:20	conflact 9:10	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	decided 6:3 27:22 30:1	document 11:3 13:13
clients 24:4	conflict 29:4,13 32:4	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	decides 29:4	documents 7:5
close 12:6	conflicts 7:25 8:10 9:10 13:10,11 23:16	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	decision 14:3 21:8 21:9,16 24:6 28:10 29:21,23 32:21	doesn't 9:19 12:11 18:12 23:9 39:21
closest 11:8	connection 13:8 31:23	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	demonstrate 16:22 34:8	dollars 14:1
co- 4:22 7:19 22:6 34:8	consider 14:17 24:6 27:25 28:5 36:3	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	demonstration 34:15 35:25 37:13	don't 14:21 18:2 18:14 24:16 29:10,13 31:3 34:5 35:21 36:1
co-counsel 5:24 7:13,14,19 9:12 9:13,21 11:25 13:3 18:5 22:11 22:14 23:9 32:23 32:25 33:8 37:11 39:2	CONTAIN 3:24	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	denied 6:14 14:17 17:20	doubt 32:4
co-counsels 7:12	contend 32:3	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	deny 15:23 16:14 26:22	drag 35:19
Coal 13:25 14:4	continue 6:10 12:19 15:16	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	denying 30:7	dredges 23:14,15
code 5:1,12 32:13	controlling 34:7	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	depos@legaleag... 1:25	due 14:6
codified 5:2	controls 21:5 27:19	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	described 4:22	E
Colloquy 3:3	corollary 7:16 10:6	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	didn't 6:11,15,25 12:22 21:23 28:5	EAGLE 1:21
Columbia 15:1	correct 14:19 15:3 16:14 21:14 26:22	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	difference 15:3 16:24 17:2	earlier 26:14
come 18:9 31:11	corollary 7:16 10:6	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,9 32:10,19 33:10 33:11,12,13,16 33:20 34:4,6,8 34:20,25 35:4,8 35:12,17 36:13 36:21,25 37:9,18 37:22 38:8,12,16 38:22 39:1,8,14 39:18,20,25 40:5	different 5:18 20:22 29:19 37:17	earned 7:15,16,20
commencing 1:17	Court's 14:25	10:11,24 11:4,13 11:18,23,24 12:2 12:4,10,10,11,15 13:14,21 14:3,5 14:18,22,23 15:25 16:5,12,21 17:5,7,11,14,19 17:19,22 18:19 18:23 19:2,8,14 20:2,10,14,15,19 20:20,21 21:1,3 21:7,10,11,15,16 21:19,20,25 22:15,17,21,25 23:11,19 24:14 24:20,24 25:1,7 25:8,20,24 26:12 27:5,9,13,18,24 28:2,2,4,11 29:21,23 30:16 30:21,23 32:2,		

Especially 27:25	family 5:20,23,25 13:15	forward 11:22	handed 7:8,23 8:18 11:3 12:21	holds 32:13
Esquire 2:3,11	fashion 23:12	found 7:4,9 17:15	hands 7:5	honesty 5:13
established 19:25	favor 14:2	Four 26:7	hanging 24:19	Honor 15:22
establishing 30:19	favorable 24:7	fours 7:21	happen 18:10	28:17 30:1,3,9
Estate 4:20	fee 15:2	Freeman 20:5	happened 14:24 29:3,16 30:6	30:10 32:2,8
ethical 6:10	feel 24:23	Friday 39:12,13	happy 32:8	36:18 39:12 40:8
ethically 27:24	fees 6:19 7:15,20 9:22 11:12,15,17 13:1	full 39:4	harmful 36:8	Honorable 1:15
Evans 1:10 2:12	fifth 31:9	fully 7:15,16	hat 24:19	hour 1:17 23:3,4 23:24
events 31:13	figure 20:8	further 7:4 26:2 38:24 40:9	hate 29:5 35:19	huge 15:2
evidence 16:9,13 16:15,16 17:23 19:10,15,21 25:2 25:11 26:19,25 30:14 32:2,3 36:24	file 22:18	future 33:20	haven't 16:16 33:25,25 38:5,25	husband 5:22,24 6:4,19 7:1 15:2,4 17:17 26:14,18
evil 33:18	filed 4:17,25 7:3 13:12,13 23:2	G	Haynsworth 2:11 2:12 4:11,24 10:16 12:16,17 24:4 28:12,16 31:2 35:18 36:7 36:15,16,23 37:5 37:14,20 39:11 39:16 40:7	husband's 26:17 26:22 29:5
Ex 16:25	files 23:4	Gafaary 22:8	Haynsworth's 6:22 39:3	I
exactly 18:4 30:12	final 32:1	gain 34:11	he's 8:4 37:10,10 37:16	I'll 4:12 17:23 20:6,7,11 32:8
example 12:25 31:8	finally 30:2	general 6:12 21:24 25:16,17,23 26:4 26:11	head 13:25	I'm 12:5 16:17 17:4 18:4,24 19:3,11 22:12,22 24:23 25:3 26:3 26:13 28:12 29:6 29:10 30:10 33:23 35:19 38:4 38:18
excuse 9:8 15:4 26:3	financial 8:1,3,9 9:11 22:2 33:23 34:11	gentlemen 40:6	hear 5:16 12:13,19 21:12 28:6,8,15 31:21 32:13 38:7	I've 13:12 17:3,21 20:8 25:6 29:4 34:18 36:10
exercise 12:7,12 15:17	find 11:9 20:6,21 21:2,3 25:15 26:2 36:19 39:24 40:1	gigged 29:24	heard 1:15 5:23 14:3 22:7 28:13 33:10,12	id 20:8
EXHIBITS 3:6	finding 6:9,13 21:16	give 6:15 9:24 16:17 17:20 31:8 32:2 35:18	hearing 1:14 4:19 9:14 11:25 12:20 18:6 20:15 23:12 23:20,22,24 25:14 40:9 41:4	III 1:7 2:11 4:11 4:17
expecting 36:18	findings 19:19	given 21:19	helpful 40:1	immediately 25:4
expert 29:10	finish 19:3	gives 8:6	herd 11:5	impartial 18:18 24:18 31:6
Expires 41:15	firm 5:16,17 9:15 9:23 11:24,25 12:1 18:5,6,7 22:14 32:25 37:12 39:3	go 8:25 10:14 15:22 32:6	here's 16:24 17:2	impartiality 5:6 5:14 9:25 26:6,8 26:18,25
explanation 29:1	first 5:19 7:7 8:18 8:21 16:2	goes 14:5 26:2 31:7	hereto 41:8,9	impartially 15:15 19:18
extend 31:17	fit 37:15	going 16:17 17:4 18:9,14 28:12 29:6,7,17,25 31:20,20,21 35:20	Hey 31:5	imperpearance 6:8
extent 13:7 14:11 31:7	fitness 5:14 6:10 20:25 21:2,8	good 4:2,15 8:5	high 30:19	implicated 4:25
extra 15:9	five 9:9,9	gosh 28:1 29:4	higher 14:23	important 14:16
extraordinary 14:5	fix 29:7	grade 31:9,9	highest 29:22	improper 10:18 18:14 22:13 27:1 31:19
F	flat 17:3	granting 4:7	hired 13:6,6 22:8	impropriety 5:7,8 5:9,10 6:8 8:6
facie 37:12	follow-up 28:13	Greenville 1:2,16 1:16,23 2:15	Hix 1:15,18 41:3 41:13	
fact 8:8 15:2,11 21:7 38:5	following 20:15	Griffin 2:4	Hold 19:3	
facts 5:15 37:15	footnote 20:7	guess 5:19 11:6 37:10,19	holding 26:23	
factual 19:19	footnoted 20:7	guidepost 7:6		
factually 13:16 37:16	force 39:4	H		
failed 28:25	foregoing 41:4	hand 7:5 13:9 35:22		
fails 26:18	formal 39:21			
failure 6:5 19:16 27:23 28:18	former 26:19			
fair 15:20 29:15 32:5				

11:23 13:24 17:1 18:2,2,8,12 19:5 19:22,24 23:15 30:25 31:4,14,17 31:22 32:3,18 34:10,14 35:24 37:13 inaccuracy 13:16 inaccurate 13:16 incorporated 14:6 independently 13:7 INDEX 3:1 indirect 6:18 indirectly 32:24 insisted 28:22 instances 26:7 integrity 5:6 intentionally 18:8 interest 14:8 interested 4:9 41:9 interpretation 14:20 interpreting 7:8 interstate 17:4 involved 13:5 32:22 33:1,19 involvement 32:24 involving 4:19 5:16 13:22 15:8 15:14 19:14 isn't 6:12 26:23 28:6 issue 11:12 15:5 15:14 19:20 29:20,23,24 32:17 33:21 35:1 36:9 39:9,9 issued 11:8 21:16 issues 32:21 it's 7:2 8:2,8 11:3 11:4,21 12:5,9 13:11,13 14:9,9 14:10,16 15:20 18:3 20:7 24:18 24:18 29:6,19 30:16,21 32:5 36:9,19,20 items 8:18	J James 1:4,7 4:3 23:21 jblinecow@blinc... 2:7 Jennings 1:15 12:18 22:3 job 34:18 John 2:3 4:9,16 20:5 JONATHAN 1:10 Jr 1:4 2:3 4:3 23:22 Judge 5:4,4,7,12 5:15,16,21,21 6:12,15,18,24 9:13 11:11,11,15 11:16 12:18,18 12:25 13:11,18 13:23,25 14:2,7 14:9,10,12,13,19 14:22 15:4,12 16:14 17:3 18:17 19:6,10 20:21 21:3,4 22:3,16 25:3 26:5,7,15 26:21,21 27:4,17 27:25 28:10,18 28:18,21 29:14 29:24 30:18 31:5 31:11,14,15,24 32:13,14,21,22 33:1 34:11,16 37:5,19 Judge's 5:13 14:1 16:8 19:16,17 25:10 Judges 11:10 15:1 Judgment 4:8 23:21 33:10 36:5 judicial 6:2,13 7:7 11:7 15:9,21 16:9,16 17:15,23 19:8,15,16 20:23 21:8,20 25:11 27:21 32:13 judiciary 5:6 11:5 judicious 12:7 justice 30:4	K kids 31:13 know 4:17 5:15 7:6 11:9,21 13:24 23:10 27:4 27:10 31:10,17 32:6 34:5 38:4 39:9 Knox 2:11 4:11 Knox's 31:11 knoxhaynswort... 2:16 L L 1:15 2:11 L-y-v-e-r-s 19:12 lacked 6:9 late 17:4 law 2:4 4:24 5:16 5:17,20 6:22 7:18 10:22 11:24 11:24 12:10,18 14:7,10,20 16:6 19:6 20:5 23:13 26:17 30:3,8 34:6,21 36:20 lawyer 4:23 5:22 5:25 8:5 9:14 11:13 18:5 31:23 31:25 lawyer's 9:14 lawyers 6:5,17,20 7:1 17:17 left 21:22 legal 1:21 6:19 LESLEY 1:9 let's 33:4 39:15 level 29:13 leverage 15:11 lines 9:9 litigant 31:24 litigants 15:20 31:15 36:8 litigate 13:23 15:5 little 7:3 12:20 LLC 2:12 location 41:5 long 34:21 longer 28:10 look 7:22 10:14	11:2,14 12:9 looking 37:17 looks 31:6,19,21 Lord 30:9 lot 15:19 28:19 love 37:25 Lyvers 19:12,12 25:4,4 M manner 5:5 marked 3:7 Marshall 1:4,7 4:3 4:17 13:14 15:9 23:22 Massey 2:12 13:21 13:25 14:4 MATERIAL 3:24 3:25 matter 1:3,14 4:2 21:17 23:21 33:21 35:20 36:2 36:8 matters 27:14 32:14 33:24 McLeod 2:12 4:23 4:24 8:4 10:7,15 10:21 13:4 15:8 22:14 23:11 McLeod's 10:9 23:13 mean 12:3 19:20 21:8 24:17 meant 27:23 Meeting 2:5 member 37:11 mention 22:10 mentioned 8:13 25:13 33:9 mere 19:4,22 34:14 merely 16:7 25:9 Merit 6:2,13 17:15 21:20 27:21 merits 14:20 mess 29:6 middle 12:20 million 14:1 mind 29:11,18 minds 5:11 18:16	mine 39:12 minutes 17:4 mired 14:25 misconduct 20:1 model 5:1 7:6,7 25:17 money 13:22,23 33:18,19,21 37:16 month 38:6,7 months 33:13 MOORE 1:9 Motion 4:5,5,13 4:18,21,25 5:9 7:3 13:12,20 14:17 15:24 16:15 22:1 23:21 29:17 30:7 33:12 33:13,17,22 36:5 38:11,13 39:10 Motions 13:17 36:6 Mount 5:22 movement 19:9 25:2 multiple 8:18 N name 4:16,23 named 5:21 Nathan 29:9 necessary 19:22 25:15 need 26:2,15 28:1 30:25 34:21 35:20,22 needed 6:3 needs 34:14 never 18:9 31:8 new 28:24 Notary 1:15,19 41:3,14 Notice 23:2 November 1:16 nth 31:18 number 1:5 4:3 24:9 O objection 13:12

objective 31:4 obligation 15:15 obvious 13:10 obviously 13:1 15:13,16 occurred 5:19 offers 16:13 office 1:22 2:14 10:17,19 Oh 29:4 30:8 Ohio 7:8,25 8:23 11:4 12:22,24 Okay 8:21 10:4,12 10:25 11:19 18:20 20:3 25:13 29:8 33:15 35:9 35:18 39:17 40:2 one-eighty 29:8 one-page 11:3 one's 31:20 ongoing 6:24 7:2 7:14,19 opinion 11:4,8 14:4,25 21:5,17 24:2 26:14 30:17 33:2 opinions 11:5 opportunity 16:17 21:19 35:18 opposed 6:21 opposing 29:2,8 oranges 14:9 Order 4:6,7 30:7 32:22 38:13 39:3 outcome 41:10 P p.m 1:17 40:10 page 7:23 8:14,16 8:16,25 9:2,6,8 10:14 20:6 41:6 paid 11:15 13:23 22:3,9,12,16 23:5 33:23 34:1 38:25 papers 28:8 paragraph 8:16 9:8 11:14 paraphrasing 12:5 part 5:2 13:16	part- 7:11 part-time 7:9,17 9:13 11:10 Parte 16:25 partial 8:7 18:18 23:17 partiality 16:14 participate 35:22 particular 14:2 parties 4:9,20 6:5 15:15 18:4,7 36:4 41:8,9 partner 6:22 7:19 10:23 23:14 26:17 partners 4:24 9:22 10:9,16 partnership 10:19 party 6:17,20 7:11 7:18 10:10 16:6 16:8 25:8,10 30:11,13 payment 34:10 pecuniary 14:8 pending 22:9 people 31:25 perception 5:11 8:7 18:3,17 23:17 perfunctory 29:1 person 24:11 personal 1:9 8:1,3 8:10 9:11 14:8 perspective 23:6 Petitioner 1:8 2:8 4:10,16 19:9 25:2 37:2 Petitioner's 4:4 Pleasant 5:22 please 4:15 point 23:3 29:15 31:24 38:3 pointed 8:14 36:7 politics 15:1 Polly 4:20 poor 34:18 position 11:21 31:18 possible 34:5 Post 1:22 2:14	potential 7:25 8:9 9:10 practice 7:13 15:13 practicing 15:12 prejudice 16:9,16 17:24 19:10,16 19:21 24:2,3 25:3,11 26:20 27:2 30:14,19 31:1 34:15,19 36:1 37:4 present 4:9,10,11 16:8 25:10 preside 11:15 pretty 11:21 previous 26:16 prima 37:12 prior 4:7 25:8 32:22 38:13 39:3 private 7:13 pro 22:24 Probate 1:1,14,15 problem 29:12 Procedure 23:25 proceed 36:2 proceeding 7:10 7:18 proceedings 38:24 process 14:6 Profession 5:1 professional 8:1 8:11 9:11,23 promotes 5:5 proof 19:25 26:10 proper 10:7,8 12:7 12:12 21:9 24:8 propriety 34:13 37:1 provide 26:19 28:25 34:5 provision 30:17 provisions 30:8 public 1:15,19 5:5 41:3,14 pulled 14:14 Q qualifications 14:15	question 10:14 18:15,22 26:18 33:4 questioned 19:18 26:7,8 questions 16:1 28:13 32:8 40:9 quickly 12:23 quoted 3:24,25 13:20 17:6 quoting 16:24 19:12 25:3 26:13 30:11 32:15 R rambling 24:23 read 3:25 12:22 13:24 14:14 28:8 28:19 really 12:10 29:6 reappointed 6:11 reason 15:22 18:17 28:9 35:13 reasonable 5:11 18:16 24:11 31:4 reasonably 19:18 26:6,18 reasons 10:8,20 15:22 recall 23:20 receive 11:12 received 7:16,21 32:23 record 19:19 28:21 recorded 23:5 recusal 4:6 10:6,8 10:20 14:21 15:14 16:15 21:9 24:8 26:23 30:1 33:5,7 36:7 37:2 recuse 4:5,18 11:23 14:7,17 15:18 29:11,17 29:22 31:6,15 32:5 33:17 35:24 38:23 recused 6:3 14:23 17:16 27:22 recusing 6:7	reelect 28:18 reelected 21:22,24 referee 7:9,12,17 26:5 referee's 26:8 reference 32:7 referenced 13:5 39:2 referred 23:3 reflects 5:13 26:23 refused 21:12 28:5 regulations 34:7 relate 33:7 related 4:19 7:12 41:7,8 relation 9:12 relationship 4:23 6:4,16,18,24 8:2 8:3,4,9,11 9:12 9:13,24 10:17 17:17 18:5 22:2 22:7,11,13,14 23:9 24:12,18 26:16,20 27:1,1 33:5,8,23 34:9 39:2 relative 15:6 relayed 18:4 relevant 30:8,10 30:17 39:9,10 relied 37:16 relief 6:15 17:20 relying 18:1,3 25:17,21 26:3 29:2 remain 39:4 remember 6:25 rendered 33:1 report 14:15 REPORTED 1:18 Reporter 1:15,18 3:4 41:1,13 represent 4:16 Representative 1:9 represented 7:11 7:18 12:1 13:13 18:7 23:13 representing 10:7 10:9,21,23 13:3

represents 4:10 9:15 REPRODUCED 3:25 request 6:15 15:23 17:20 26:22 requested 36:10 required 6:10 20:1 32:12 37:3 requires 5:7 26:9 research 19:20 35:9,19 respectfully 15:23 Respondent 2:17 Respondents 1:10 4:8,12 10:7,22 10:23 23:13 result 12:2 resulted 26:20 27:2 reversed 19:17 Review 20:5 reviewed 19:7 Richland 30:6 rides 11:5 Ridge 1:16 right 4:2 8:25 10:2 11:2 12:16 16:1 16:4 17:10,19,21 21:12,20,21 22:1 23:1,20 24:21 26:13 27:8,12 28:6,12,23 32:17 32:20 34:1 35:9 35:21 37:10 38:3 38:3,21 40:6 risks 23:14,16 Roache 30:15 Roche 19:13 root 33:18 rose 29:13 round 6:1,1 route 32:6 rule 5:3 7:16 14:7 18:8 19:8,15 23:25 25:17,21 30:25 31:3,5 ruled 14:2 15:4 24:9,16 33:10,13 36:6	rules 5:1,3 7:6,7,9 7:24 11:22 23:25 25:17,18 ruling 26:21 28:1 S S.C 1:19 41:14 sake 38:19 saying 19:4 29:17 30:24 37:11 says 5:4 7:25 9:9 9:21 16:6 26:14 scenarios 18:10 school 5:20 second 8:16 9:6,8 9:8 see 20:8 22:20 25:23 31:10 33:4 37:25 seeking 4:5,6 16:6 25:8 30:11 37:2 seen 13:8 Segars 6:18 Segars- 6:24 28:18 Segars-Andrews 5:21 14:13,19 17:6 26:15,21,22 27:4,25 28:22 Selection 6:2,13 17:15 21:21 send 38:6 sense 10:16 25:19 September 4:22 serve 5:14 serving 37:11 set 4:21 seven 6:9 shared 10:16 sharing 10:19 11:17 she's 28:10 Shoemaker 1:4,7 1:10,10 4:3,17 4:20 13:14 15:9 23:22 shouldn't 38:17 show 18:2 19:7,9 24:2 25:2,18 26:25 30:14 31:1 37:2,23	showing 18:13 34:19 side 8:7 9:15 12:1 24:9,10 29:9,19 sides 15:17 simply 30:12,13 Simpson 17:7,7 19:11,11 26:13 26:13 28:23 simultaneously 5:17 sir 4:15 36:12 37:21 40:4 sit 28:23 site 30:15,20 sitting 23:10 situation 7:3,22 12:9,24 13:2,4,9 14:12 15:7 28:23 29:5,19 six 9:9 SLOAN 1:10 someone's 31:21 son 15:6 sorry 26:3 sort 22:2 33:23 34:8 sorts 23:14 South 1:1,16,23 2:6,15 5:2 11:9 14:10,10,18 16:6 17:7 25:1 30:3 32:7,12 41:4 space 10:17,19 speak 13:10,18 36:15 SPEAKER 3:25 speaks 13:9 specific 25:18 26:7 26:10 specifically 28:20 spent 33:21 36:3 splitting 12:25 Square 1:16 stand 21:7,10 28:3 28:10 standard 26:4 30:18 32:5 standards 11:7 stands 14:11 19:5	Stanley 4:23 15:8 start 15:19 state 1:1 18:11 20:22 30:20 41:3 stated 19:8 25:1 41:6 statements 26:15 step 12:3,8,11,13 straight 11:22 Street 2:5,13 stronger 6:16 stumble 30:6 submission 29:2 submit 20:15 23:23 24:1 34:21 35:13 39:19,21 submitted 23:23 29:9 substantial 14:8 suggest 37:7 suggesting 22:12 Summary 4:7 23:21 33:10 36:5 support 16:13 supported 19:19 Supreme 6:14 7:8 7:24 8:23 11:4 13:21 14:4 17:18 17:19 19:8,14 20:21 21:7,10,16 21:19 25:1 28:2 28:2 30:16 sure 18:24 19:3 20:18 35:21 36:17 swing 30:3 system 15:21 T take 28:1 31:18 35:20 taken 1:14,15 41:5 talk 12:4 13:9 14:5 talking 28:20,21 33:6 tell 4:12 8:13 20:20 telling 19:21 22:22 temperament 5:14 terms 6:16	terrible 28:1 test 5:9,10,15 18:11,15 19:24 testified 6:25 Thank 12:16,18 16:1 40:6,8 that's 5:15,18 10:2 13:7,15 14:24 15:20 22:13 24:10,15 28:1 30:1,19 31:3,13 32:5,17 33:24 37:16 there's 6:23 8:8,9 8:10 9:23 11:6 15:21 18:15 19:4 19:22 23:9 29:7 29:12 30:24,25 31:22,23 32:17 33:18 34:10 35:25 37:1,25 38:18,23 they're 7:23 31:12 thing 5:19 6:23 7:7 11:2,3,9 12:6,7,7 12:12 24:7,14 35:21 things 14:16 think 7:21 8:4 11:10,21 12:2,8 12:9,18 14:16,22 15:3,3,16 18:15 22:7 26:9 30:18 31:3,21 32:1 33:4 35:22 thinking 23:11 third 22:10 three 6:9 8:25 9:2 10:14 13:25 24:17 Thursday 35:7 time 7:12 11:25 18:6 22:17 23:5 23:12 33:20 36:2 36:3 38:25 41:5 times 5:4 24:9,17 tire 17:3 today 4:4 6:12 22:7 told 30:4

Tomorrow's 35:7 transcript 3:24 41:6 Treasa 1:15,18 41:3,13 treated 13:14 trial 16:14 28:24 tried 30:4 true 10:19 33:25 truly 4:6 trumps 27:24 29:20 Trustee 1:10 try 15:11 trying 24:8 25:14 Tuesday 39:15 turn 38:5 turns 5:24 two 10:15 22:9 33:13 39:1 U U.S 13:21 14:4 unanimously 6:6 17:16 understand 13:3 36:17,18 37:10 understood 19:25 undo 29:15 unfair 24:15 unfit 27:24 University 1:16 unnotarized 24:1 unrelated 7:12 use 39:22 V v 17:7 19:11,12,13 25:4 26:13 30:15 30:20 Vacate 4:5 33:17 38:13 39:10 vacated 32:22 39:5 vacating 4:6 vague 18:9 vehemently 28:22 versus 37:8 violated 5:12 violation 23:24	voted 6:6,9 W want 14:21 24:16 31:5 35:21 36:1 36:17 38:5 39:12 wanted 30:7 32:6 wants 24:14 36:15 37:23 wasn't 14:25 way 20:22 23:17 25:13 29:7,15 ways 22:20 we're 18:3 24:19 25:16 28:20,21 37:17 38:4 39:13 we've 12:8 15:19 33:6 37:8,15 week 34:24 35:3,5 35:14 well- 19:24 went 6:1 29:14,25 36:4 Westlaw 30:20 what's 29:16 wife 5:25 7:1 17:18 wife's 26:17 Williams 2:13 words 6:24 8:2 work 11:12 12:20 22:3,9,12,18 33:24 worked 7:1 working 5:17 6:20 6:22 8:5 11:24 22:24 23:11 26:16 works 31:25 wouldn't 38:4 wrong 14:22 15:6 29:21 X Y ya'll 29:5 yeah 8:16,21,21 16:11,20 24:15 26:3 32:17 35:3 38:21 39:7	Yep 38:15 You-all 13:6 you-all's 13:8 you'll 11:2 you're 13:6 16:24 18:1,9 19:3,20 22:6,8,11 23:10 23:10 24:7,17 26:24 31:20 32:11 33:17 36:18,18 38:17 39:4 you've 22:9 24:9 24:16 28:13 32:1 32:4 35:9 37:7 39:20 Young 19:13 30:15 Z Zurich 30:4 0 1 1 41:6 106 2:13 10th 1:16 12-2013 11:4,8 126 2:5 1918 20:6,8 1998 19:13 30:16 2 2 4:25 5:3 11:22 17:1 25:25 26:2 2:11 1:17 2008 17:12 30:21 2018ES2301729 1:6 4:4 2021 1:17 24 20:7 2464 2:14 29401 2:6 29602 2:15 29606 1:23 3 3 17:1 3:05 40:10 30 17:4	301 1:16 322S.C.75504S.... 30:16 377S.C.519 17:7 3C(1) 26:4,8 3D(1) 32:15 3E(1) 19:8 24:25 3E(1)(a) 19:15 4 4 3:3 41 3:4 5 5682 1:22 6 6 23:25 6/13/29 41:15 7 8 864-467-1373 1:24 864-587-7050 1:24 9 9844641 30:21

DEC 15 2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

ORDER

This matter came before the Court for a hearing on Wednesday November 10, 2021 pursuant to Petitioner's motion that the undersigned recuse himself and to vacate prior Orders.

As explained below, the Court denies Petitioner's Motion to Vacate this Court's prior Order granting summary judgment and oral ruling granting Respondents' motion to alter or amend that summary judgment order. The Court grants Petitioner's Motion for Recusal as to any future matters heard in the present action as well as the related action involving the Estate of Polly Shoemaker pending under C.A. No.: 2020-ES-23-00073.

Petitioner bases his Motion to Vacate this Court's prior Order Granting Summary Judgment and seeks recusal of the undersigned based on the relationship of the undersigned as co-counsel with Stanley McLeod, who is a partner in the firm in which Knox Haynsworth, III practices. However, as disclosed to counsel: I have never served as co-counsel with a member of the firm of which Mr. Haynsworth is a member until serving with Stanley McLeod; I agreed to represent a friend, Jeff Gaafary, in litigation involving him and a limited liability company in which he is a member; I filed a notice of appearance on April 7, 2021 in anticipation of needing

County of Greenville

James Marshall Shoemaker III,

Plaintiff,

-vs-

Lesley Moore PR, et. al.,

Defendants.

Court of Common Pleas
Thirteenth Judicial Circuit
Case No. 2021-CP-23-02955

Transcript of Record

September 8, 2022
Via Virtual Courtroom

B E F O R E:

The Honorable Debra McCaslin, Judge

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

William R. McKibbin III, Esquire
Attorney for the Plaintiff/Appellant

Knox Haynsworth III, Esquire
Attorney for the Defendants/Respondents

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

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

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Appeal from Probate Court.....	4
Court Reporter Certification.....	51

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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18
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(No Exhibits Presented)

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2 THE COURT: This is James Marshall Shoemaker III versus
3 Mary Hunter Sloan Shoemaker. This is an appeal from probate
4 court, and then I also have a defendant's motion to dismiss.
5 Oh, it is -- that is Lesley R. Moore. Okay.

6 MR. HAYNSWORTH: Judge, you're going to see two different
7 case numbers, which is kind of going to throw things off. I
8 think we can probably work through it with you fairly easily
9 though.

10 THE COURT: Okay. Well, I read the whole case and it
11 threw me off. So -- oh, okay.

12 And let me ask first do y'all need a break or anything
13 right quick before we start? This might be lengthy. Okay?
14 If so, y'all let me know. You could just go. I promise I'll
15 defend myself. Okay. I just want to make sure everybody's
16 comfortable.

17 All right. This is an appeal for probate. Now, I don't
18 know all the Greenville lawyers. So you're going to have to
19 introduce -- wait a minute. You've got to sit back down.
20 I've got to tell you about sitting down things.

21 MR. HAYNSWORTH: Oh, okay.

22 THE COURT: There's something to it. Y'all are going to
23 have to introduce yourself to me because I don't know who
24 everybody is. I'm from Lexington.

25 We are in an automated courtroom. As you notice, there

2 speak into your microphone, it makes a transcript. So I know
3 lawyers aren't used to it, but you've got to remain seated or
4 we can't get a transcript. So everybody stay seated. Don't
5 worry about standing up.

6 All right. Let me start with this table over here. Tell
7 me who everybody is.

8 MR. MCKIBBON: Yes, Your Honor. May it please the Court.
9 My name is Will McKibbon. I am representing Mr. Marshall
10 Shoemaker, the appellant. I am relatively new to the case.
11 He had another counsel who was relieved, and I came on, I
12 believe, in April.

13 THE COURT: In April? Okay.

14 MR. MCKIBBON: And this is my first court appearance on
15 behalf of Mr. Shoemaker.

16 THE COURT: Okay. Now tell me over here.

17 MR. HAYNSWORTH: Judge McCaslin, my name is Knox
18 Haynsworth. I represent Lesley Moore, who is seated to my
19 right. She is one of the respondents. I represent all of the
20 respondents.

21 THE COURT: Okay. But Ms. Moore, she's the PR of the
22 estate; is that right?

23 MR. HAYNSWORTH: Correct.

24 THE COURT: I have read this file, and my understanding
25 it was the probate judge -- I guess Mr. Shoemaker passed away.

2 will like three weeks before?

3 MR. HAYNSWORTH: Yes, ma'am.

4 THE COURT: They're saying that child claims that he was
5 incompetent when he did that at the time. I know that there
6 was an expert who read some of the records, did not physically
7 examine or know anything about Mr. Shoemaker, but then you had
8 that his general physician testified during that case; am I
9 correct?

10 MR. HAYNSWORTH: Yes, ma'am, Your Honor.

11 THE COURT: About all this?

12 MR. HAYNSWORTH: To sort of give you the background,
13 you're right. Mr. Shoemaker III seated there --

14 THE COURT: Okay.

15 MR. HAYNSWORTH: -- is one of three children. His
16 parents cut him out of their estate, his dad about three or
17 four weeks before he passed away. His mother died a year and
18 some months --

19 THE COURT: Before?

20 MR. HAYNSWORTH: No, after.

21 THE COURT: After.

22 MR. HAYNSWORTH: His mother was still alive when she sued
23 -- he sued his mom.

24 THE COURT: Okay.

25 MR. HAYNSWORTH: She passed away during the pendency of

2 court pending. The father's case, which the probate court
3 granted summary judgment on, is -- is what we're talking
4 about.

5 THE COURT: Is the case that I'm hearing?

6 MR. HAYNSWORTH: Yes, ma'am. And you're right. The
7 issues that were raised by the appellant were that they had
8 submitted -- the prior attorney, John Blincow, submitted an
9 affidavit from a doctor that had never been listed as a
10 witness, and the affidavit wasn't submitted until the night
11 before.

12 THE court: Right.

13 MR. HAYNSWORTH: But not with --

14 THE COURT: I understand all that. It was --

15 MR. HAYNSWORTH: Notwithstanding that the affidavit
16 really didn't change anything.

17 THE COURT: Right.

18 MR. HAYNSWORTH: Because as Your Honor I'm sure is aware,
19 the key in a -- in a -- in a challenge to a will or a trust is
20 the competency of the person at the time they executed their
21 testamentary documents. You can be crazy as a bedbug before
22 and after, but if -- but if you had what is less capacity than
23 to execute a contract, if you had testamentary capacity at the
24 time you did the documents, then that's all it requires.

25 And so what we submitted to the probate judge -- and this

2 THE COURT: I noticed that. I think some -- one probate
3 judge recused himself, and I read his reasons for the summary
4 judgment to stand.

5 MR. HAYNSWORTH: Right. And so -- and I think I can
6 might -- and if I could approach, Your Honor, I know I can't
7 talk while I do it, but I've got two cases that I'd like to
8 hand up that address some of the core legal issues before you
9 today that may help --

10 THE COURT: Sure.

11 MR. HAYNSWORTH: -- from the Fourth Circuit and I --

12 THE COURT: Because this whole case is nothing but the
13 law that we're arguing today as to why I should overturn the
14 probate court.

15 MR. HAYNSWORTH: And well -- and, Judge, what -- what
16 I've done -- before I walk up there, I've highlighted your
17 copy, opposing counsel's copy, my copy, just to sort of steer
18 us to the important points of these two opinions.

19 THE COURT: That's something I need for this case.

20 MR. HAYNSWORTH: Your Honor, the -- the -- the two cases
21 I've given you, the first one I'd like to direct your
22 attention to is the *Estate of Charles Kretzmeyer* [ph], if I'm
23 pronouncing that correctly, and you'll see, Your Honor, the --
24 I highlighted it. The sole issue is whether the notice of
25 appeal was timely filed in the circuit court.

2 whether there was a timely appeal from probate court to
3 circuit court. And as the South Carolina Supreme Court
4 recited in this opinion, Judge, the notice of intention to
5 appeal to the circuit court must be filed in the Office of the
6 Circuit Court and in the Office of the Probate Court and a
7 copy served on all parties within ten days after receipt of
8 written notice of the appealed from order, sentence, or
9 decree.

10 And in that case, they didn't, timely appeal from the
11 probate court, Your Honor, and the circuit court noted, you
12 know, it's -- it's a settled rule of statutory construction.
13 The notice of appeal quote -- I'm reading from the second page
14 now in your honor -- must be filed in the circuit court within
15 the ten-day period. Failure to comply with the procedural
16 requirements for an appeal divest the Court of appellate
17 jurisdiction.

18 Well, in this case, Your Honor, if you look at the notice
19 of appeal versus when written order -- excuse me -- when
20 written notice of the order appealed from was received, Mr.
21 Shoemaker did not timely appeal the order from the probate
22 court. He had ten days after written notice.

23 If you'll bear with me, Your Honor, I can give you the --
24 the -- I filed -- just so Your Honor will know what I'm
25 reading from, this is a notice of motion and motion to dismiss

2 some in each case, but it was filed January 27th of 2022.

3 And in that motion to dismiss, Your Honor, I attached a
4 copy of the transmittal letter from the probate court to Mr.
5 Shoemaker and -- or excuse me, to Mr. Shoemaker's lawyer at
6 the time and myself. That email was sent December 16th.
7 Please see attached signed order. Certified copies will be
8 mailed to you. So --

9 THE COURT: All right. Wait a minute. The -- the order
10 was filed when?

11 MR. HAYNSWORTH: We -- we got -- I, as attorney for
12 respondents, and the prior attorney, John Blincow as attorney
13 for Mr. Shoemaker, received an email from the probate court
14 sending us the summary judgment order on December 16th.

15 THE COURT: Okay.

16 MR. HAYNSWORTH: So we received written notice of the
17 probate court's order on December 16th. Under --

18 THE COURT: Gotcha.

19 MR. HAYNSWORTH: Under the statute, you've got ten days
20 from your receipt of that written notice to file your appeal
21 with the probate court, the circuit court, and serve me. I
22 attached as an additional exhibit the December 15th order that
23 we got notice of on the 16th.

24 THE COURT: Okay.

25 MR. HAYNSWORTH: Exhibit 2, Your Honor, was the notice of

2 court -- excuse me. It was filed with the circuit court on
3 January 10th of '22. That is way more than ten days from
4 December 16th.

5 By not timely appealing the probate court order in
6 accordance with the clear mandates of the statute, as the case
7 I just read discussed, Your Honor, with respect, circuit court
8 has no jurisdiction over this because he did not timely
9 appeal.

10 THE COURT: Well, let me ask you this. Did he file
11 anything with the probate court?

12 MR. HAYNSWORTH: Not timely. No, sir. Or no, ma'am.

13 THE COURT: Did he file the same time? I mean I'm --

14 MR. HAYNSWORTH: He filed everything at the same time. I
15 -- he --

16 THE COURT: On January the 10th, which is well past the
17 ten days?

18 MR. HAYNSWORTH: Yes, ma'am. There are some other issues
19 that, you know, while I'm sort of picking it up --

20 THE COURT: But while you're going on, I want the other
21 side too.

22 MR. HAYNSWORTH: Okay.

23 THE COURT: Because --

24 MR. HAYNSWORTH: I'll stop.

25 THE COURT: -- I'm sitting here making a little note of

2 Do you have any response to that? I know it wasn't you.
3 It wasn't -- you were not the lawyer.

4 MR. MCKIBBON: Your Honor, the -- the response that we
5 would have to that would be sort of twofold. Number one,
6 there was a motion. If there was a motion to dismiss the
7 appeal filed, that is its own motion and not before the Court
8 today. And secondly, with regard to the issues of the appeal
9 as --

10 THE COURT: Well, I mean, what do you mean? There was a
11 motion to dismiss the appeal?

12 MR. MCKIBBON: Yes, Your Honor.

13 THE COURT: But you've got to appeal first before we get
14 to do a motion.

15 MR. MCKIBBON: No, Your Honor. Mr. Haynsworth filed. I
16 believe he stated he filed something in January. Again, this
17 is well before I was involved.

18 MR. HAYNSWORTH: Yeah. I filed a motion to dismiss the
19 untimely appeal in January, which is what I was reading from.

20 THE COURT: Which is this?

21 MR. MCKIBBON: Yes.

22 THE COURT: Was that ever heard?

23 MR. MCKIBBON: No. You're the -- this is --

24 THE COURT: See, I'm the -- I get to decide.

25 MR. HAYNSWORTH: You get everything that's been filed in

2 THE COURT: Okay. I gotcha.

3 MR. MCKIBBON: Except for that motion is not before the
4 Court, Your Honor, which puts us -- as a -- I mean, it wasn't
5 scheduled for today to be heard.

6 THE COURT: Well, let me tell you why this is the deal.
7 Y'all do have me because I've got it on here for 2 o'clock,
8 the motion to dismiss.

9 MR. MCKIBBON: That motion to dismiss was the motion to
10 dismiss the personal representative, Your Honor.

11 MR. HAYNSWORTH: No, it's not.

12 THE COURT: I would hope --

13 MR. HAYNSWORTH: The motion to dismiss the PR was -- was
14 granted by the probate judge.

15 THE COURT: It would be in probate court, not here, I
16 would hope. I don't know that --

17 MR. HAYNSWORTH: No, he's right. There was -- there was
18 a motion to dismiss the PR --

19 THE COURT: Yeah.

20 MR. HAYNSWORTH: -- that Mr. Blincow consented to.

21 THE COURT: But this is the bottom line, and it is on my
22 docket, is that they've given me this case for a probate
23 appeal. So my decision that I'm going to write is going to
24 end this case one way or the other or y'all can appeal it to
25 upstairs.

2 on my docket, I'm looking at it, is the motion to dismiss that
3 he filed in January, not to dismiss the PR, but to dismiss
4 this case. It's notice of motion, and motion for summary
5 judgment.

6 MR. MCKIBBON: No, ma'am.

7 THE COURT: No, no, this isn't it. Yeah. I'm sorry.

8 MR. HAYNSWORTH: Your computer is full of stuff because
9 you've got the whole return from probate.

10 THE COURT: He's sitting here pulling out the stuff
11 that's in front of me.

12 Yeah, I want the dismissal. It was Number 16.

13 THE LAW CLERK: Yes.

14 THE COURT: There's -- there's like three different
15 things. That's what makes it so confusing. If you go on e-
16 filing --

17 MR. HAYNSWORTH: I know. It's --

18 THE COURT: Because I was going to even talk to the clerk
19 about it, thinking that we should have combined it to make it
20 all one.

21 MR. HAYNSWORTH: Do you want me to hand up what y'all are
22 looking for in my --

23 THE COURT: I've got notice of motion and motion to
24 dismiss an appeal that was --

25 MR. HAYNSWORTH: Filed --

2 MR. HAYNSWORTH: Yes, ma'am.

3 THE COURT: -- of 2022, and it lays out that you didn't
4 comply with the statute. I mean -- and I'm going to tell you
5 from looking at it, if those dates are correct, then I think
6 you've got a problem.

7 MR. MCKIBBON: Yeah.

8 THE COURT: So I'd like to hear your response.

9 MR. MCKIBBON: Your Honor, the -- well, the primary
10 response to that is that it was in between these time periods
11 that Mr. Blinco or Mr. Blincow, former counsel for Mr.
12 Shoemaker, was suspended from the practice of law, leaving Mr.
13 Shoemaker without an attorney, and he is the individual that
14 filed it.

15 THE COURT: When was he suspended? Does anybody know?

16 MR. HAYNSWORTH: In your file there's an -- there's a
17 letter from Blincow to the clerk of court, Judge, that I may
18 not have in these materials, but it's --

19 THE COURT: Yeah, and I think it's on here because I
20 remember reading it too. There was a letter from Peyre
21 Lumpkin.

22 MR. HAYNSWORTH: It would have the date on it or -- and
23 Mr. Blincow, I think, wrote a letter as well that had the date
24 of his suspension.

25 THE COURT: Yeah. Let's see. It might be on the other

2 don't know what day, but I'll look.

3 MR. MCKIBBON: Your Honor, I'm sorry. I've been checking
4 my phone. I did find in the matter of John Keith Blincow,
5 Respondent, from the Supreme Court, December 21st, Your Honor,
6 2021. I'm sorry, 12 -- yes, 12/21/21.

7 THE PLAINTIFF: Yes, Your Honor.

8 THE COURT: But this was 12/20/20, was it, or '21?

9 MR. HAYNSWORTH: No, this -- this was '21, Your Honor,
10 and I think to address where Mr. McKibbon is going, Your
11 Honor, if you'll look in the file, Mr. Shoemaker -- I'm sorry.
12 I'm standing up out of habit.

13 THE COURT: Thank you.

14 MR. HAYNSWORTH: Thank you.

15 Mr. Shoemaker instituted this action representing
16 himself. He started the case in probate court *pro se*, and
17 it's in your record represented to the probate judge that he
18 talked to a hundred lawyers about taking his case against his
19 father on contingency and hadn't found one.

20 So we rocked along through several hearings in probate
21 court. Then Mr. Shoemaker retained John Blincow as an
22 attorney. Mr. Blincow was suspended. Mr. Shoemaker continued
23 *pro se* for a period of time, and recently Mr. Shoemaker has
24 hired Mr. McKibbon.

25 Now, if the argument is the deadline was missed because

2 attorney. But as far as my clients are concerned, Judge, the
3 law is the law and the statute is very clear and the deadline
4 is the deadline, and if you don't properly perfect your
5 appeal, there is no jurisdiction for the higher court to be
6 talking about the appeal.

7 THE COURT: Right.

8 MR. HAYNSWORTH: So -- so that's an un-issue. A
9 completely different issue is this, Judge, and this has
10 nothing to do with Mr. Blincow getting gigged. There was a --
11 there was a discussion by Mr. McKibbon at the beginning and by
12 Your Honor about recusal. That was a big issue.

13 THE COURT: Well, that's the first thing --

14 MR. MCKIBBON: Right.

15 MR. HAYNSWORTH: Well --

16 THE COURT: -- that I see. Did the lower court err as
17 the grounds for appeal for this probate matter is to vacate
18 its order while granting appellant's motion to recuse made on
19 the same grounds?

20 MR. HAYNSWORTH: Well, let me tell you a completely
21 independent reason why that aspect of the appeal is not before
22 you. Whether or not -- leave aside for a moment whether the
23 appeal of the summary judgment order was timely. Put that to
24 the side.

25 There were two orders issued by the probate judge on

2 judgment. The other order was the order denying the motion to
3 recuse retroactively but agreeing not to hear anything going
4 forward.

5 THE COURT: Right.

6 MR. HAYNSWORTH: That order was never appealed, timely or
7 otherwise. That order simply was never appealed from the
8 probate court at all to this Court. It's not a question of
9 whether it was timely appealed. It has never been appealed.
10 And since it wasn't appealed, we can't be talking about it
11 here.

12 MR. MCKIBBON: Your Honor, if I may address a number of
13 these things --

14 THE COURT: Please, please.

15 MR. MCKIBBON: -- that are being addressed? First, back
16 to the -- to the timeliness.

17 THE COURT: Timely. He was --

18 MR. MCKIBBON: Understood. I certainly understand Mr.
19 Haynsworth's argument. I understand that -- that the Court
20 often admonishes *pro se* folks, you know, the rules apply. I
21 understand that certainly.

22 THE COURT: They sure do.

23 MR. MCKIBBON: I also understand that in -- in certain
24 circumstances, particularly extraordinary circumstances, they
25 are not applied with such mandatory approach, and we have a

2 between fathers and mothers, and we're not getting it, but a
3 very, very substantial estate, one child written out of a
4 will. I mean the issues are as close to home and they're big.
5 They're very, very big.

6 My client did represent himself at first. My client is
7 not made of money. He was trying to find someone to represent
8 him on contingency. Mr. Haynsworth said, you know, he
9 couldn't find somebody, and that may or may not have been
10 true. I don't know. But he did ultimately find Mr. Blincow,
11 who did take up his representation. And the reason for that,
12 of course, is Mr. Shoemaker knows this is complicated stuff,
13 and he did find someone.

14 So the fact that he started out representing himself has
15 nothing to do with the inquiry, but what is important is the
16 timing of Mr. Blincow being suspended. He was representing my
17 client as of December 20th. We're in the week of Christmas.
18 On December 21st, he is suspended from the practice of law.
19 Now, I don't know if my client knew that on December 21st or
20 not, but what I do know is this. He signed his intent --his
21 notice of appeal on January 8th. It was clocked January 10th.

22 But for a man who just lost his attorney to being
23 suspended to not only discover that that was the case, but
24 also to discover that he needed to act quickly and to act as
25 quickly as he did, if there were ever a situation where a

2 that related to actions which may or may not have occurred
3 from, who the Supreme Court certainly believed did, from a --
4 from his attorney and not from this case, but from some --
5 some other back past conduct in Mr. Blincow's disciplinary
6 action, the kind of prejudice that then is imposed upon my
7 client for doing, in my opinion, what could be all that could
8 be asked of someone who is just left hanging in the wind
9 because if he had maybe thought about possibly getting an
10 emergency hearing to have a little bit of extra time to find
11 an attorney, there was no way that he would have known at that
12 point that he had ten days immediately. He knew he wanted to
13 appeal. He knew he had spoken to Blincow that he needed to
14 appeal, but he didn't have a lawyer anymore.

15 And the opposition is seeking to have him -- his case
16 kicked out forever on a procedural matter, which I do not
17 believe that the higher courts would agree with given these
18 exceptional circumstances. I understand the statute says ten
19 days is ten days, but the attorney that had the obligation to
20 file that in ten days was not a lawyer for the period of that
21 ten days.

22 I understand that's an incredibly unique situation. We
23 certainly don't have a case to look at that would give the
24 Court or -- or us any guidance. And I certainly don't
25 disagree with -- with what Mr. Haynsworth has cited as a case

2 able to get to the -- to the merits of the appeal itself
3 because he made every effort that one could ask of him to get
4 his appeal notice in promptly after his attorney was suddenly
5 stripped of his license, I believe that goes contrary to -- I
6 know we're not in a court of equity, but it's contrary to
7 fairness, and I don't know that it would ultimately stand up
8 to a --

9 THE COURT: Well, you know, if this is up to the --

10 MR. MCKIBBON: -- due process claim.

11 THE COURT: I'm sitting here hearing an appeal, and it's
12 strictly on the matter of the law.

13 MR. HAYNSWORTH: Your Honor, I might have missed it, but
14 I never heard -- and I get that, well, Mr. Shoemaker lost his
15 lawyer and he's in this -- this horrifically bad position.
16 Marshall Shoemaker is a smart guy. He's a Princeton grad. He
17 knew enough to bring a lawsuit in probate court against his
18 mother, his father, his two siblings, his father's law
19 partner, Lesley Moore, seated to my right, and his parents'
20 longtime housekeeper, and he was able to represent himself
21 through at least one hearing before Judge Horlbeck in probate
22 court.

23 Mr. Shoemaker also -- you know, I don't want Your Honor
24 to think this is a picture of a man who's in a panic. His
25 lawyer's been gigged. My God, what can I do? I've got to

2 I believe, April he said.

3 Well, Mr. Shoemaker was perfectly content as he started
4 off to represent himself through this appeal. Again, he did a
5 good job of putting together as a pro se his notice of appeal
6 and his issues on appeal. But again, let's leave aside the
7 ten-day notice on the order. Let's talk about what Mr.
8 Shoemaker knew.

9 He knew he needed to appeal an order and he did that, but
10 he didn't appeal the recusal order, and you can't go back and
11 fix that. You can't say, well, he didn't know because his
12 lawyer got gigged, you know, within that time window, because
13 we're not even talking about that anymore. We're talking
14 about --

15 THE COURT: Let me ask this for the new lawyer.

16 MR. MCKIBBON: Yes, Your Honor.

17 THE COURT: Since you're retained in April, are you going
18 by the issues that your client wrote in his appeal?

19 MR. MCKIBBON: Yes, Your Honor, absolutely, which is
20 reflected in -- in our argument and --

21 THE COURT: Okay. I'm looking at it. First -- all
22 right. Let's go down the line.

23 Did the lower court err in refusing to vacate its order
24 while granting appellant's motion to recuse made on the same
25 grounds? Let me hear from you. What's the argument for

2 MR. MCKIBBON: Yes, Your Honor. And this is all
3 reflected in the appellant's brief as well. But the -- I'd
4 first like to address what Mr. Haynsworth just stated. The
5 order on December 15th was an order addressing both the motion
6 to --

7 MR. HAYNSWORTH: It was two orders.

8 MR. MCKIBBON: Two orders. One was an amended summary
9 judgment order. That was amending a previous summary judgment
10 order. Amending it does not change the fact that summary
11 judgment had already been granted.

12 I don't particularly -- for purposes of our argument
13 related to the judicial canons, which are absolutely paramount
14 here in what occurred, it doesn't matter why summary judgment
15 was granted. It matters that it was granted. So I don't care
16 that there was an amended order.

17 The fact is it was granted and that is what was sought to
18 be vacated and that is why we are here, because the summary
19 judgment hearing should never have been heard by Judge
20 Jennings in the first place, because on the day he heard that
21 hearing, the very same day he signed up with Mr. Haynsworth's
22 law firm on two cases to serve as co-counsel upon which he
23 would get paid, that same day, April 7th, 2021, and he did not
24 disclose it. And we maintain that is absolutely a
25 disqualifying event under Canon 3E,¹ and if it is not a

2 Canon 2 as being an appearance of impropriety.

3 There can be no dispute, Your Honor, that the rules of
4 Canon 3F of a remittal, those did not occur at the summary
5 judgment hearing, and the reason for that is that Judge
6 Jennings did not believe or just did not disclose that by him
7 going to -- to joining as co-counsel with Mr. Haynsworth's
8 partner, Mr. Stanley McLeod in the firm of Brown Massey Evans
9 McLeod and Haynsworth, as it has been known for a number of
10 years and they're a very well-known firm in town, Mr. Jennings
11 said nothing, said absolutely nothing.

12 And at the conclusion of the summary judgment hearing, he
13 even stated his inclination to grant summary judgment. He did
14 grant summary judgment April 22nd, and then the first order
15 was written, which it doesn't particularly matter when the
16 first order came out because at this time Mr. Shoemaker and
17 his counsel still had no idea whatsoever of the relationship
18 that Mr. -- that Judge Jennings had with Mr. Haynsworth's
19 firm, two cases ongoing as co-counsel.

20 Then Mr. Haynsworth's firm filed a motion to be awarded
21 attorney's fees. This motion was heard on September 15th, in
22 which -- no doubt Mr. Haynsworth's firm has worked very, very
23 hard on this case -- the attorney's fees requested plus costs
24 was \$108,000 of attorney's fees and 4,000 and change of costs,
25 approximately \$112,000 in attorney's fees.

2 advisement. One day later, one day with no inquiry from
3 anyone else, Judge Jennings sent an email out saying, you know
4 what? It just occurred to me. I'm co-counsel with these guys
5 on some cases, and I haven't told you guys that. I can still
6 be impartial, but I feel like I ought to let you know. The
7 day after hearing a request for 112,000, not the day that he
8 actually signed up to work with this firm, that day he heard
9 summary judgment, the most dispositive motion that someone can
10 make affecting a multimillion-dollar estate and didn't feel
11 that that needed to be disclosed?

12 First, it is an absolute disqualifying event because
13 there's a financial interest. Now, Judge Jennings later
14 opined in his -- in his order where he refused to vacate, he
15 made some distinction that at the time he signed up on April
16 7th, he hadn't gotten paid anything but that he was going to
17 recuse himself now because he expected to get paid in the
18 future. However, he also states --

19 THE COURT: He wrote that he was doing a favor for a
20 friend.

21 MR. HAYNSWORTH: And he did write he may get paid in the
22 future. I think that part is correct, but you're also
23 correct, Your Honor.

24 MR. MCKIBBON: He also states in that order, Your Honor,
25 is he says I've not gotten paid, I've not billed a thing, I

2 up on April 7th, I was expecting to be representing my new
3 client the next day, April 8th, with Mr. McLeod.

4 As he sat on the bench hearing a summary judgment motion,
5 he knew he was supposed to be in court the next day with Mr.
6 Haynsworth's firm. In his own words, he says, but I later
7 found out that Mr. McLeod didn't need me to be there, so I
8 didn't go, and what he was saying in his order was so I didn't
9 bill anything, I didn't have any money in it, I didn't have to
10 participate.

11 But while he sat on the bench that day, he thought he was
12 going to have to be in a hearing as co-counsel with Mr.
13 Shoemaker's opposing counsel, and then he granted summary
14 judgment. And then after \$112,000 in attorney's fees is asked
15 of him, it suddenly came to him I should probably disclose
16 this relationship. It still wasn't a remittal. He still
17 didn't even state it was a disqualifying event. What he said
18 was, I have this -- I just feel like I need to make these
19 disclosures. That's it.

20 Then the motion to recuse and vacate arose, and this is
21 why the grounds are what they are. How could you not vacate
22 and still recuse at the same time? Because he recused himself
23 precisely because of concerns of future objections related to
24 his financial interests in -- in an ongoing case. He recused
25 himself for that.

2 the summary judgment motion. The only thing is he was the
3 only one that knew it because he didn't tell anybody, and so
4 the appropriate ruling should have been I recognize this, I'm
5 disclosing this, this is a disqualifying event. He could ask
6 the -- he could do full disclosure, see if counsel wanted to
7 waive the -- the disqualifying event. And even if that
8 weren't so, the appearance of impropriety, I feel like it goes
9 without saying appearance of impropriety, as you can see in
10 the brief, has been found when a law clerk had an uncle who
11 was a prosecuting lawyer.

12 This is a judge who has a current financial co-counsel
13 relationship with a party's attorney practicing in front of
14 him this very moment, while the other party sits awaiting the
15 fate and then finds that this case that might be worth
16 millions of dollars gets kicked out, and then the judge later
17 discloses it, recuses himself, but lets the summary judgment
18 stand.

19 In fact, letting that stand is even a greater appearance
20 of impropriety. That scares the heck out of me, and I'm not
21 even suggesting that Judge Jennings did something purposefully
22 at all. But as you well know, appearance of impropriety are
23 probably the three most commonly heard words when it comes to
24 the -- to -- to -- to judges in what the judicial CLEs and the
25 books and what comes from Court Administration.

2 professional, to be avoided, and it is mandatory. It is
3 shall, the language is shall in Canon 2. And for a judge to
4 be looking down at two counsel over something so serious as
5 this on a dispositive motion, knowing that he is co-counsel
6 with one of those attorneys, expecting to be in a hearing with
7 them the very next day, having just put them on notice and not
8 disclosed it in my mind is it doesn't even pass the smell
9 test.

10 And -- and what's even more -- and this I found very
11 unfortunate because I happen to know it's not -- not true.
12 Judge Jennings, in his order, also said that it had just
13 occurred to him that Mr. McLeod and Mr. Haynsworth were
14 partners when he recused himself. That was stated, and I know
15 that's not true for a fact. !

16 The appearance of impropriety was there. I believe it
17 was an absolute, disqualifying event, and the right ruling of
18 that time, despite how much people had spent and all of those
19 things, even if there had been an accidental issue April 7th,
20 there wasn't anything about accidental or lack of knowledge.
21 Everything was as clear as a bell when that motion to vacate
22 came.

23 And because the disqualifying event existed on April 7,
24 2021, when he heard the summary judgment motion, indicated his
25 inclination to grant it, later did, in fact, grant it, it

2 disqualified and did not follow the remittal procedures.

3 THE COURT: Okay.

4 MR. MCKIBBON: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. HAYNSWORTH: Yes, ma'am. Your Honor, I found it
7 interesting to hear about how Judge Jennings looked down at
8 us, given that Mr. McKibbon was not at those hearings, but in
9 any event, to give you a little background, I don't know
10 whether Lexington County has this or not, and I don't know
11 whether we've had it before.

12 Judge Jennings is a part-time probate judge. He's a
13 lawyer in private practice as well. So the whole issue of he
14 and my partner, Stan McLeod, being co-counsel in some other
15 case, that's how that happens, because he's a part-time
16 probate judge.

17 THE COURT: Yeah. We have a full-time.

18 MR. HAYNSWORTH: And we have full-time too, but he's one
19 of the part -- I guess the part-timer.

20 But in any event, Your Honor, I want to discuss the
21 merits, which I'm going to get to in a second, but I -- but I
22 wanted to be clear, Judge, because Mr. McKibbon I don't think
23 ever addressed it with the Court.

24 We're here on an appeal, and he has spent a whole lot of
25 time arguing recusal this, recusal that, appearance of

2 Jennings' decision to not retroactively recuse himself and
3 undo his prior ruling, that order was never appealed. If you
4 look at the notice of appeal, Your Honor, it attaches one
5 order that was appealed, the amended order granting us summary
6 judgment.

7 Now, if we want to talk about that order and gloss over
8 that it wasn't timely appealed, we can, but let's don't talk
9 about an order that was never even appealed to this Court.
10 But since we've done it, Judge, and I get the technicalities,
11 particularly dealing with someone who is pro se during part of
12 the time, that maybe the Court wants to hear a little more of
13 the merits, and the merits are these, Judge.

14 I can't do a better job with you than Judge Jennings did
15 in his order that was filed -- excuse me. This is his order
16 denying the motion to recuse. It's dated -- it's -- well,
17 it's dated December 15th, as I --

18 THE COURT: I read it.

19 MR. HAYNSWORTH: You know, if you went and had drinks
20 with a lawyer out in Lexington County during some Bar event
21 and I saw you all chatting, I could come in here if that
22 lawyer was up here in front of you and say, you know, out of
23 an abundance of caution, Judge, that appeared -- you know,
24 y'all looked mighty friendly there. I mean, you've got to
25 draw a line, and the case law has drawn a line and that case

2 And -- and this whole argument has been made at length
3 before Judge Jennings and the applicable law about a judge and
4 when you are compelled to recuse yourself has been addressed.
5 What Mr. McKibbon left out is if you don't have a conflict,
6 then you shall hear the case assigned to you.

7 So I'd like to twist it around, Judge. It was Judge
8 Jennings' obligation. If he didn't have a conflict and he
9 could be fair and impartial, he's supposed to hear that case.
10 The case was assigned to him.

11 But let's get to the merits, Judge. You've heard time
12 and time -- I've heard so many times about how large Mr.
13 Shoemaker's estate was, I'm blue in the face. Mr. Blincow
14 said it a hundred times. It really doesn't matter whether
15 this man died with an estate of \$10 or \$10 million. He
16 expressed his wishes, what he wanted done with his stuff, and
17 he chose to leave the majority of his stuff to two of his
18 three children.

19 Marshall and his children were not left destitute, as
20 their memo suggested. Marshall has got a \$900,000 hunk of
21 money in trust. Marshall has had a bad relationship off and
22 on with his parents since he went to college in roughly 1977-
23 78. The record is replete. The depositions of his brothers
24 were taken.

25 I took his deposition. He admitted under oath, Judge,

2 to the end was my father always treated we three children
3 equally. The only possible explanation for cutting me out was
4 my father was crazy. He was under medication. He's dying.
5 And my -- my mother and brothers vilified me to my father and
6 turned him against me and made him cut me out of my [sic]
7 will.

8 Well, Judge, as I said in probate court in the summary
9 judgment hearing, that would ring like a pretty good argument,
10 except for one fatal misrepresentation to the probate court.
11 Mr. Shoemaker was cut out completely by his parents before.
12 This is not the first time. He was cut out 27 years ago, give
13 or take.

14 Well, I spot you neither his mom nor dad were under the
15 influence of mind-altering drugs or alcohol or dying of COPD
16 when he got cut out last time. So all this nonsense about
17 everyone's been treated equally in the family until three
18 weeks before Dad died and he didn't know what he was doing is
19 just malarkey, and it was malarkey in the probate court.

20 We did discovery for years. No doctor was ever listed as
21 a witness by them. I go to the summary judgment hearing and
22 have gotten faxed the night before the affidavit from the
23 doctor that Blincow got, out of the blue, never seen. Mr.
24 Shoemaker -- hadn't even reviewed all Mr. Shoemaker's medical
25 records.

2 get over the procedural problems and the fact that this Court
3 in theory can't even address what we're addressing, but even
4 if you could, on the merits of this case, they have presented
5 no evidence sufficient to change the decision of the probate
6 court.

7 And the mother's case, which is still sitting in probate
8 court, I suspect will get cranked back up once this stage of
9 Mr. Shoemaker's case is decided, but all Mr. Shoemaker has
10 done, Judge, is gummed up this lady's life, the CPA who was
11 helping her and his parents with their estate planning, his
12 siblings, and the stuff is part of the estate.

13 You know, we're incurring charges because Mr. Shoemaker
14 continues to gum up and delay his parents' wishes. Now, he
15 might not like their wishes. I might -- you know, my dad may
16 cut me out. I can assure you I'll go -- I'll come to court
17 somewhere and go my dad was crazy. There is no way he would
18 have done this if he was in his right mind, but you know what?
19 If the evidence was he -- you know, he might be mad at me, and
20 I may think you have no real logical, good, legitimate reason
21 to be mad at me, but you know what? That's his decision.

22 And if I did something to make my dad mad enough to cut
23 me out, again look in the record. It is replete with why this
24 happened. Marshall Shoemaker threatened to kill his little
25 brother, and the email that Marshall sent to his little

2 that broke the camel's back.

3 You know, there were various events in Marshall's life
4 where he got crossways with his mom and dad, and this was a
5 biggie, but it had nothing to do with lack of testamentary
6 capacity or any undue influence. It was the logical result of
7 how Marshall's relationship with his parents was, and I feel
8 bad for him as a child.

9 You know, my dad's got some dementia going on right now,
10 and that's caused some issues with us. So on a personal
11 level, I get it. I went to high school with him and his two
12 brothers. I know the whole family, but at the end of the day,
13 it ain't about what we expected as children or what we want or
14 what we think. It's about the deceased's wishes and what they
15 wanted to do with their stuff.

16 And Mr. Shoemaker sat down with this lady, who was his
17 law partner and who has handled all his will and trust
18 matters, and they went over the changes to both Mr.
19 Shoemaker's will and Mrs. Shoemaker's. Mrs. Shoemaker's was
20 changed at the same time. So, you know, if Dad was crazy
21 because he's on these -- having this COPD episode and all
22 these harmful drugs, well, what about Mrs. Shoemaker? She
23 didn't have COPD.

24 So the bottom line is Mr. and Mrs. Shoemaker made a
25 decision based on what they wanted to do with their stuff once

2 instance was to set money aside for Marshall and his children
3 in trust and to favor the other two sons more than they
4 favored this son. He actually came out better, in fact, in
5 this last will than in the one 30-odd years ago where he and
6 his children were cut out completely.

7 So, Your Honor, on the merits of the case, if we're going
8 to talk about the merits, appellants have come forth with no
9 evidence sufficient for this Court under the legal standard
10 that it must apply to overrule the summary judgment order of
11 the probate court.

12 THE COURT: Okay. And I've read all that, and I
13 appreciate y'all's arguments. I'll tell you what. I'm going
14 to take a quick ten-minute break only because I'm going give
15 them a break.

16 Do you have your client's issues on appeal, a copy of it
17 that was filed? Because he mentioned something about the
18 appellant's expert, the preponderance of the evidence
19 standard, the mere scintilla of evidence, about the court
20 expert?

21 MR. MCKIBBON: I'm not following, Your Honor.

22 THE COURT: Well, this is what he filed with his notice
23 of appeal. I want to know if you're ready to argue that,
24 because I want to go down this list when I come back and tell
25 me what your grounds are or legal issues for this.

2 statement of issues?

3 THE COURT: Right. Well, I got three altogether, I
4 reckoned.

5 MR. MCKIBBON: I was limited to those and those are what
6 are argued in the brief that was filed with the Court. Yes,
7 Your Honor, I am prepared to argue those.

8 THE COURT: Okay. Let's take a quick ten-minute break.
9 I'll be right back.

10 (WHEREUPON, there was a break in the proceedings, after
11 which the proceedings resumed as follows.)

12 THE COURT: All right. I'm breaking out the Red Bull.

13 Okay. Let's go down this list and, if you would, we have
14 argued number 1, did the lower court err in refusing to vacate
15 its order while granting the appellant's motion to recuse? I
16 think I've heard from both sides.

17 Then the summary judgment. Did the Court err in
18 concluding that the affidavit of the appellant's expert
19 created a question of fact on the decedent's capacity by using
20 the preponderance of evidence standard, the mere scintilla of
21 evidence, and it did not state the level of incapacity.

22 I'm going to let you argue your number 2, if you would,
23 please.

24 MR. MCKIBBON: The summary judgment standard as briefed
25 by the appellant [inaudible] Supreme Court [inaudible].

2 legitimate inferences on the facts are the very functions of
3 the [inaudible]. Evidence of the non-moving is to be believed
4 and all justifiable inferences are to be drawn in his favor.

5 Now, [inaudible] extreme circumstances [inaudible]
6 summary judgment. [Inaudible] this gets thrown [inaudible].
7 We've probably all dreamed about that standard of review and
8 hear it so much.

9 But it is credible. Everything must be viewed through
10 the lens of the party, which in the case of the summary
11 judgment was my client. It is [inaudible] for fact, and prior
12 to your brief recess, you heard the opposition speaking
13 largely about factfinding. It was -- it was all about, look,
14 man, the parents, it was their wishes. It was this.

15 I mean these -- somehow the decisions on the merits were
16 made. It's sort of made [inaudible] that on the merits that
17 they win. Well, that's -- that's not the inquiry on a summary
18 judgment. The inquiry is, is there a dispute of material
19 fact?

20 And in these issues of appeal as they're called and
21 rightly and it is filed slightly secretly, but two of them
22 relate to specific facts that were suggested to be in dispute,
23 and they were largely [inaudible] Dr. Hughes' affidavit, which
24 you heard Mr. Haynsworth talking about earlier as well.

25 The credibility or the weight of Dr. Hughes, as the

2 [inaudible]. In his affidavit -- I mean, you stated this at
3 the very beginning. You read it. 'You were there. He
4 [inaudible]. He reviewed records and things like this.

5 And I'm at somewhat of an offhanded [inaudible]. If --
6 if you had to see every patient before you could make an
7 expert opinion for all physicians, there wouldn't be a medical
8 malpractice case. All these [inaudible], but they're not
9 [inaudible]. That's for a jury to decide. [Inaudible] just
10 might go against it too. It's just [inaudible] regardless.
11 It doesn't mean it's useless, and the evidence [inaudible].
12 All evidence must be viewed in the light most favorable
13 [inaudible]. So the evidence is [inaudible] to justify
14 inferences.

15 The expert did, in fact, state that there was substantial
16 cognancy during that time [inaudible] when he executed that
17 will. He didn't -- he didn't state -- well, he's [inaudible].

18 MR. HAYNSWORTH: That's why I was shaking my head.

19 MR. MCKIBBON: [Inaudible.]

20 THE COURT: And the Court doesn't take it that way.

21 MR. MCKIBBON: [Inaudible.]

22 MR. HAYNSWORTH: It's in your brief about the last four
23 or five pages of what would be the exhibits.

24 MR. MCKIBBON: [Inaudible.] The Court [inaudible]. It
25 is stated in his affidavit that [inaudible]. You've got

2 [inaudible] and capacity.

3 Whether or not that evidence and its weight would lead to
4 a jury [inaudible] lack of capacity [inaudible] issues, and
5 the weight [inaudible] all true, that that is the test that a
6 jury must apply when determining a testator's [inaudible]
7 specific words. He testified [inaudible] that there was
8 [inaudible]. That was the physicians. Okay?

9 [Inaudible] also needs [inaudible] qualifications.
10 [Inaudible] the merits [inaudible]. There's faults because,
11 as the Court said, the affidavit does not sufficiently raise
12 any [inaudible]. A physician [inaudible] capacity that he had
13 substantial cognitive [inaudible]. And the reason [inaudible]
14 properly executed [inaudible].

15 THE COURT: All right. I got the argument.

16 MR. MCKIBBON: So [inaudible]. I believe I've addressed,
17 Your Honor, our position on the summary judgment and why that
18 [inaudible] dispute of material fact [inaudible] summary
19 judgment.

20 THE COURT: Right.

21 MR. MCKIBBON: We are going to hear from Mr. Haynsworth,
22 and they may be [inaudible], but they need to be heard at
23 another [inaudible] hearing back in [inaudible]. That's what
24 they need.

25 THE COURT: Right.

2 THE COURT: Let me ask you -- let me ask you this before
3 I turn to Mr. Hightower. The other thing, I think you've
4 addressed everything that I've -- because there's two twos in
5 here. Two -- it's 1, 2, 2, and a 3. I think the two twos you
6 just addressed, but the other one was the lower court erred by
7 applying the same legal standard to the deceased's IRA account
8 as opposed to a higher standard to contract.

9 MR. MCKIBBON: Your Honor, I have no knowledge whatsoever
10 about that particular argument, nor --

11 THE COURT: Okay.

12 MR. MCKIBBON: -- in reference to this particular case.

13 THE COURT: Okay. So I didn't think so. Would you
14 agree, Mr. Hightower?

15 MR. HAYNSWORTH: Yes, ma'am. It's Haynsworth, but that
16 -- that's all right.

17 THE COURT: Mr. Haynsworth.

18 MR. HAYNSWORTH: No worries, Judge.

19 THE COURT: All right.

20 MR. HAYNSWORTH: You're drinking Red Bull. I know the
21 hour is late.

22 THE COURT: I'm sorry.

23 MR. HAYNSWORTH: Oh, no, no, do not.

24 Your Honor, short answer is Mr. Shoemaker never sued over
25 the IRAs. So that really is not an issue before the probate

2 didn't.

3 And Judge, I want to address Mr. -- Mr. McKibbon saying
4 he thinks all my eloquent summary judgment argument should be
5 made in probate court. They will be in Mrs. Shoemaker's case,
6 which is still pending in probate court, but as to Mr.
7 Shoemaker's case --

8 THE COURT: Okay.

9 MR. HAYNSWORTH: -- which is here before you, Judge,
10 again, I don't think I can address the -- Dr. Hughes'
11 affidavit any better than Judge Jennings did in how he dealt
12 with it.

13 But -- but in point of fact, Judge, contrary to what Mr.
14 McKibbon represented, this is not some factual dispute that
15 the judge made a decision by weighing the evidence or the
16 credibility. You have to have a factual dispute about
17 something relevant in the case.

18 It is not relevant that Mr. Shoemaker had idiopathic
19 disease. It's not relevant that this guy said he had, quote,
20 some level of cognitive impairment. There is no indication in
21 the record that Mr. Shoemaker did not have testamentary
22 capacity the day he executed the testamentary documents, and
23 that's the only relevant time frame for how he was doing
24 medically. Again, he can be crazy day before, crazy day
25 after, but if he had that limited amount of capacity on the

2 This Court's -- in the two cases I handed up earlier,
3 Judge, one dealt with, you know, you've got to follow the ten-
4 day rule, it's clear or else. The other one, Judge, which is
5 the *Edens v. Edens* case, if you look on the second page about
6 middle of the way down, on appeal from the probate court's
7 ruling regarding a claim against an estate, the circuit
8 court's jurisdiction is limited to determining whether there
9 is any evidence to support the probate court's ruling.

10 So to the extent the issues on appeal talked about
11 scintilla of evidence or different things of that nature, the
12 analysis of this Court is, is there any evidence to support
13 what the judge did?

14 THE COURT: Right.

15 MR. HAYNSWORTH: Well, there's no evidence to support
16 anything other than what he did. You know, I'm sitting here
17 listening to the arguments about this Dr. Hughes fellow and
18 thinking, well, you know what? If they'd listed him as a
19 witness, I'd have taken his deposition and we wouldn't have
20 all this hypothetical theoretical stuff about his affidavit.
21 I'd have it locked down, but I didn't know about the guy until
22 the night before the summary judgment hearing.

23 So, you know, I feel like I'm being -- that I screwed up,
24 you know, not, oh, let's just bag summary judgment. Let me go
25 depose this guy and delay it all. So then when we get on

2 know, I'd have more meat. But -- but the fact of the matter
3 is, the burden is on them to establish that the probate court
4 was wrong. And if you get over all the dispositive procedural
5 problems with the timeliness of any appeal and not appeal on
6 the other order, if you just get to the meat of it, we still
7 prevail, Judge.

8 There is no evidence in this record to suggest that the
9 probate judge's decision was anything other than spot on based
10 on the evidence in front of him. He didn't make a credibility
11 decision. He made a decision of evidence on issues in dispute
12 before him, and there was no issue in dispute as to Mr.
13 Shoemaker's testamentary capacity when he did the documents
14 that were being challenged. That's the time, that's the
15 issue.

16 And finally, Judge, because we haven't really explored
17 this, there were two challenges to his will and trust. He was
18 crazy, he didn't have the capacity to do it, or he was under
19 undue influence by my mom and my brothers. They convinced him
20 to cut me out. To prove undue influence, it's clear and
21 convincing evidence, Judge. It's even a higher standard than
22 capacity, nowhere near that, and that was sort of, I think,
23 glossed over in the underlying case because the burden was so
24 high.

25 But to the extent there's an appeal before you arguing

2 influence by clear and convincing evidence. They never came
3 close to that standard, and that's why the judge granted
4 summary judgment against him.

5 And based on the totality of the record before you, I
6 think you -- you've got to dismiss their appeal for the
7 reasons I talked about, but if you're not inclined to -- to --
8 to dismiss it on those reasons or in addition to those
9 reasons, as far as the merits go, they simply have not met
10 their burden of proof in this appeal, and the probate judge's
11 decision should be upheld.

12 THE COURT: All right. Let me ask one last question
13 before I let y'all go.

14 Mr. McKibbon?

15 MR. MCKIBBON: Yes, Your Honor.

16 THE COURT: I also have the motion to dismiss for her
17 untimely filing. Are you going to represent Mr. Shoemaker on
18 that motion?

19 MR. MCKIBBON: Yes, Your Honor.

20 THE COURT: Okay. I mean, we've talked about it. We've
21 been over it. You explained to me what the reason was. I
22 just wanted to make sure because I didn't have your name down
23 for that, and it's now lumped in. It's kind of an issue I'm
24 going to have to take up before I make an issue on appeal.

25 MR. MCKIBBON: And, Your Honor, I did have one brief

2 THE COURT: Sure.

3 MR. MCKIBBON: It's going to be very brief.

4 THE COURT: Sure.

5 MR. MCKIBBON: But it --

6 THE COURT: Take your time. You got all the --

7 MR. MCKIBBON: Judge --

8 THE COURT: You got all the time in the world.

9 MR. HAYNSWORTH: Plenty of Red Bull back in the office.

10 THE COURT: I'm here for you.

11 MR. MCKIBBON: I might get the case name wrong, but I
12 think it was first year towards when you're trying to figure
13 out what the heck proximate causation [inaudible], the
14 [inaudible] case or something like that, and you're trying to
15 figure out how far down a line you can go to from a causation
16 before something causes something else [inaudible]. Is it
17 reasonable that one thing causes another?

18 And this just goes back to that one issue of the
19 timeliness as it pertains to judicial disqualification. The
20 fact that a disqualifying event occurred and disqualifying did
21 not happen, which means that summary judgment motion didn't
22 happen, which would have changed the docket completely, but
23 the entire case was poisoned after that.

24 If the disqualification had occurred as it was supposed
25 to under Judicial Canon 3E, we're not here arguing about

2 Blincow, but December 21st is when he was suspended. And I
3 don't know when my client --

4 THE COURT: Well, how do you expect it to change if you
5 don't make a timely appeal?

6 MR. MCKIBBON: Well --

7 THE COURT: How -- what gives me jurisdiction to hear it?

8 MR. MCKIBBON: I'm sorry?

9 THE COURT: What gives me jurisdiction to hear it if you
10 don't make a timely appeal?

11 MR. MCKIBBON: [Inaudible] the timely appeal, it's like
12 in other matters. For example, the one that jumps to mind
13 quickest --

14 THE COURT: I mean, I understand your argument about the
15 summary judgment, but I can't get to the summary judgment
16 until I have jurisdiction to hear your appeal. So I've got to
17 decide that first before I even look at all these other issues
18 as whether this appeal was even timely. Other than that, all
19 this other stuff is moot.

20 MR. MCKIBBON: I would submit, Your Honor, the situation
21 that I'm involved with, including appeals to the Court of
22 Appeals, sometimes people are not timely in things. In
23 default and the Court's civil procedure, we [inaudible]
24 understand that sometimes there can be [inaudible], but
25 excusable neglect can be one, and that's one that's applied to

2 We're talking about a non-attorney. Even at the Court of
3 Appeals, people miss these deadlines, and that's a tight
4 court. So is the Supreme Court and the federal courts, and
5 the federal courts and the Supreme Court and appellate court
6 routinely upon request and briefing of issues of excusable
7 neglect or inadvertence or mistake allow things to be filed
8 out of time. It happens every day. Every day. And this is
9 not some super special statute.

10 THE COURT: I know of very few instances that that
11 happens.

12 Why don't I do this? I'm going to ask both of you, Mr.
13 Haynsworth and Mr. McKibbin, how about both of y'all issue me
14 proposed orders? I mean, this case is pretty serious. I read
15 it. I know that there's a lot of money involved. I know it's
16 a family, and it's fighting. That's never a good combination.
17 I mean, it's just not.

18 But I know that it's important to your client. So I'm
19 going to ask that you both write, and to your client too, Mr.
20 Haynsworth. I assume you represent the other -- are there two
21 children?

22 MR. HAYNSWORTH: The two children live -- live -- I
23 represent the two children, the mother's estate, the father's
24 estate, Lesley Moore, and I think there were some John and
25 Jane Does that are gone and a -- and a housekeeper that's

2 THE COURT: Everybody on the other side, and I know this
3 case is important to them. And you know, y'all, we need to
4 get it behind everybody so they can get on with their lives.
5 That's what we need to do.

6 So if you would both -- I'm going to ask that you submit
7 me a proposed order, and I want it in this fashion. Number
8 one, addressing the motion to dismiss and, in the alternative,
9 the other, I think, really three issues, Mr. McKibbon, that
10 your client has raised for appeal.

11 Is there anything else that we talked about here in court
12 today? I think it's going to be hard to get a transcript. I
13 don't know that we can get a -- how fast that is in this
14 courtroom if you're wanting a transcript. I don't know, but I
15 think -- I think the record is pretty clear. I think the
16 paper record is very clear. It's extensive. I've read it.
17 It took me two days to go through it to figure out who
18 everybody was and what was happening. So if y'all could just
19 get me a proposed order on your arguments.

20 MR. HAYNSWORTH: No, I think, in fact, you -- the probate
21 court, in their zeal to kick every -- there's some stuff in
22 circuit court that has nothing -- really has to do with stuff
23 still pending in probate court.

24 THE COURT: That's still pending in probate court.

25 MR. HAYNSWORTH: Yeah. They just -- there was an appeal

2 THE COURT: And they gave us everything.

3 MR. HAYNSWORTH: Yeah.

4 THE COURT: And I think most of it is on e-filing.

5 MR. HAYNSWORTH: I -- there's a duplicate file here and
6 in probate court now.

7 THE COURT: Okay. So -- but if y'all need anything else,
8 let me know. I will give you some time to write this, because
9 I'm going to tell you -- oh, we've got a calendar. Okay.
10 Today is the 8th. Can I go to October? How about do you
11 think that you might could get that to me by October the 3rd?
12 If it's -- if it's sooner, sooner the better, but my deadline
13 is going to be October the 3rd.

14 MR. HAYNSWORTH: Do you want us, Your Honor, to send --
15 when we send you the proposed order presumably ruling 100
16 percent in our respective favors --

17 THE COURT: I expect that's what it's going to be.

18 MR. HAYNSWORTH: We sort of got that's -- that's how
19 you'd expect they'd come to you. Do you want us to provide
20 copies to each other of what we send to you? Or just -- that
21 may trigger additional filings by one or the other of us if --
22 I mean I --

23 MR. MCKIBBON: If -- if I may, I would propose that we
24 don't so that we don't -- that neither of us have --

25 MR. HAYNSWORTH: Get -- get all stirred up and want to

2 MR. MCKIBBON: Or try to reply to one another within the
3 order itself.

4 THE COURT: Just send me your proposed order on your
5 position, each one of y'all. If y'all send it to my law
6 clerk, he'll get it to me, or you can send it straight to my
7 email. Do not file it in my e-filing because I'll look at it
8 and, once I decide, I'll write my own order.

9 MR. MCKIBBON: Would you like to be mailed Word documents
10 to you?

11 THE COURT: If you would, please.

12 MR. MCKIBBON: Thank you for all your time this
13 afternoon, Your Honor.

14 MS. MOORE: Yes. Thank you.

15 THE COURT: Absolutely. Thank y'all. Nice meeting you,
16 Mr. McKibbon, Mr. Haynsworth.

17 (WHEREUPON, the proceedings ended.)
18

19 --- END REQUESTED TRANSCRIPT ---
20
21
22
23
24
25

) Certificate

County of Florence

)

I, the undersigned, Krystal J. Smith, Notary Public and Official Circuit Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 50, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 8th day of September, 2022, to the best of my ability based upon the audio and video provided.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

December 27, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED

IN THE PROBATE COURT

APR 01 2021

Case No.: 2018-ES-23-01729

GREENVILLE COUNTY
PROBATE COURT

James Marshall Shoemaker, III

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe

Respondents.

MEMORANDUM IN SUPPORT
OF RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT

In support of their motion for summary judgment filed November 4, 2020, respondents submit the following:

I. Background

Petitioner, Marshall Shoemaker, is the eldest of three sons of James M. (Shoe) Shoemaker, Jr. and Mary Hunter Sloan (Polly) Shoemaker. The decedent, James Marshall Shoemaker, Jr., was a long time attorney in Greenville, South Carolina with Wyche Law Firm. Mr. Shoemaker passed away on July 14, 2018. Many current or former lawyers at Wyche are witnesses in this matter, have provided affidavits, or are even parties. Their testimony, submitted by affidavit, will be discussed later in this memorandum.

Marshall Shoemaker, has been estranged, off and on, from his parents and his two brothers for years. Before finishing high school, Marshall began abusing substances. After leaving Greenville to attend Princeton University in approximately 1979, Mr. Shoemaker became significantly more burdened by a problem with alcohol. Although it is unknown when he made

the decision or if the decision was made for him, in 1986 Marshall Shoemaker spent 28 days in a program at Marshall Hale Hospital in San Francisco, California followed by six months in Henry Ohlhoff House, a half-way house. Marshall Shoemaker's obsession with alcohol and recovery pervaded his relationship with his parents and other family. As noted by his deposition testimony:

Q. Okay. Okay. So after your dad has been buried, you have a subsequent conversation about, "Mom, why would you exclude me from the funeral?" And that's when she told you that your brothers expressed they were fearful of you if you had come.

A. Right. And I interpret that to be a socially acceptable presentation for the real underlying thing, that she was horrified that I would openly talk about alcoholism and drug addiction in the family.

(Deposition of James Marshall Shoemaker, Page 49 line 2 through line 10)¹

Q. So, in your opinion, your family's a tribe of mean drunks and the other things you allude to in this letter, but you're still - - - are you on good terms with your folks at this point, in your opinion?

A. I'm on the best terms I could be, given the context, yes.

(Deposition of James Marshall Shoemaker, Page 118 line 23 through Page 119 line 3)

Q. And not to beat a dead horse, but the sentence says, "My mother's influence over my relationship with my father was undue and hostile, in large part I believe because of her own untreated emotional problems, and anger at me for suggesting that both she and my father

¹ All cited pages of Mr. Shoemaker's deposition are attached hereto collectively as Exhibit A. The original deposition of Petitioner James Marshall Shoemaker was submitted to the court with Respondents' Motion for Summary Judgment on November 4, 2020.

required treatment for chemical dependency." Is that why you believe that your mother was trying to influence your father, along with the help of your two brothers, to have you cut out? Because she was PO'd at you for suggesting she and your dad required treatment for chemical dependency?

A. Correct.

(Deposition of James Marshall Shoemaker, Page 131 line 8 through line 19)

Q. And I apologize if I am replowing old ground. The first time you raised issues about your dad being an alcoholic, I thought, was something like twenty-five years ago.

A. Correct.

Q. Okay. Go on to say that, "They find the situation intolerable, so have written me out of their lives." What situation are you talking about that was intolerable that caused your parents to write you out of their lives?

A. Alcoholics' and drug addicts' primary relationship is with the substance. And when people threaten their use of that substance, it's intolerable to them.

(Deposition of James Marshall Shoemaker, Page 74 line 8 through line 18)

Q. I'm talking about when your dad was still alive. Is it your contention that your mother, along with Jonathan and Sloan, were unduly influencing your father, because of some weakened state, for him to do his Will and Trust, not based on his wishes, but based on their undue influence? Was your mother involved in convincing your dad to change his estate plans?

A. Yes. On the long-term basis, she abetted his alcoholism. We had a rule at my house: do not talk to your father about a difficult topic before he's on his second Scotch. His sons made Scotches for him. So one of the ways she got power was to take a guy who basically was very high strung and who was mellow once he was on his second scotch. She abetted him drinking because it mellowed him out and made him more pleasant to be around. She also abetted this sort of competitive relationship between the brothers. And she did not stand up for, really, me, when my brother Sloan put these e-mails in front of my father.

Q. Well, in the e-mails we are talking about, this is one where you threatened to kill Sloan; right?

A. Right.

(Deposition of James Marshall Shoemaker, Page 122 line 3 through line 24)

Q. "As a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts..." Now, a couple of questions about those lines. At this point in time did your mom not like you? Why would she collude with your brothers to have your dad cut you out of his Will?

A. Because my brother Sloan shoved the e-mails in their face. And they were not of sound mind, in general, but they went of - - - those e-mails disturbed them. And instead of picking up the phone to talk to me about it, they just took this sort of nuclear reaction.

(Deposition of James Marshall Shoemaker, Page 124 line 9 through line 22)

Q. All right. Same sentence we were reading: "...to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trust..." By whom was he persuaded, exactly?

A. My brothers, my mother, his Personal Representative. Obviously these other people. Maybe Carl Muller might've - - - Carl Muller, based on his affidavit, might've tried to counsel otherwise. But all these people who you see as the good citizens of Greenville who were testifying to the righteousness of his activity.

(Deposition of James Marshall Shoemaker, Page 125 line 18 through Page 126 line 2)

Q. Back in July of '94 - - - these Codicils where you were cut out that we're talking about - - - to your knowledge, were your mother and father under the influence of any type of drugs during this period of time?

A. Sure.

Q. What drugs were they under the influence of?

A. My father drank like a fish from the day he went to college, I imagine, and my mother has always been in an altered state. But I don't know that for sure, because I didn't have ... you know, I'm just guessing. People don't overnight start abusing alcohol and drugs.

(Deposition of James Marshall Shoemaker, Page 170 line 14 through line 24)

II. Petitioner's relationship with his family speaks volumes to petitioner's motives.

"The sad part is that the Shoemaker assholes that I grew up with have an incredible methodology of holding out the promise of love, and more importantly money, and never delivering. The only thing you assholes deliver is withholding and judgment and delusional

scapegoating...you and Jonathan and mom and dad are a tribe of mean drunks. I highly recommend you stay the fuck away.”² There can be no more clear evidence of the strained and hostile relationship between petitioner and his family than petitioner’s own words and deeds as will be discussed, in detail, in this supporting memorandum. While respondents will certainly address the core legal issue in this case relative to the testamentary capacity of James Shoemaker, respondents also want to illustrate for the court’s edification the total lack of evidence supporting the claims asserted by petitioner and his deep-seated animosity towards his family. In this regard, it is important to recall that the initial pleadings filed in this matter contained claims that were so spurious and outrageous leveled against his mother and father, that the court granted respondents’ motion to strike the offending language and required petitioner to submit an amended petition.

Based on a review of the amended petition, Marshall Shoemaker challenges his father’s testamentary capacity and contends that the challenged documents were the result of undue influence.

Once “the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation.” Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); Howard v. Nasser, 364 S.C. 279, 290, 613 S.E.2d 64, 69 (Ct. App. 2005) (noting a will is presumed valid when its formal execution goes unchallenged). The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

² E-mail dated May 1, 2018 from Exhibit 4 of deposition of Marshall Shoemaker.

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew [(1)] his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks, 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 So. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to found his likes or dislikes of the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity." S.C. Code Ann. § 62-3-407 (Supp. 2018). "Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[u] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influence—"there [must be] additional evidence that such influence was actually utilized." Howard

y. Nasser, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock, 266 S.C. at 277, 222 S.E.2d at 774).

"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallas, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)).

The right to testamentary disposition of one's property is a fundamental one which reaches back to the early common law; the right to dispose of one's property by Will is most solemnly assured by law and does not depend upon its judicious use. Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946). Moreover, when the formal execution of a Will is admitted or proved, the burden is upon the contestant to prove undue influence. When he relies solely upon circumstantial evidence, the circumstances relied upon 'must be such as, taken together, point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person, so that the will is that of the latter, and not of the former.' Id. at 83, 39 S.E.2d at 129. Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969); Mock v. Dowling, 266 S.C. 274 222 S.E.2d 773, (1976)

With regard to the testamentary acts in the present matter, the execution of Mr. Shoemaker's Will and Trust, petitioner has readily admitted he has no knowledge of the discussions about or execution of the documents at issue. According to his deposition testimony:

Q. Okay. Let me try to break into smaller chunks. The day that your dad actually executed the revisions to his Will and Trust, the ones that you have challenged, that day, you didn't talk to your father; correct?

A. No.

Q. You had not seen him that day.

A. No.

Q. Or a week before, as an example?

A. No.

Q. The people that were involved with your dad such as Ms. Moore, in preparing the revisions to the Will and Trust that he ultimately signed, you weren't with your father and Ms. Moore and the others to know what the discussion was about, what was to be changed and not?

A. No.

Q. Okay you're not aware of what discussions, if any, were had during the actual execution of the document when he was sitting there signing it and his signature was being witnessed?

A. No.

(Deposition of James Marshall Shoemaker, Page 127 line 8 through Page 128 line 2)

Q. Okay. The next interrogatories reference Page 6 of your petition. And it references the portion of your petition that says your dad was incapacitated at the time of the alleged revisions to his Will. Were you with your father on the day that he executed the most current testamentary documents?

A. No.

Q. Do you know who was with him when he executed those documents?

A. The documents imply that there were two lawyers from my father's law firm, as I recall. I do not have them in front of me.

Q. Okay. And you've not had occasion to talk to either of the two lawyers who show up on the documents, to ask them about your dad's condition or capacity --

A. No.

Q. On the date that he executed the documents?

A. No.

(Deposition of James Marshall Shoemaker, Page 26 line 7 through line 24)

Mr. Shoemaker readily admits he has no information concerning his father's capacity at **the time of the transaction.** (Emphasis added) Yet, Mr. Shoemaker has hauled his family into court and forced them to incur tens of thousands of dollars in legal fees. However, the people intimately involved with James Shoemaker, who worked with him, were familiar with and assisted in his estate plans over decades and were actually present at the time of the transaction, are personally familiar with his testamentary capacity. By way of example, attached to these respondents' motion for summary judgment and incorporated as Exhibit G is the affidavit of

William W. Kehl. Bill Kehl practiced law with James Shoemaker beginning in 1965 after they attended and graduated together from the University of Virginia School of Law. As noted in his affidavit, Bill Kehl confirms that not only was it beyond question the decedent was in command of his mental faculties and actions during the years they worked together, but that was equally true in the final weeks of decedent's life. Significantly, Bill Kehl confirms he was familiar, because James Shoemaker shared with him, that there was family strife involving Marshall. As confirmed by his affidavit, Bill Kehl was told by James Shoemaker when he prepared his Last Will and Testament dated June 24, 2018, that Marshall was going to be excluded from the estate. As he noted in paragraphs 6 and 7 of his affidavit, Mr. Kehl, who had personal knowledge of and a close relationship with Mr. Shoemaker over 50 odd years, confirmed that he possessed, without question, testamentary capacity at the time he executed the instruments at issue.

The affidavit of Rita Christopher which is attached to respondents' motion as Exhibit F, establishes that she had been the primary assistant for the decedent from approximately the year 2000 until his passing on July 14, 2018. Ms. Christopher avers that she was well aware of the strained relationship that existed between Mr. Shoemaker and his son Marshall, as Mr. Shoemaker was open regarding that relationship and she saw communications from Marshall to his father as well as prepared and transmitted communications from Mr. Shoemaker to Marshall. Ms. Christopher goes on to note in her affidavit that she personally saw a violent, threatening e-mail that Marshall sent to his brother Sloan on May 1, 2018, which Sloan forwarded to his father on May 7, 2018. Ms. Christopher notes that the receipt of the threatening e-mail appeared to be the precipitating event in Mr. Shoemaker's decision to change his Will in the early summer of 2018. Ms. Christopher makes this averment of her personal knowledge as noted in her affidavit. As with his law partner Bill Kehl, Mr. Shoemaker's longtime assistant Rita Christopher specifically avers

that based upon that the criteria for determining testamentary capacity, the decedent possessed testamentary capacity during all times that she ever saw, spoke or dealt with him.

Interestingly, while petitioner's lawsuit is based on claims of lack of capacity and undue influence, the petitioner has actually admitted he was aware, like Ms. Christopher, of the reason his father chose, yet again, to exclude him as a beneficiary.

Q. You reference that your dad might've been angry, that that might've been some of the motivation for what he did in his last executed testamentary documents. Something about your brothers had shown private communications to your dad and it made him mad. Tell me about that.

A. It's been revealed by e-mail s that you've copied me on, and you have his secretary's statement. **I think its common knowledge that my brother showing some e-mail communications to him really pissed him off and he took this action.** (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 28 line 21 through Page 29 line 5)

Q. What would Sloan and Jonathan have -- are you talking about they would have guilty consciences?

A. Yeah.

Q. About what?

A. Sloan's passing on e-mail , which would obviously distress my parents, to my parents, which were not addressed to my parents, **directly resulted in my father writing me out of his Will.** (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 49 line 21 through Page 50 line 3)

To provide context, it must be remembered that originally Sloan Shoemaker had been invited to attend his nephew Peter's graduation. A plane ticket had been purchased and Sloan intended to visit his mother and father on the Sunday or Monday following the graduation events. Instead Sloan landed in Atlanta on Friday afternoon and drove to Greenville where of course his parents inquired as to the change of plans and why he had not attended the graduation. His father asked about the email Marshall had sent and asked to see it.

In addition to the email where Marshall Shoemaker threatened to kill his younger brother Sloan, Marshall also generated an e-mail to a Greenville City police detective, Drew Palmer. In that e-mail Marshall Shoemaker accused his parents' long time housekeeper Debbie Wine of potential elder abuse in addition to casting aspersions on his parents' long time housekeeper and his brothers, Marshall Shoemaker succinctly expresses his view of his relationship with his parents: "My parents refuse to speak with me. My father drinks and my mother takes drugs. I am a recovering alcoholic and have on multiple occasions confronted them about their dependencies. They find the situation intolerable, so have written me out of their lives. And probably their wills!" A copy of the aforementioned e-mail is attached hereto and incorporated by reference as Exhibit D.

The affidavit of Amos A. Workman is attached to respondents' motion and incorporated as Exhibit A. A review of Mr. Workman's affidavit establishes that he worked at the Wyche firm with James Shoemaker for many, many years and Mr. Shoemaker always appeared to be well possessed of his complete mental faculties and in Mr. Workman's experience, any decisions Mr. Shoemaker made were his own decisions and not decisions based on any outside influence upon him. Mr. Workman's affidavit notes at paragraphs 5 and 6 that he has been apprised of the criteria for determining testamentary capacity and that during the times Mr. Workman interacted with Mr.

Shoemaker, Mr. Shoemaker had testamentary capacity. Perhaps most significantly, as averred on page 4 of his affidavit, on June 24, 2018, Mr. Workman actually sat down and watched Mr. Shoemaker, along with Carl F. Muller, review his Last Will and Testament and Trust dated June 24, 2018 and initial every page of the Will and sign the Will and Trust. As such, while the petitioner has readily admitted that he did not talk to any of the witnesses to his father's Will and Trust nor his father himself on the day the testamentary documents were executed and thus, has no personal knowledge as to his father's condition that day, Mr. Workman has that personal knowledge, was actually present and witnessed the execution of the Will and Trust.

As with his admitted knowledge that threatening to kill his brother was one of the motivating factors for his father's decision to exclude him as a beneficiary, Marshall Shoemaker also admits in his deposition the accuracy of a number of affidavits provided in discovery, such as the affidavit of Martha Louise Ramage Lewis. During his deposition, Marshall Shoemaker was questioned as to whether he knew Ms. Lewis and the following exchange took place:

Q. Martha Louise Ramage Lewis. Do you know who that is?

A. Yes.

Q. Have you ever talked to Martha Louise?

A. Maybe at a party. But it's been a very long time.

Q. Do you know what the relationship was, if any, with your mom and dad?

A. I think she kept their books or something. Or their taxes. I'm not sure.

Q. Do you know if she had any knowledge of your mom and dad's wishes as far as what would happen to their estate upon their death?

A. I don't know much about it.

Q. Have you reviewed the affidavit that I obtained from Martha Louise?

A. Yes, I read it.

Q. Was anything in her affidavit incorrect as a factual matter? (Emphasis added)

A. I don't see anything to call into question. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 140 line 21 through Page 141 line 17)

The petitioner confirmed that Ms. Lewis' affidavit is factually accurate. A review of that affidavit which was attached to respondents' motion as Exhibit D, establishes a number of significant points. First, Ms. Lewis had known and Mr. and Mrs. Shoemaker and they had been clients of hers since approximately December of 2000. She had occasion to meet with Mr. Shoemaker or speak with him approximately 2 to 4 times each year. As noted in paragraph 5 of her affidavit, of her own personal knowledge, Ms. Lewis is familiar that Mr. Shoemaker changed his estate plans at various times such that his eldest son, Marshall, would not share on an equal basis with his other two children. Ms. Lewis confirmed that as part of her general practice, she often times keeps contemporaneous notes regarding the substance of meetings and instructions she has been given by her clients. She reviewed those notes relative to Mr. Shoemaker's estate plan and his intentions with regard to his son Marshall. As noted in her affidavit, on June 24, 2018, the very day that the testamentary documents were executed, Mr. Shoemaker spoke with Ms. Lewis by telephone and told her he was going to change his estate plan relative to his son Marshall, and attorney Lesley Moore would be preparing the documents to reflect his changes. Her notes went on to indicate that Marshall was "trouble" and at no time during her conversation on June 24, 2018, did she observe anything that would lead her to question Mr. Shoemaker's

mental competency or whether the actions stated regarding his intention to alter his estate plan was completely voluntary. In fact, contrary to the petitioner's wholly unsupported claims that his father as of June 24, 2018 was literally out of his mind, Ms. Lewis' affidavit confirms that more than three weeks later, on July 12, 2018, she met in person with Mr. Shoemaker at his residence at The Cascades to obtain his signatures on documents. Based on a review of her notes from the meeting on July 12, 2018, James Shoemaker was "totally lucid" and her notes reflected a direct quote from the decedent to her which was "Marshall is out".

As with Ms. Lewis, petitioner also addressed the veracity of the affidavit submitted by William Kehl.

Q. Okay. Same question for Mr. Kehl, who you happened to speak to at the funeral, because we were walking in together. Bill Kehl. Longtime partner of your dad's at Wyche Firm. You spoke to him at the visitation after your dad's funeral. Do you know the man I am talking about, Mr. Kehl?

A. Yeah.

Q. Do you have any reason to believe Mr. Kehl would lie about his knowledge of your father's wishes, his knowledge of any of the execution of Will and Trust documents that we are here about? You got any –

A. No.

Q. – reason to think that man would lie?

A. No.

(Deposition of James Marshall Shoemaker, Page 136 line 10 through line 23)

Likewise, as to the affidavit submitted by Dr. Daniel Grover.

Q. Do you have any evidence that the representations made in your dad's doctor's affidavit are anything other than true?

A. No.

(Deposition of James Marshall Shoemaker, Page 140 line 17 through line 20)

The petition submitted by Marshall Shoemaker to this court goes to great lengths to attempt to paint the picture that because his father had treated he and his two brothers equally over time, being excluded from his father's Trust and Will can only be the result of undue influence on an incapacitated man. According to his petition at page 4 "as a result of my father's highly disturbed and distorted state of mind during his final months alive, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he allegedly signed on June 24, 2019 revisions of his Will and Trusts. These revisions expressly exclude me, and my children Mary and Peter, from benefitting from his estate as originally intended, and twice later confirmed." Mr. Shoemaker goes on to note at page 4 over to page 5 of his petition "under conditions of physical, emotional and spiritual agony, my father was influenced, three weeks before his death, to take drastic action contrary to the principals of love and equity which he had previously shown explicitly, here documented, me and my brothers, and all of our collective children, for the previous twenty years." While Mr. Shoemaker came to this court and submitted pleadings purporting to be truthful to this court, the reality is he knew full well that his parents had not treated him on an equal basis with his brothers and he knew full well he had not been cut out of his father's Will and Trusts because of any mental infirmity or undue influence. Petitioner claims the action taken by his father was so contrary to the equanimity that had been exhibited between the three

sons that such a change could only be explained by lack of capacity and undue influence. He claims his father always treated him equally with his two brothers. However, it is clear that petitioner's relationship with his parents has been estranged for years and being excluded from an equal share of their estate has happened before. As confirmed by Mr. Shoemaker in his deposition:

Q. All right. Well, when your mom and dad, back in 1994 cut you and your kids out, thereby, as of 1994, treating you much differently than Sloan and Jonathan, was it because neither of your parents were of sound mind to have been able to validly execute these documents? (Emphasis added)

A. It was because my father did not tolerate dissent and he went nuclear, like he's done many times in our relationship. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 167 line 14 through line 21)

Q. Well, now that you have seen these documents — I was talking to you and trying to give a hypothetical earlier and you said, "Well, I'm not going to respond to hypotheticals". You've now seen the document in front of you, signed by your mother and father, cutting you out of their Wills, as long ago as 1994. Did their unsoundness of mind begin decades ago? Have they been unable to validly express their wishes as to what they wanted done with their estate from that far back? I am trying to get a handle on why they would do this twenty, third - odd years ago.

A. I just explained it to you.

Q. It's the alcoholic rage and he was mad?

A. No, that's part of it. The other part was, is I questioned how he was handling my grandfather's estate. And this is his response to being challenged.

Q. "You challenge me, buddy, I'll cut you out."

A. Yeah. He used to verbally talk about that. We'd get into a discussion and he goes "Well, do you wanna be in my Will?" I mean, he was constantly dangling that carrot. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 168 line 23 through Page 169 line 16)

Q. Do you read that as I do, to cut you and your kids out of his Will as it existed back in 1994?

A. I don't know where you're getting '94. I read April 23, 1991.

Q. Well, the document was executed in 1994. The amendment to his Will of April of '91 is amended when your mom and he signed this Codicil to it in July of '94.

A. uh, in July of '94...?

Q. Yeah. Why'd your parents cut you out of the Will?

A. Well, I'm trying to get the dates straight here. So my daughter was born in April of '92 and my son in August of '94. That is the time period in which I said, "Dad, I wanna negotiate my way out of that real estate property," and he flipped out.

Q. So your mother and father cutting you out of their Will in July of '94, you believe was in response to your dad getting mad at you because you wanted to extricate your interest in the property that you and Sloan and Jonathan Shoemaker shared, the gas station.

A. Correct.

(Deposition of James Marshall Shoemaker, Page 166 line 12 through Page 167 line 6)

Q. Okay. Did you threaten to beat up your father when they lived on Pine Forest Drive, back in the garden your mom and dad used to have in the backyard?

A. I told my father to get his finger out of my face or I was gonna break it off.

(Deposition of James Marshall Shoemaker, Page 107 line 21 through line 25)

Q. Okay. Bad question on my part. His incapacity -- you have alleged that he didn't have the mental capacity to properly execute his Will and Trust.

A. Correct.

Q. When did that incapacity begin? When did he become so incapacitated of his mind and his free will that he was no longer able to execute testamentary documents based on what he wanted?

A. Once again, I'll repeat: I believe towards the end of his life -- and there are many events I can point to -- he was losing the ability to think rationally about emotionally-charged topics. In a more compressed time framework, he was suffocating to death and was on medication to avoid the anxiety. I don't think a person who is suffocating to death and on tranquilizers has the capacity to make decisions in his best interest. Given the twenty-year history of him treating his sons equally and the three weeks before his death making this drastic change, I'd say the facts speak for themselves.

(Deposition of James Marshall Shoemaker, Page 28 line 2 through line 20)

Q. So is it your contention that alcoholism and drug addiction caused your father to not have testamentary capacity?

A. The drug addiction refers to my mother, not my father.

Q. Okay strike drug addiction from my question.

A. Yes. His actions three weeks before his death are so contrary to his actions twenty years previous and since he was a lawyer, he was fully aware of the kind of damage for multiple generations this action would take on me and my children and my side of the family and the relationship with the other side of the family. And since he acted in a loving way many years previously towards me and my children, and seemed very aware of family dynamics, and in general acted towards keeping a unified family, it was totally against his character. And that is explained to me by being on narcotics, suffocating to death, the long-term effects of alcoholism.

(Deposition of James Marshall Shoemaker, Page 35 line 8 through line 23)

Petitioner contends throughout his pleadings as well as his discovery responses that he was treated equally by his father along with his two brothers and this equal treatment throughout history only changed in the weeks proceeding the death of his father. Petitioner's argument is that the only possible explanation for being excluded from his father's estate is lack of capacity due to illness and medication making his father's mind subject to undue influence.

The love and equal treatment over the last 20 years to which petitioner constantly refers in his petition and discovery responses is yet again laid bare as a misrepresentation to this court when actual communications between petitioner and decedent are reviewed. By way of example, attached to hereto and incorporated as Exhibit B, is a copy of an e-mail from the decedent James M. Shoemaker to his son Marshall on Tuesday June 17, 2014 with the subject line "family". This is the same "family" that petitioner claims was in a loving relationship, yet here are the words from decedent that actually reflect that relationship:

I have the impression that you would like to completely disassociate yourself from your mother and me – to which we are agreeable. The

relationship since you left for Princeton has always been sour most of the time. Is that what you would like to do? We will, of course stay in touch with your Adult Children as much as possible. Dad

III. Petitioner's Petition is internally inconsistent and conflicts with subsequent petition he filed regarding his mother's estate.

Q. The influence to which you refer there about your mother was not influencing your dad to change his estate plan, you're just talking about influence¹ generally? Or are you alleging that your mother influenced, provided undue influence on your dad to cause him to change the disposition - - -

A. Yes.

Q. - - - of his estate?

A. Yes.

Q. Okay. So your mom was one of the people who was utilizing your dad's weakened mind to convince him to change his estate plans as far as you were concerned?

A. Yes. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 121 line 11 through line 22)

Q. Well, your mom initialed this version as well. Does that, in your mind, make it more legitimate, or more valid, than had she not initialed every page?

A. Well, speaking in general terms, yes. But in terms of my mother, I don't think she had any - she was just doing whatever my father told her to do.

Q. Okay. So you believe that your father exerted undue influence on your mother to get her to do this Will that we have marked as Exhibit 7? (Emphasis added)

A. Yes. (Emphasis added)

Q. And was that undue influence put upon her when she did this document? She was under that influence when she signed this document? (Emphasis added)

A. Yes. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 160 line 15 through Page 161 line 3)

Q. Why was that?

A. My mother was not of sound mind the last five years of her life. She had dementia. She could not be relied on to be rational of thought or able to recall facts, or even make commitments about whether a fact is true or false. My father went through a lot of mood swings over the years. And sometimes he would get mad about something and react, or he would not communicate, or withdraw. And there tended to be a cycle of positive communication and somebody's upset about something.

(Deposition of James Marshall Shoemaker, Page 18 line 4 through line 13)

Respondents would like to take a moment to address with the court the significance of the above deposition testimony. In this matter Marshall Shoemaker has come to court, sued his brothers, their mother, the PR of the estate of their parents and at one point in time, their parents' longtime housekeeper. In this lawsuit the petitioner specifically alleges that his mother and her two sons exerted undue influence upon James Shoemaker and due to his weakened mental state convinced him, against his own will, to disinherit Marshall. Yet, based on the testimony above, Marshall Shoemaker swore under oath that it was his father who exerted undue influence upon his mother regarding her Will as his mother was not of sound mind in the last five years of her life. It

is absolutely inconceivable that a petitioner would come to this court with such wildly inconsistent and diametrically opposed allegations. The only reasonable conclusion is that petitioner knew full well, as illustrated by his sworn deposition testimony, that he had been cut out of his parent's estate plan yet again because of the continued estrangement that existed between him and his parents.

IV. Claims as to Sloan and Jonathan.

In addition to allegations that his father's Will and Trust being challenged are the product of undue influence brought to bear by Mrs. Shoemaker, petitioner alleges that his brothers Sloan and Jonathan, in collusion with their mother, also unduly influenced Mr. Shoemaker to change his estate plans. Notwithstanding his allegations regarding his two brothers, when questioned under oath petitioner admitted he had no evidence of his mother or his brothers discussing with Mr. Shoemaker changes to his estate plans.

Q. All right. And, again, I want to draw a distinction between the e-mails after your dad has passed versus how he had been influenced before. **Do you know of any specific instances where either of your brothers or your mother talked to your father about him changing his Will or Trust?**

A. No. (Emphasis added)

(Deposition of James Marshall Shoemaker, Page 123 line 16 through line 21)

During his deposition, Jonathan Shoemaker was questioned by counsel for petitioner regarding conversations had with his father concerning Marshall. Jonathan provided truthful sworn testimony that, in fact, his father raised the issue (of excluding Marshall) but Jonathan was clear that he would have a conflict of interest and offered no opinion as to whether Mr. Shoemaker should exclude Marshall from his estate. As noted by Jonathan Shoemaker:

A. Because dad had told me he was gonna write Marshall out of the estate.

Q. All right, now, when was that?

A. I don't know. Late in the game.

Q. I can help. I believe that the Will got - - - and when I say Will, the Will and the Trust - - - that got changed in, say, middle of June and he passed away in July.

A. Uh huh.

Q. When were you - - - you mentioned late in the game. When were you aware of that?

A. I don't know. Maybe it was the Memorial Day Weekend when I was home.

Q. In May?

A. Yeah.

Q. How did that come up? Do you remember?

A. He told me he was considering doing that.

Q. What did you tell him?

A. He asked me what I thought. I said, "Well, Dad, I can't counsel you on that, you know. I have a serious conflict of interest. But you know I'm not a fan of Marshall."

Q. So you didn't advise him one way or the other?

A. No. (Emphasis added)

Q. Was Sloan - - - was Sloan there over Memorial Day?

A. No. I don't believe so. Anyway, the conversation that I remember, Sloan was not in the room for.

Q. Okay. And so that would have been --- was that the only time you had a discussion with your dad about that part of his estate plan?

A. I think so. (Emphasis added)

Q. And, again, you think that might've been around Labor Day, (sic), May, and it was your dad saying, "I'm thinking about taking Marshall out of the Will. What do you think, Jonathan?"

A. Yes.

Q. And your reply was, "I don't know that I can help you one way or the other."

A. Yeah.

(Deposition of Jonathan Shoemaker Page 35 line 1 through Page 36 line 12)

Sloan Shoemaker was also questioned by petitioner's counsel regarding conversations with Mr. Shoemaker about son Marshall.

Q. I see.

A. My father said to me many times over the years, expressing --- he would express frustration, to me, about Marshall. And he would say, "But your mother ... I keep having him back in the house for the sake of your mother." Marshall had threatened, physically, my father. He threatened me over the years a few times. He was full of rage, often, when he would be in the family house. And he was disruptive, and he was a very toxic presence that many of us tried tolerate sometimes. Sometimes it was okay, but often it wasn't okay. For me it reached a

critical point years ago, and I decided I wasn't gonna go down that road anymore. It was different for dad. And I just took it that Dad reached a point at the end of his life.

(Deposition of Jonathan Shoemaker Page 41 line 9 through line 22)

Both Sloan Shoemaker and Jonathan Shoemaker live considerably further away from their parents than their brother Marshall. Marshall resides in Atlanta whereas Jonathan resides in New York City and Sloan resides in Colorado. Thus, as a practical matter, undue influence brought to bear by Sloan and Jonathan upon the will of Mr. Shoemaker is patently unreasonable. In fact, Mr. and Mrs. Shoemaker chose not to share every unpleasant event they experienced with Marshall with their other two sons.

Q. You mention - - - and you've been gone a long time. Maybe we all have. But are you aware of explosions between Marshall and your dad that you were not a part of but that you found out about some kind of way?

A. You know, they didn't go at it blow by blow, every event, with me. But it was inevitable that it would come up, that you know, "Yeah, Marshall was here a month ago," or "We talked to Marshall" and "it ended badly." And it always ended badly, it seemed like, you know. There was the rare exception that it didn't. And it got to the point where dad really didn't want to deal with him. Mom was peacemaker in the family, was the go between. And Marshall was abusive to her, based on her reporting of it.

(Deposition of Sloan Shoemaker Page 37 line 12 through line 24)

As with so much of this case, the petitioner's own words shed a bright light on the family situation. Attached hereto and incorporated by reference as Exhibit C is a copy of a letter sent by Marshall Shoemaker to his brother Sloan on February 7, 2019. In bullet point 5 of that letter

Marshall states to his brother Sloan, "I attempted to drag you into my conflicts with our father." This lawsuit is another example what Marshall recognized and admitted to his brother in the aforementioned letter. Trying to drag brother Sloan into Marshall's conflict with his father.

V. Claims as to Lesley Moore.

Petitioner has also asserted claims against attorney Lesley Moore. As to those claims, Marshall Shoemaker simply misapprehends the duties of a personal representative and a Trustee.

Q. As we sit here today, you have absolutely no idea what conversations Lesley Moore and your father had about the execution of his most recent testamentary documents, do you?

A. No, I do not. I draw my conclusion on her allowing herself to become involved emotionally sometimes in the ups and downs between my father and then taking the liberty of communicating it to me. So I draw my conclusions that she did not act in the best interest of either my father or his heirs.

(Deposition of Marshall Shoemaker Page 101 Line 1 through 8)

Q. Well, Marshall, what is it you would have wanted all these professionals to do? To talk your dad out of cutting you out so as not to create dissension amongst the family?

A. To talk him out of taking an irrational action on his death bed that went against his long term will, which was, he loved me and I loved him and I was his son and it was not based on one tiff e-mail exchange between two of his sons. It was not a rational response to cut them out of the Will.

(Deposition of Marshall Shoemaker Page 102 Line 4 through 11)

Q. Well, I mean, wouldn't that be fair? If they got money based on a Will that your dad was too mentally addled to know what he was doing?

A. No, what would be fair is that I sue Lesley Moore for her participation in this and have her insurance pay for this mess. That's what would be fair.

(Deposition of Marshall Shoemaker Page 113 Line 25 through Page 114 Line 5)

As noted previously, Marshall Shoemaker had not talked to his father prior to execution of the documents in question nor had he talked to any of the witnesses to the execution of the documents nor Ms. Moore who drafted the documents. In fact, to this day Marshall Shoemaker has failed to come forth with any evidence, to include any unbiased witness testimony expert or otherwise, establishing that his father lacked testamentary capacity, was under any undue influence or that Ms. Moore had undertaken any action other than to follow the clear instructions of Mr. and Mrs. Shoemaker and prepare their testamentary documents in accordance with their wishes. Her affidavit confirmed that Ms. Moore has been handling trust and estate matters for Mr. and Mrs. Shoemaker since 1989, that she was involved with and worked closely with the Shoemakers and their financial advisors relative to their estate plans and testamentary documents, was well aware of the estrangement that existed between Marshall Shoemaker and his family, was aware of changes over the years to the testamentary documents reflecting that Marshall had been excluded in the past and that it was clear Mr. Shoemaker wanted him excluded from the documents being challenged.

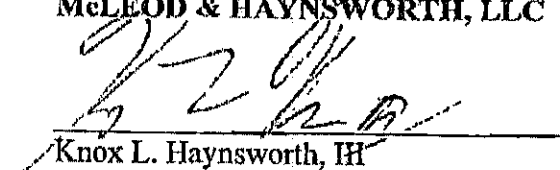
VI. Conclusion.

Based on the evidence before this court, respondents respectfully submit there are no genuine issues of material fact in dispute regarding the allegations that James M. Shoemaker, Jr.

lacked testamentary capacity or was under any undue influence at the time he executed the testamentary documents at issue. Petitioner was well aware of what he had done over the years to create the estrangement with his family and the changes to his parents' estate plans due to those estrangements. Petitioner came to this court seeking to smear the name of his parents contending they were alcoholics and drug addicts. In addition to seeking judgment in their favor as a matter of law, the respondents respectfully submit that this court should, in accordance with the provisions of SC Code Ann. §62-1-111, 62-1-112 and 62-7-1004, award them the recovery of their damages, costs and attorney's fees as justice and equity may require due to the frivolous and unsupported claims petitioner has asserted and the attendant massive financial and emotional expense those acts have caused the respondents to suffer.

Respectfully submitted,

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Greenville, South Carolina
April 7, 2021

EXHIBIT

A

1 afraid of you." That's where I got that conclusion.

2 Q. Okay. Okay. So after your dad has been buried, you
3 have a subsequent conversation about. "Mom, why would you
4 exclude me from the funeral?" And that's when she told you
5 that your brothers expressed they were fearful of you if you
6 had come.

7 A. Right. And I interpret that to be a socially
8 acceptable presentation for the real underlying thing, that she
9 was horrified that I would openly talk about alcoholism and
10 drug addiction in the family. And that she was grief-stricken
11 and my brothers found a way for her to vent her spleen on me.
12 Which had been part of a pattern. And which I understand from
13 other lawyers I've talked to in Georgia, that when parents are
14 aging, siblings tend to become very entitled about assets of
15 their parents and behave in ways in order to gather more of
16 those assets. And that's what I see in my brothers' behavior.

17 Q. Okay. Still reading in the same paragraph after the
18 quote "fear that I will harm them," and you've got, in
19 parenthetical, "a totally fabricated idea cooked up in their
20 obviously guilty consciences."

21 What would Sloan and Jonathan have --- are you
22 talking about they would have guilty consciences?

23 A. Yeah.

24 Q. About what?

25 A. Sloan's passing on e-mail, which would obviously

1 fuck away." I don't need you to explain what you meant there.
2 "I am contemplating, strike that, I am going to rip your
3 fucking heart out if you show up. Nobody here needs your
4 'support'; you have none to give."

5 Rolling over to the next page: "I'm going to
6 fucking kill you if you show up. Stay in Colorado, running
7 away from life, waiting for the Patriarch to die and refund
8 your insanely dependent life style."

9 I presume the "waiting for the Patriarch to die"
10 means waiting on the death of your dad so Sloan could inherit
11 money to refund his insanely dependent life style?

12 A. Correct.

13 Q. Sloan never came to the graduation, I presume.

14 A. Correct.

15 Q. Were you in regular communication --- when you sent
16 Sloan this e-mail in May of 2018, were you in regular
17 communication with your mom and dad at that point?

18 A. Yeah. You've got letters in your exhibit where I
19 talk about going to Ireland to visit my cousin --- I mean my
20 girlfriend's family--- and keeping them up to date on visiting
21 old relatives. And I was talking to my dad on the phone. So
22 the answer's yes.

23 Q. So, in your opinion, your family's a tribe of mean
24 drunks and the other things you allude to in this letter, but
25 you're still --- are you on good terms with your folks at this

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1 point, in your opinion?

2 A. I'm on the best terms I could be, given the context,
3 yes.

4 Q. The context, meaning...?

5 A. Of their emotional states.

6 Q. Did their emotional states cause your relationship
7 with them to degrade over time?

8 A. I think over the last few years of my mother's life
9 it became impossible to have a rational conversation with her.
10 I mean, you could have a conversation about the weather, or
11 what are we gonna eat, but that's about as far as it would go.

12 For my father, he would still talk about politics,
13 or my contemporaries' athletic abilities. But we didn't have
14 deeply meaningful conversations with an exchange of love and
15 support and affirmation, no.

16 Q. All right, Marshall, take a look at Exhibit 1.
17 Exhibit 1, I will represent to you, should be the Petition you
18 filed in Probate Court here in Greenville County, with all the
19 exhibits to that Petition.

20 A. Yeah.

21 Q. But I don't want you to believe it just because I
22 say it. I'm happy for you to review it and satisfy yourself
23 that that is in fact the Petition that you filed with the
24 exhibits.

25 A. Yes, it looks to me like it's complete. I haven't

1 Q. And my apologies for getting a little off track.
2 But what I was trying to explore is, is I thought your mom was
3 mad at you about e-mails, and maybe I'm wrong on that. What we
4 were reading is this contention in your Petition that your
5 mother was angry at you for suggesting that she and your dad
6 required treatment for chemical dependency.

7 A. Correct.

8 Q. And not to beat a dead horse, but the sentence says,
9 "My mother's influence over my relationship with my father was
10 undue and hostile, in large part I believe because of her own
11 untreated emotional problems, and anger at me for suggesting
12 that both she and my father required treatment for chemical
13 dependency."

14 Is that why you believe that your mother was trying
15 to influence your father, along with the help of your two
16 brothers, to have you cut out? Because she was PO'd at you for
17 suggesting she and your dad required treatment for chemical
18 dependency?

19 A. Correct. And when she came out and announced that
20 my father for a second time refused to see me on his death bed
21 ---which I do not know if that's what his view was, but that's
22 what she communicated--- she expressed joy and glee in the pain
23 she was witnessing on my face when she communicated the news.
24 It showed malice towards me when she delivered that news. And
25 her sarcastic remark, "Boy, I'll bet that must've hurt," and

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1 father drinks and my mother takes drugs."

2 Third bullet point: "I'm a recovering alcoholic and
3 have on multiple occasions confronted them about their
4 dependencies." And this is going back decades, right, that you
5 had confronted them at various times about alcohol and drugs?

6 A. I don't know about decades, but it is true it had
7 happened in the past.

8 Q. And I apologize if I'm reploting old ground. The
9 first time you raised issues about your dad being an alcoholic,
10 I thought, was something like twenty-five years ago.

11 A. Correct.

12 Q. Okay. Go on to say that, "They find the situation
13 intolerable, so have written me out of their lives." What
14 situation are you talking about that was intolerable that
15 caused your parents to write you out of their lives?

16 A. Alcoholics' and drug addicts' primary relationship
17 is with the substance. And when people threaten their use of
18 that substance, it's intolerable to them.

19 Q. Okay. And then the next line down, after you say,
20 "They find the situation intolerable, so they've written me out
21 of their lives," then you say, "And probably their wills!" ---
22 exclamation mark.

23 A. This letter was written in anger and in hast, and
24 upset. So, you know, there's a bit of hyperbole in it.

25 Q. Okay. Well, did you know, did you have an inkling

1 me about's after your dad's death.

2 A. Correct.

3 Q. I'm talking about when your dad was still alive. Is
4 it your contention that your mother, along with Jonathan and
5 Sloan, were unduly influencing your father, because of some
6 weakened state, for him to do his Will and Trust, not based on
7 his wishes, but based on their undue influence? Was your
8 mother involved in convincing your dad to change his estate
9 plan?

10 A. Yes. On the long-term basis, she abetted his
11 alcoholism. We had a rule at my house: Do not talk to your
12 father about a difficult topic before he's on his second
13 Scotch. His son's made his Scotches for him. So one of the
14 way she got power was to take a guy who basically was very high
15 strung and who was mellow once he was on his second Scotch. So
16 she abetted him drinking because it mellowed him out and made
17 him more pleasant to be around.

18 She also abetted this sort of competitive
19 relationship between the brothers. And she did not stand up
20 for, really, me, when my brother Sloan put these e-mails in
21 front of my father.

22 Q. Well, in the e-mail we're talking about, this is one
23 where you threatened to kill Sloan; right?

24 A. Right. Like two guys in a bar who are pissed,
25 screaming, "I'm gonna kill you!" Right. I didn't --- well,

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1 to get you to explain some of it.

2 This is along the same vein. Look at the line sort
3 of in between line 17 and 18: "...collusion of my mother and
4 brothers to vilify me..." This is on Page 2 of the Petition,
5 line 18, I guess it is.

6 A. Yeah. Well, let me re-read it just a second.

7 Q. Sure. Go ahead.

8 A. (Reading document) Yeah. Go ahead.

9 Q. "As a result of his weakened, disturbed and
10 distorted state of mind during his final months, and the
11 collusion of my mother and brothers to vilify me to, and
12 separate me from, my father, he was persuaded to sign revisions
13 of his will and trusts..."

14 Now, a couple of questions about those lines. At
15 this point in time did your mom not like you? Why would she
16 collude with your brothers to have your dad cut you out of his
17 Will?

18 A. Because my brother Sloan shoved the e-mails in their
19 face. And they were not of sound mind, in general, but they
20 went off --- those e-mails disturbed them. And instead of
21 picking up the phone to talk to me about it, they just took
22 this sort of nuclear reaction.

23 Q. "I no longer wish to communicate with you," the
24 e-mail you got. The nuclear reaction "Dad doesn't wanna have
25 any contact" ---

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1 A. No, the nuclear reaction is changing your estate
2 when he's going in and out of the hospital, and then not seeing
3 your son on your death bed. Can you imagine that as a father,
4 doing that? I don't think so.

5 Q. I guess it would depend on my relationship with my
6 son when I'm on my death bed.

7 A. Yes. And you would judge him and condemn him and
8 tell him to go to hell, I'm sure.

9 Q. I guess it depends on how he'd been in his grown-up
10 years. But, hopefully, we won't be there for a while.

11 A. Yeah, but the facts of the matter are, that for
12 twenty years, the legal documents that I have show him treating
13 him in equity. So you can do whatever you want to to slander
14 me, and collunify (phonetic) me, and besmirch me, and make me
15 out to look like a monster, but those are not the facts.

16 Q. I'm sorry. I don't know what collunify means.

17 A. Well, maybe I'm not saying the word right.

18 Q. All right. Same sentence we were reading: "...to
19 vilify me to, and separate me from, my father, he was persuaded
20 to sign revisions of his will and trusts..." By whom was he
21 persuaded, exactly?

22 A. My brothers, my mother, his Personal Representative.
23 Obviously these other people. Maybe Carl Muller might've ---
24 Carl Muller, based on his affidavit, might've tried to counsel
25 otherwise. But all these people who you see as the good

1 citizens of Greenville who were testifying to the righteousness
2 of his activity.

3 Q. Let me make sure I understand what you're
4 contending, now. So in addition to your brothers and your mom,
5 you're now telling me that Leslie Moore and others persuaded
6 your dad to revise his Will?

7 A. No, I'm not saying that.

8 Q. Okay. Well, I'm just focusing on who persuaded him.
9 You've alleged that he was persuaded to sign revisions. I'm
10 just trying to get the limited universe of people that you
11 contend persuaded him to change his Will.

12 A. Right. My brothers and my mother.

13 Q. And the day that he revised his Will and Trust, when
14 he sat down and signed them, you hadn't talked to him that day,
15 had you?

16 A. No.

17 Q. Hadn't seen him that day, had you?

18 A. No, I don't believe so.

19 Q. He didn't talk to you ahead of time about what he
20 was planning on doing.

21 A. No.

22 Q. Didn't call you up right after the fact and tell you
23 what he'd done.

24 A. No.

25 Q. And you don't have any information one way or

1 A. Correct.

2 Q. And those would come up in the context of you were
3 bucking up to him and he was going to show you who was going to
4 win the argument.

5 A. Exactly. Yeah, it's quite painful and astonishing
6 to see these documents. Ha! I had two small children and
7 it's, "Fuck you and your father."

8 Q. I don't really have any questions about the
9 transcript, (Exhibit 11) other than you do recall going to
10 court and us talking to the judge about the Petition, and...
11 You have no reason to think this is not the conversations we
12 were all having in court.

13 A. Makes sense to me.

14 Q. Back in July of '94 ---these Codicils where you were
15 cut out that we're talking about--- to your knowledge, were
16 your mother and father under the influence of any type of drugs
17 during this period of time?

18 A. Sure.

19 Q. What drugs were they under the influence of?

20 A. My father drank like a fish from the day he went to
21 college, I imagine, and my mother has always been in an altered
22 state. But I don't know that for sure, because I didn't
23 have...you know, I'm just guessing. People don't overnight
24 start abusing alcohol and drugs.

25 Q. Are you keeping your Uncle Ned apprised of the

1 another from any of the people who might have been with him,
2 either when he prepared the documents he signed, or he signed
3 the documents. You've not talked to any of them and don't know
4 what they know about the discussions with your dad or the
5 actual execution of the documents.

6 A. I don't know, that's kind of a big question. So I'm
7 not sure how to answer that.

8 Q. Okay. Let me try to break it into smaller chunks.

9 The day that your dad actually executed the
10 revisions to his Will and Trust, the ones that you have
11 challenged, that day, you didn't talk to your father; correct?

12 A. No.

13 Q. You had not seen him that day.

14 A. No.

15 Q. Or a week before, as an example?

16 A. No.

17 Q. The people that were involved with your dad, such as
18 Ms. Moore, in preparing the revisions to the Will and Trust
19 that he ultimately signed, you weren't with your father and Ms.
20 Moore and the others to know what the discussion was about what
21 was to be changed and not.

22 A. No.

23 Q. Okay. You're not aware of what discussions, if any,
24 were had during the actual execution of the document. When he
25 was sitting there signing it and his signature was being

1 witnessed.

2 A. No.

3 Q. You don't know what was talked about in the room or
4 what went on.

5 A. Well, no, and I don't know where the room was and
6 --- no, I don't know that.

7 Q. I'm over on the next page now, Page 3. Look up
8 at...I guess it's line 4 or 5. "...my girlfriend, of my mother
9 to allow me to have access to my father's bedroom." And then
10 the sentence that begins, "My mother's influence over my
11 relationship..." You see that one?

12 A. Yeah.

13 Q. "My mother's influence over my relationship with my
14 father was undue and hostile, in large part I believe because
15 of her own untreated emotional problems, and anger at me for
16 suggesting that both she and my father required treatment for
17 chemical dependency."

18 Well, you told me that your mom was upset because of
19 the e-mails, should have been "Put up your swords." and,
20 instead, her reaction was to get very upset at you over the
21 e-mail that you and Sloan had exchanged. If I understood you
22 earlier, that was one of the reasons she was miffed at you in
23 this period of time. Did I ---

24 A. I don't know for sure when Sloan was showing her
25 e-mails. I know that she stated in a phone call to me two days

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1 .to avoid dealing with it.

2 Q. Okay. And then this sarcastic comment, "Boy that
3 must really have hurt." Do you know why she would throw that
4 out? That seems kinda confrontational.

5 A. No, it was a passive/aggressive cruel remark and it
6 was within character.

7 Q. Okay. The next interrogatories references Page 6 of
8 your Petition. And it references the portion of your Petition
9 that says your dad was incapacitated at the time of the alleged
10 revisions to his Will.

11 Were you with your father on the day that he
12 executed the most current testamentary documents?

13 A. No.

14 Q. Do you know who was with him when he executed those
15 documents?

16 A. The documents imply that there were two lawyers from
17 my father's law firm, as I recall. I do not have them in front
18 of me.

19 Q. Okay. And you've not had occasion to talk to either
20 of the two lawyers you show up on the documents. to ask them
21 about your dad's condition or capacity ---

22 A. No.

23 Q. --- on the date that he executed the documents?

24 A. No.

25 Q. Okay. In the Interrogatory Answer...the question

1 A. And he was on oxygen constantly.

2 Q. Okay. Bad question on my part.

3 His incapacity --- you have alleged that he didn't
4 have the mental capacity to properly execute his Will and
5 Trust.

6 A. Correct.

7 Q. When did that incapacity begin? When did he become
8 so incapacitated of his mind and his free will that he was no
9 longer able to execute testamentary documents based on what he
10 wanted?

11 A. Once again, I'll repeat: I believe towards the end
12 of his life ---and there are many events I can point to--- he
13 was losing the ability to think rationally about emotionally-
14 charged topics. In a more compressed time framework, he was
15 suffocating to death and was on medication to avoid the
16 anxiety. I don't think a person who's suffocating to death and
17 on tranquilizers has the capacity to make decisions in his best
18 interest. Given the twenty-year history of him treating his
19 sons equally and the three weeks before his death making this
20 drastic change, I'd say the facts speak for themselves.

21 Q. You reference that your dad might've been angry,
22 that that might've been some of the motivation for what he did
23 in his last executed testamentary documents. Something about
24 your brothers had shown private communications to your dad and
25 it made him mad. Tell me about that.

1 A. It's been revealed by e-mails that you've copied me
2 on, and you have his secretary's statement. I think it's
3 common knowledge that my brother showing some e-mail
4 communications to him really pissed him off and he took this
5 action.

6 Q. He got mad as hell at you for threatening to kill
7 Sloan, and then he wrote you an e-mail that he didn't wanna
8 communicate with you anymore and he cut you out of the Will.

9 A. Is that a question?

10 Q. Do you agree that that's a fair representation of
11 factually what happened?

12 A. No, it's not.

13 Q. Okay. How do you know your father was angry when he
14 was shown the e-mails which you and Sloan exchanged?

15 A. Well, when I visited him, I was not aware of him
16 being shown the e-mails. I was also not aware that he had
17 written me out of his Will. I didn't find that out until six
18 months after his death when I started to seek the information
19 from Attorney Moore. It's only in hindsight that I found out
20 about this.

21 Q. So you didn't know he was angry with you in close
22 proximity to when Sloan sent the e-mail. You only found out
23 your dad was mad because, looking back in time, he cut you out
24 of the Will, and then you found out he was shown the e-mail.
25 And now, in hindsight, you're telling me you figured he was

1 afraid of you." That's where I got that conclusion.

2 Q. Okay. Okay. So after your dad has been buried, you
3 have a subsequent conversation about, "Mom, why would you
4 exclude me from the funeral?" And that's when she told you
5 that your brothers expressed they were fearful of you if you
6 had come.

7 A. Right. And I interpret that to be a socially
8 acceptable presentation for the real underlying thing, that she
9 was horrified that I would openly talk about alcoholism and
10 drug addiction in the family. And that she was grief-stricken
11 and my brothers found a way for her to vent her spleen on me.
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16 those assets. And that's what I see in my brothers' behavior.

17 Q. Okay. Still reading in the same paragraph after the
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20 obviously guilty consciences."

21 What would Sloan and Jonathan have --- are you
22 talking about they would have guilty consciences?

23 A. Yeah.

24 Q. About what?

25 A. Sloan's passing on e-mail, which would obviously

1 distress my parents, to my parents, which were not addressed to
2 my parents, directly resulted in my father writing me out of
3 his Will. And I would think --- in my mind, I've never thought
4 to try and exclude my brothers out of my parents' estate. I've
5 never tried to exclude them from the family, really. I didn't
6 want Sloan coming to the graduation because he was so
7 disrespectful. But I would think, on some level, my brothers
8 would think, "You know, this situation sucks, we had a part in
9 it, and I don't feel good about my part in it."

10 Q. Okay. Did your mother ever share with you that
11 either of your brothers had talked to her or your dad about
12 trying to get him to exclude you?

13 A. Could you repeat that?

14 Q. Yeah. You told me you talked to some lawyers in
15 Georgia and they explained to you that siblings, at times, when
16 parents get older, become very entitled to the assets of those
17 parents.

18 A. Correct.

19 Q. And if I'm understanding you correctly, Sloan and
20 Jonathan should feel guilty, or you think should feel guilty,
21 because they were part of the mechanism that caused your dad to
22 cut you out.

23 A. Correct.

24 Q. Okay. And I didn't tell you this when we started.
25 Sometimes --- it's not ADD, it's stupidity--- sometimes my mouth

1 A. Well, Workman and Muller, yes. Not my mother.

2 Q. You weren't there to see Workman and Muller talk to
3 your dad or witness what your dad signed. So you don't have a
4 clue what went on, other than what they've said went on in
5 their affidavits.

6 A. Correct. We've talked about this a couple of times
7 today. Yes.

8 Q. Dr. Grover, your dad's physician, he gave an
9 affidavit too. Is he one of the ones whose affidavit you're
10 suspicious of, motivation-wise, because he's on the payroll?

11 A. Correct.

12 Q. And he's on the payroll because he's your dad's
13 doctor and your doctor pays his bills after he has medical
14 visits?

15 A. It's a financial relationship. It's not a personal
16 relationship.

17 Q. Do you have any evidence that the representations
18 made in your dad's doctor's affidavit are anything other than
19 true?

20 A. No.

21 Q. Martha Louise Ramage Lewis. Do you know who that
22 is?

23 A. Yes.

24 Q. Have you ever talked to Martha Louise?

25 A. Maybe at a party. But it's been a very long time.

1 Q. Do you know what her relationship was, if any, with
2 your mom and dad?

3 A. I think she kept their books or something. Or their
4 taxes. I'm not sure.

5 Q. Do you know if she had any knowledge of your mom and
6 dad's wishes as far as what would happen to their estate upon
7 their death?

8 A. I don't know much about that.

9 Q. Have you reviewed the affidavit that I obtained from
10 Martha Louise?

11 A. Yes, I read it.

12 Q. Was anything in her affidavit incorrect as a factual
13 matter?

14 MR. HAYNSWORTH: I'm gonna make that 12.

15 (RESPONDENTS' DEPOSITION EXHIBIT NO. 12 MARKED AND ENTERED)

16 A. (Reviewing document) I don't see anything to call
17 into question.

18 Q. Because she was in a financial relationship, she
19 would fall in the category, though, of people that there may be
20 suspect motives, in your opinion?

21 A. Yes.

22 Q. Do you know what your mom and dad's opinion of
23 Martha Louise was?

24 A. No.

25 Q. Do you have a Will?

1 have any reason to believe Leslie Moore would lie about her
2 interaction with your father, and these documents, and his
3 expression of his wishes as reflected in the documents.

4 A. And I told you what my belief is.

5 Q. You believe she would lie.

6 A. No. I believe that her self-interest and her
7 behavior that I've observed would --- that she would have a
8 motivation to at least withhold information and perhaps not
9 divulge everything.

10 Q. Okay. Same question for Mr. Kehl, who you happened
11 to speak to at the funeral, because we were walking in
12 together. Bill Kehl. Long-time partner of your dad's at the
13 Wyche Firm. You spoke to him at the visitation after your
14 dad's funeral. Do you know the man I'm talking about, Mr.
15 Kehl?

16 A. Yeah.

17 Q. Do you have any reason to believe that Mr. Kehl
18 would lie about his knowledge of your father's wishes, his
19 knowledge of any of the execution of Will and Trust documents
20 that we're here about? You got any ---

21 A. No.

22 Q. --- reason to think that man would lie?

23 A. No.

24 Q. Do you know who Amos Workman is?

25 A. I'm aware that he is in the Wyche Firm. I've never

1 Q. So your mother and father cutting you out of their
2 Wills in July of 1994, you believe, was in response to your dad
3 getting mad at you because you wanted to extricate your
4 interest in the property that you and Sloan and Jonathan
5 shared, the gas station.

6 A. Correct. And then I had a friend of mine who was a
7 lawyer write him a letter and state that that's what we wanted.
8 I don't remember exactly when my friend wrote that letter, but
9 my father responded as if I sued him. So, apparently --- he
10 attended my graduation from business school in, I believe, June
11 of '94, and that's when we started talking about the...you
12 know, the last distribution, which was coming up in December of
13 '94.

14 Q. All right. Well, when your mom and dad, back in
15 1994 cut you and your kids out, thereby, as of 1994, treating
16 you much differently than Sloan and Jonathan, was it because
17 neither of your parents were of sound mind to have been able to
18 validly execute these documents?

19 A. It was because my father did not tolerate dissent
20 and he went nuclear, like he's done many times in our
21 relationship.

22 Q. All right.

23 A. And he had so much rage that, when my son was born
24 in August of '94, he didn't even acknowledge him, his own
25 grandson.

1 Q. So much rage ---

2 A. Yes.

3 Q. --- that he didn't acknowledge ---

4 A. Yes.

5 Q. --- your son?

6 A. Yes. This insane rage of his. Which, when we were
7 children, was very physical. And when I was too big and Sloan
8 was too big to take it, for him to dish that out anymore, it
9 just became emotional terrorism and manipulation. I don't know
10 why he changed his mind two years later. Maybe he came to his
11 senses.

12 Q. Do you have any evidence to believe that back when
13 he executed Exhibit 9 and your mom executed Exhibit 10, in July
14 of '94, that either one of them were not of sound mind or under
15 any sort of undue influence?

16 A. Well, I don't know if you consider rage sound mind
17 or not.

18 Q. Other than they were mad ---a rage--- do ---

19 A. Well, this pattern is part of the alcoholic family
20 where everyone's trying to control each other all the time. So
21 I don't know whether you call that sound mind or not. I
22 wouldn't call it sound mind.

23 Q. Well, now that you've seen these documents --- I was
24 talking to you and trying to give a hypothetical earlier, and
25 you said, "Well, I'm not gonna respond to hypotheticals."

1 Will by deleting paragraph (5) of Item XVII of My Will in its
2 entirety and by substituting in lieu thereof the following new
3 paragraph (5)...

4 "For all purposes of this Will, all references
5 herein to 'my child(ren)', 'child(ren) of mine,' 'my issue,'
6 'issue of mine,' 'my descendants', 'descendants of mine' and
7 similar terms shall not include my son, JAMES MARSHALL
8 SHOEMAKER, III, and his issue, descendants and heirs. It is my
9 intention not to make any provision in this Will for JAMES
10 MARSHALL SHOEMAKER, III and his issue, descendants and heirs,
11 and this Will shall be construed accordingly."

12 Do you read that as I do, to cut you and your kids
13 out of his Will as it existed back in 1994?

14 A. I don't know where you're getting '94. I read April
15 23rd, 1991.

16 Q. Well, the document was executed in 1994. The
17 amendment to his Will of April of '91 is amended when your mom
18 and he signed this Codicil to it in July of '94.

19 A. Uh, in July of 94...

20 Q. Yeah. Why'd your parents cut you out of the Will?

21 A. Well, I'm trying to get the dates straight here. So
22 my daughter was born in April of '92 and my son was born in
23 August of '94. That is the time period in which I said, "Dad,
24 I wanna negotiate my way out of that real estate property," and
25 he flipped out.

1 A. The answer is no.

2 Q. I haven't finished my question, sir.

3 A. (Laughing)

4 Q. And the rules allow me to ask you to assume for
5 purposes of my question certain facts. I'm not asking you to
6 agree with those facts, I'm asking you to make the assumption
7 for purposes of my question that those facts exist.

8 A. Really?

9 Q. Yeah, Marshall, really.

10 So, if your dad cut you out twenty years ago, would
11 you have any explanation for why?

12 A. I have no proof he cut me out. I'm not gonna assume
13 a hypothetical that doesn't exist. That's your answer.

14 Q. Did you and your dad get along well twenty years
15 ago?

16 A. What date are you referring to?

17 Q. Generically, twenty years ago. Twenty-five years
18 ago. Over the course of your adult life, have you and your dad
19 gotten along well the majority of the time?

20 A. Yes.

21 Q. Okay. Did you threaten to beat up your father when
22 they lived on Pine Forest Drive, back in the garden your mom
23 and dad used to have in the back yard?

24 A. I told my father to get his finger out of my face or
25 I was gonna break it off.

1 A. And he was on oxygen constantly.

2 Q. Okay. Bad question on my part.

3 His incapacity --- you have alleged that he didn't
4 have the mental capacity to properly execute his Will and
5 Trust.

6 A. Correct.

7 Q. When did that incapacity begin? When did he become
8 so incapacitated of his mind and his free will that he was no
9 longer able to execute testamentary documents based on what he
10 wanted?

11 A. Once again, I'll repeat: I believe towards the end
12 of his life ---and there are many events I can point to--- he
13 was losing the ability to think rationally about emotionally-
14 charged topics. In a more compressed time framework, he was
15 suffocating to death and was on medication to avoid the
16 anxiety. I don't think a person who's suffocating to death and
17 on tranquilizers has the capacity to make decisions in his best
18 interest. Given the twenty-year history of him treating his
19 sons equally and the three weeks before his death making this
20 drastic change, I'd say the facts speak for themselves.

21 Q. You reference that your dad might've been angry,
22 that that might've been some of the motivation for what he did
23 in his last executed testamentary documents. Something about
24 your brothers had shown private communications to your dad and
25 it made him mad. Tell me about that.

1 a person has to do a Will. Leave their possessions to who they
2 want to leave them to. The legal capacity to be able to do a
3 valid Will that would be upheld in a court of law is
4 testamentary capacity. Got enough mental acuity and not under
5 the influence, undue influence, of someone else. I got enough
6 going on to validly leave a Will. When I say testamentary
7 capacity, that's what I'm talking about.

8 So is it your contention that alcoholism and drug
9 addiction caused your father to not have testamentary capacity?

10 A. The drug addiction refers to my mother, not my
11 father.

12 Q. Okay. Strike drug addiction from my question.

13 A. Yes. His actions three weeks before his death are
14 so contrary to his actions twenty years previous. And, since
15 he was a lawyer, he was fully aware of the kind of damage for
16 multiple generations this action would take on me and my
17 children and my side of the family and the relationship with
18 the other side of the family. And since he acted in a loving
19 way many years previously towards me and my children, and
20 seemed very aware of family dynamics, and in general acted
21 towards keeping a unified family, it was totally against his
22 character. And that is explained to me by being on narcotics,
23 suffocating to death, the long-term effects of alcoholism.

24 Q. Do you remember approximately the first time you
25 voiced to either of your parents your opinion that they were

1 father and myself and my brothers.

2 Q. So you ---

3 A. And she had a tremendous amount of power over my
4 father. My father was the dominant, you know, alpha male
5 corporate attorney out in the world. But at home, my mother
6 basically ruled the emotional environment.

7 Q. And my mistake for assuming. So this sentence on
8 line 7 of Page 2 of your Petition, "He was also heavily
9 influenced by my mother, Mary Hunter Sloan Shoemaker, and my
10 two brothers, Edward Sloan Shoemaker and Jonathan Evans
11 Shoemaker." The influence to which you refer there about your
12 mother was not influencing your dad to change his estate plan,
13 you're just talking about influence generally? Or are you
14 alleging that your mother influenced, provided undue influence
15 on your dad to cause him to change the disposition ---

16 A. Yes.

17 Q. --- of his estate?

18 A. Yes.

19 Q. Okay. So your mom was one of the people who was
20 utilizing your dad's weakened mind to convince him to change
21 his estate plans as far as you were concerned.

22 A. Yes. As attested to by her reaction to try and
23 exclude me from the funeral when Sloan put these e-mails in
24 front of her. She took great offence and went nuclear.

25 Q. Well, two different time frames. What you just told

1 MR. BLINCOW: That's correct.

2 Q. Will and Testament, I think.

3 A. (Reviewing Exhibit 7)

4 Q. You now recall you've actually seen that before;
5 right?

6 A. Correct.

7 Q. Now, you talked earlier, with regard to your dad, it
8 seemed to be a big deal to you that the pages were not
9 initialed. I noticed that the pages on your mother's Will are
10 initialed. Does that signify anything in particular to you
11 about your mom's Will versus your dad's will, other than there
12 are initials on hers and not on his?

13 A. It seemed like he initialed all the previous
14 versions, so I thought it was curious that he didn't.

15 Q. Well, your mom initialed this version as well. Does
16 that, in your mind, make it more legitimate, or more valid,
17 than had she not initialed every page?

18 A. Well, speaking in general terms, yes. But in terms
19 of my mother, I don't think she had any --- she was just doing
20 whatever my father told her to do.

21 Q. Okay. So you believe that your father exerted undue
22 influence on your mother to get her to do this Will that we've
23 marked as Exhibit 7?

24 A. Yes.

25 Q. And was that undue influence put upon her when she

1 wrote my father, I sent a separate letter to my mother and my
2 father. Because the communication channels between my parents
3 and myself and my brothers were very poor in general.

4 Q. Why was that?

5 A. My mother was not of sound mind the last five years
6 of her life. She had dementia. She could not be relied on to
7 be rational of thought or able to recall facts, or even make
8 commitments about whether a fact is true or false.

9 My father went through a lot of mood swings over the
10 years. And sometimes he would get mad about something and
11 react, or he would not communicate, or withdraw. And there
12 tended to be a cycle of positive communication and somebody's
13 upset about something.

14 My brothers over the years kept me out of the loop
15 of family events. Like my mother going to the hospital, my
16 father going into the hospital. I had to communicate with my
17 Uncle Ned in order to find out about a lot of these events.

18 Q. During this period of time you've just relayed to
19 me, did you consider yourself estranged from your parents and
20 your brothers?

21 A. No. I talked to them. I visited them. I saw my
22 parents in December of 2017 when I came up for the Christ
23 Church football reunion. We were all gonna go out to lunch.
24 However, my father fell and crushed a table and didn't feel
25 like he could get up and go to the event. And then my mother

1 anyway, never mind. Go ahead.

2 Q. So when your father sees an e-mail that's been put
3 in front of him that you've threatened to kill your younger
4 brother, and your mom is made aware of that, what is it that
5 you felt like your mom was supposed to do?

6 A. Well, what she did with my father is, she said, "Put
7 away your swords." That's what I would do with my children and
8 others. I would say, "Put away your swords. What's going on
9 here? Why are you guys so upset?" That's the rational
10 approach when people you care about are in conflict.

11 Q. And the irrational approach would be to exclude you
12 from the funeral.

13 A. Yes. As a father myself, there's no reason I would
14 ever write off one of my children. Certainly not for some
15 stupid e-mail.

16 Q. All right. And, again, I want to draw a distinction
17 between the e-mails after your dad has passed versus how he had
18 been influenced before. Do you know of any specific instances
19 where either of your brothers or your mother talked to your
20 father about him changing his Will or Trust?

21 A. No.

22 Q. You believe they were involved in convincing him to
23 do that, you just don't know any of the specifics.

24 A. The chain of causality's obvious, yes.

25 Q. Well, it's not as obvious to me, that's why I have

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GREENVILLE, SOUTH CAROLINA 29601

1 A. Because Dad had told me he was gonna write Marshall
2 out of the estate.

3 Q. All right, now, when was that?

4 A. I don't know. Late in the game.

5 Q. I can help. I believe that the Will got ---and when
6 I say Will, the Will and the Trust--- that got changed in, say,
7 middle of June and he passed away in July.

8 A. Uh-huh.

9 Q. When were you --- you mentioned late in the game.
10 When were you aware of that?

11 A. I don't know. Maybe it was the Memorial Day Weekend
12 when I was home.

13 Q. In May.

14 A. Yeah.

15 Q. How did that come up, do you remember?

16 A. He told me he was considering doing that.

17 Q. What did you tell him?

18 A. He asked me what I thought. I said, "Well, Dad, I
19 can't counsel you on that, you know. I have a serious conflict
20 of interest. But you know I'm not a fan of Marshall."

21 Q. So you didn't advise him one way or the other.

22 A. No.

23 Q. Was Sloan --- was Sloan there over Memorial Day?

24 A. No. I don't believe so. Anyway, the conversation
25 that I remember, Sloan was not in the room for.

1 Q. Okay. And so that would've been --- was that the
2 only time you had a discussion with your dad about that part of
3 his estate plan?

4 A. I think so.

5 Q. And, again, you think that might've been around
6 Labor Day (sic), May, and it was your dad saying, "I'm thinking
7 about taking Marshall out of the Will. What do you think,
8 Jonathan?"

9 A. Yes.

10 Q. And your reply was, "I don't know that I can help
11 you one way or the other."

12 A. Yeah.

13 Q. Okay. Well, back to what, you know, what you say to
14 your dad here in early July, "I'll do my best to look out for
15 Mary and Peter," what did you mean by that?

16 A. Because by then I knew that they were not gonna ---
17 that Marshall wasn't gonna inherit a third of the estate. So I
18 knew that my father cared about the grandkids.

19 Q. Right.

20 A. I was trying to comfort him somehow.

21 Q. By saying, "I'll do what I can to take care of
22 them."

23 A. Yeah.

24 Q. All right. And I may have asked you this, but you
25 don't recall any e-mails back and forth with your dad after

1 your dad? Or is that too narrow of a way to describe it? In
2 other words, I think I tried to ask you a moment ago was it the
3 business of Marshall thinking that perhaps your dad had an
4 alcohol problem, or was it more than that?

5 A. I think Marshall's diagnosis of my father's
6 alcoholism made zero impression on my father. My father
7 couldn't care less what Marshall thought about his use or not
8 use of alcohol.

9 Q. I see.

10 A. My father said to me many times over the years,
11 expressing --- he would express frustration, to me, about
12 Marshall. And he would say, "But your mother...I keep having
13 him back in the house for the sake of your mother." Marshall
14 had threatened, physically, my father. He threatened me over
15 the years a few times. He was full of rage, often, when he
16 would be in the family house. And he was disruptive, and he
17 was a very toxic presence that many of us tried to tolerate
18 sometimes. Sometimes it was okay, but often it wasn't okay.
19 For me, it reached a critical point years ago, and I decided I
20 wasn't gonna go down that road anymore. It was different for
21 Dad. And I just took it that Dad reached a point at the end of
22 his life.

23 Q. I see. All right. Was there any one thing that
24 drove your decision with respect to Marshall?

25 A. I don't know. It was probably some Thanksgiving ten

1 And I will validate that. But he mellowed over time.

2 And I didn't see --- I mean, once I moved to
3 Colorado, there was a long period of time when I wasn't very
4 interactive with him, frankly, because I needed to get some
5 space. But I never --- once I was out of the household, living
6 my own life, I didn't see any...any other examples of that kind
7 of raging at all, directed towards me. So that volatility, I
8 saw Marshall as the exploder, as the bomb, if you will. But it
9 takes two to tango and I think Marshall was responding to the
10 things that were said, or perceived to be said, or interpreted
11 to be said by Dad.

12 Q. You mentioned --- and you have been gone a long
13 time. Maybe we all have. But are you aware of explosions
14 between Marshall and your dad that you were not a part of but
15 that you found out about some kind of way?

16 A. You know, they didn't go at it blow by blow, every
17 event, with me. But it was inevitable that it would come up,
18 that, you know, "Yeah, Marshall was here a month ago," or "We
19 talked to Marshall," and "it ended badly." And it always ended
20 badly, it seemed like, you know. There was the rare exception
21 that it didn't. And it got to the point where Dad really
22 didn't wanna deal with him. Mom was peacemaker in the family,
23 was the go-between. And Marshall was abusive to her, based on
24 her reporting of it.

25 MR. BLINCOW: All right. We've been at it

1 Q. As we sit here today, you have absolutely no idea
2 what conversations Leslie Moore and your father had about the
3 execution of his most recent testamentary documents, do you?

4 A. No, I do not. I draw my conclusion on her allowing
5 herself to become involved emotionally sometimes in the ups and
6 downs between my father and then taking the liberty of
7 communicating it to me. So I draw my conclusions that she did
8 not act in the best interest of either my father or his heirs.

9 Q. Well, if your father had expressly told her to
10 prepare a document cutting you out, and she followed his
11 express wishes, then, as to your father, she would have done
12 exactly what he asked of her; right?

13 A. Well, it's my contention that he was not in his
14 right mind. I think any rational person who looks at the
15 history of all this and what happened, and if we ever get the
16 pharmaceutical records we'll show that he was strung out on
17 painkillers and that's why he broke his hospice and went back
18 to a hospital and fired his hospice caregivers. He was out of
19 his mind. He was in agony. And for Leslie to allow that to
20 happen was unethical. He didn't even initialize every page on
21 his Last Will and Testament, as he did on all the other
22 documents. So her behavior --- and there is one redeeming
23 person here. Carl Muller, in his affidavit, said --- at the
24 end of his affidavit, he said, "I will do whatever I can to
25 reunify this family from this terrible situation of this

1 conflict. So one person out of the so-called ethical
2 professionals alluded to the bigger picture here, as opposed to
3 "Screw Marshall, write him out of the Will."

4 Q. Well, Marshall, what is it you would have wanted all
5 these professionals to do? To talk your dad out of cutting you
6 out so as not to create dissention amongst the family?

7 A. To talk him out of taking an irrational action on
8 his death bed that went against his long-term will, which was,
9 he loved me and I loved him, and I was his son and it was not
10 based on one tiff e-mail exchange between two of his sons. It
11 was not a rational response to cut them out of the Will.

12 Q. Well, Marshall, you would agree with me that you are
13 now aware that 2018 is not the first time your father or your
14 mother had treated you differently than your brothers as far as
15 their estate plan was concerned.

16 A. No, I'm not aware of that.

17 Q. Well, let's use this 8/12/10 letter. Do you now
18 know --- or do you? Do you know what Sloan and Jonathan get
19 out of the Irrevocable Trust? How their interests ---

20 A. I think Jonathan gets a third distributed outright
21 and Sloan gets a third managed or something.

22 Q. Okay. Used to be. Sloan gets his outright, too.
23 So both your brothers get one third. Back in 2010, you were
24 not getting an equal share with your brothers, were you?

25 A. I don't understand your point. It's obvious here

1 that provision isn't in his prior Will, is it?

2 A. I don't believe so.

3 Q. Your position is, when your dad executed his Will
4 leaving your two children \$250,000 each, he wasn't in his right
5 mind. He was under undue influence, and that document is no
6 good, and should be thrown out, because your father was not
7 competent to execute the document that left your two children
8 \$250,000 each.

9 A. Yes.

10 Q. And are they aware, your children, that you believe
11 your father's gift to them is invalid because he wasn't in his
12 right mind when he executed the document leaving them that
13 money?

14 A. They're aware that I have sought to set aside the
15 Last Will and Testament, revert to the one six months
16 beforehand that would leave 3.3 million dollars to their
17 father, of which they would be beneficiaries of the vast amount
18 because it would be put aside to generate income for everyone's
19 benefit. Yes, that's what they're aware of.

20 Q. Are they gonna give back the \$250,000 each that the
21 last Will left them if you are successful in having that Will
22 determined to be invalid?

23 A. I don't know what the legal ramifications are of
24 that.

25 Q. Well, I mean, wouldn't that be fair? If they got

1 money based on a Will that your dad was too mentally addled to
2 know what he was doing?

3 A. No, what would be fair is that I sue Leslie Moore
4 for her participation in this and have her insurance pay for
5 this mess. That's what would be fair.

6 Q. Well, that's not where we are, I guess.

7 A. Not yet.

8 Q. Oh. Speaking of suing and such things... Recently
9 you have ---or your lawyer has--- filed paperwork challenging
10 your mother's estate. Correct?

11 A. Correct. That's my understanding.

12 Q. And you believe your mother was not in her right
13 mind to have cut you out of her Will?

14 A. Absolutely certain of it.

15 Q. And she was not in her right mind --- we've covered
16 why you think you dad wasn't in his right mind: because he was
17 in the end stages of dying of pulmonary fibrosis, and under
18 medication, and those sort of things. Why are your mom's
19 wishes invalid? Why was she not competent to do what she did
20 with her estate?

21 A. She had a diagnose of Sundowner's syndrome. I think
22 when we get her prescription records we'll see that she was on
23 benzodiazepines for a very extended period of time. Anyone who
24 knows my mother knows that she basically did not...she did not
25 have the ability for rational thinking, except that glimpses of

EXHIBIT

B

Rita Christopher

From: James M. Shoemaker <jshoemaker@wyche.com>
Sent: Tuesday, June 17, 2014 1:08 PM
To: J. Marshall Shoemaker (jmarshallshoemaker@gmail.com)
Subject: family

~~I HAVE THE IMPRESSION THAT YOU WOULD LIKE TO COMPLETELY DISASSOCIATE YOURSELF FROM YOUR MOTHER AND ME -- TO WHICH WE ARE Agreeable.~~ The relationship since you left for Princeton has always been sour most of the time. Is that what you would like to do? We will, of course stay in touch with your Adult children as much as possible. Dad



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EXHIBIT C

Marshall Shoemaker
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259

February 7, 2019

Sloan Shoemaker
1071 County Road 111
Carbondale, CO 81623
970-963-4214

Dear Sloan,

I wish to make amends to you for my mistakes and failures in our relationship over the years.

1. I picked on you without respite through our elementary and middle school years.
2. I distanced myself from you, and was unsupportive, in high school.
3. I failed to reach out to you as often as I should have over the years since college.
4. I didn't tell you that I would have appreciated an invitation to visit you and your family in Colorado since our visit in 2000.
5. I attempted to drag you into my conflicts with our father.
6. I didn't stand up for you when, from my perspective, our father was violent towards you or demeaned you verbally in my presence.
7. I was wrong to expect you to participate in my attempts to intervene on what I perceived to be our father's alcoholism.
8. I overreacted to your emails last Spring, was over the top with my threats, and tried to write you out of my life for a minor offence.
9. I excluded you from an important family event, Peter's graduation.

I do care about you, and would like to make it right between us.

How can I make all this up to you? Please let me know.

Love,



EXHIBIT D

From: Marshall Shoemaker Marshall@flockingbehavior.com @
Subject: RE: concerns about elder fraud with my parents
Date: June 12, 2018 at 12:08 PM
To: Drew Palmer dpalmer@greenvillesc.gov
Cc: sloan@sopris.net, jshoemaker@gmail.com, chall@wyche.com



+ Adding in Jonathan's new email: jshoemaker@gmail.com

From: Marshall Shoemaker
Sent: Tuesday, June 12, 2018 12:01 PM
To: 'Drew Palmer' <dpalmer@greenvillesc.gov>
Cc: 'sloan@sopris.net' <sloan@sopris.net>; 'Jonshoe@earthlink.net' <jonshoe@earthlink.net>; 'chall@wyche.com' <chall@wyche.com>
Subject: concerns about elder fraud with my parents

Dear Detective Palmer,

Thank you for taking my call and your willingness to address my concerns about elder fraud with my parents.

My father and mother live in Greenville.
I live in Atlanta.

One of my brothers live in Colorado, Sloan Shoemaker,
and the other lives in New York City, Jonathan Shoemaker.

My father is James M Shoemaker, mother Polly Shoemaker.
Their phone number is: (864) 528-5370
Their address is: 10 Creekridge Rd, Greenville, SC 29607

The housekeeper that I mentioned, Debbie, works for them cleaning house on a part time basis.

About one year ago, I was informed by my son, then later confirmed by my mother, that my mother had recently received a phone call from a stranger identifying himself as in the Dominican Republic.

This stranger convinced my mother, and through her, my father and the housekeeper Debbie, that my son Peter, age 23, had been arrested while on vacation in the Dominican Republic.

The stranger suggested that the only way to get my son free was for my parents to send, via his "contact" in New York City, a large amount of cash, which they unfortunately did. My mother refuses to disclose the full amount to this day, but led me to believe that it was around \$15,000.

She and my father confirmed that they "road around town withdrawing cash and sent it in an envelope via FedEx."

They chose not to call my son or his mother, my ex-wife, to confirm his whereabouts until after sending the cash.

The fraud could have been easily avoided if they had called me, but they did not, for reasons which I address below.

My son Peter has never been in the Dominican Republic.

My parents refused my requests that they report this crime to the Greenville Police. They told me that they would call me if such a criminal scenario involving my son or daughter ever surfaced again:

a promise which they have not kept.

I found out about 6 months ago that someone else tried the same scam on my parents again, but this time my parents at least made two phone calls to confirm the lie, before sending the money: to my son and his mother.

I have two concerns which I would appreciate your addressing with my parents:

- 1) Their housekeeper is from New York, is much younger than my parents, but did nothing but facilitate avoiding victimization to the successful fraud.
 - a. Although in her 50's, she did not act as a restraining, rational influence over my 85 year old parents.
- 2) This same housekeeper, first name Debbie, was very hostile and confrontational to me personally when my girlfriend and I visited my parents last December, 2017.
 - a. My father has recently begun to repeatedly refer to this Debbie as "family".
 - b. I believe that she has undue influence over my parents, and obviously feels free to openly express hostility to her employer's son, me: a very strange posture to take, and to have acceptable to her "employers."
 - c. My father is a wealthy retired lawyer and would be a very big fish to land should Debbie be involved with further financial scams.

My parents refuse to speak with me.

My father drinks and my mother takes drugs.

I am a recovering alcoholic and have on multiple occasions confronted them about their dependencies.

They find the situation intolerable, so have written me out of their lives. And probably their wills!

You are free to communicate about this with my brother Sloan and my brother Jonathan, who will undoubtedly pitch vastly different versions of this wretched family reality.

I have copied them both on this email.

By the way, I agree that it would be reasonable to have at least one of my parents three sons

involved with helping my parents not be victims to financial fraud in the future.

If you receive a response from Sloan or Jonathan, perhaps you can suggest that to them.

As persona non grata in the Shoemaker family, I am obviously not going to get selected for this responsibility.

I would very much appreciate hearing back from you about your conversation with my father, my mother and Debbie.

Regards

regards,
Marshall

PS I have also copied Cary Hall, former law partner of my father and administrator of his estate.

Marshall Shoemaker MBA, PMP, CSM
Software Development Project Manager

678.558.3259
Skype - marshallshoemaker
marshall@flockingbehavior.com
<https://www.linkedin.com/in/marshallshoemaker/>

Flocking Behavior LLC
1859 Tecumseh Trail SE
Smyrna, Georgia 30080

From: Drew Palmer [<mailto:dpalmer@greenvillesc.gov>]
Sent: Tuesday, June 12, 2018 11:10 AM
To: Marshall Shoemaker <Marshall@flockingbehavior.com>
Subject: RE: test

Thanks



Detective Drew Palmer
Financial Crimes Division
Greenville Police Department
4 McGee Street
Greenville, SC 29601
OFFICE: 864-467-5416 | FAX: 864-467-5395
dpalmer@greenvillesc.gov

From: Marshall Shoemaker [<mailto:Marshall@flockingbehavior.com>]
Sent: Tuesday, June 12, 2018 11:09 AM
To: Drew Palmer <dpalmer@greenvillesc.gov>
Subject: test

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Marshall Shoemaker MBA, PMP, CSM

Software Development Project Manager

678.558.3259

Skype - marshallshoemaker

marshall@flockingbehavior.com

<https://www.linkedin.com/in/marshallshoemaker/>

Flocking Behavior LLC

1859 Tecumseh Trail SE

Smyrna, Georgia 30080

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

APR 01 2021

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner,

vs.

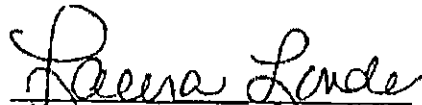
Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Debora Wine, Lesley Moore
and John and Jan Doe

Respondents.

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for respondents Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore and that I have this day caused to be served upon the person(s) named below respondents' Memorandum in Support of Motion for Summary Judgment with Exhibits by placing copies of the same in the United States mail, with adequate postage thereon, addressed as follows:

John Blincow, Jr., Esquire
126 Meeting Street
Charleston, South Carolina 29401


Laura Louder

Greenville, South Carolina
April 1, 2021

FILED

STATE OF SOUTH CAROLINA

APR 12 2021

IN THE PROBATE COURT

COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

Case No. 18-ES-23-01729

IN THE MATTER OF:

James Marshall Shoemaker, Jr.
(Decedent)

**PETITIONER'S RESPONSE TO DECEDENTS'
MOTION FOR SUMMARY JUDGMENT**

James Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

To: Knox L Haynsworth, III, attorney for the Respondents

The Petitioner, James Marshall Shoemaker, III, responds to the Respondents' Motion for Summary Judgment as follows:

This case involves the last Will and Trust of James Marshall ("Shoe") Shoemaker, Jr., a prominent attorney in Greenville, S.C. Since 2012 Mr. Shoemaker had a history of idiopathic pulmonary fibrosis with chronic hypoxic respiratory failure. He had a slow progression of his disease and, in May 2018, in consultation with his pulmonologist and family, decided to become a hospice patient. A Do Not Resuscitate (DNR) order was placed and he began hospice services at home. At the time he was on supplemental oxygen (6 L/min), was often short of breath, and desaturated with any activity.

On June 24, 2018, he made a new Will and Trust. His wife, Polly, also revised her Will and Trust at that time. Both excluded their oldest son, Marshall, as a beneficiary. Prior to that they had left everything to the surviving spouse for rest of that spouse's lifetime and then everything to their three sons equally. On July 5, 2028, Mr. Shoemaker had a worsening of his shortness of breath and hypoxemia. The hospice status was rescinded and he went by ambulance to the St. Francis Emergency Department. He was admitted and treated for pneumonia and discharged five days later. He began receiving hospice services from a new provider. At that point he was on 15 L/min of oxygen with mostly poor saturation rates. The notes indicate that he had some confusion and agitation and was impulsive with poor insight and judgment. He died on July 14, 2018.

The Respondents' have moved for a Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRPC). The Respondents contend that there is no genuine issue of any material fact and that the Respondents are entitled to a Judgment as a matter of law. The Petitioner alleges that his father lacked the requisite mental capacity to make a new Will in June 2018, just three weeks before he died. In support, the Petitioner submits the affidavit of Dr. Thomas Hughes (attached as Ex. 1). Dr. Hughes reviewed voluminous medical records and concludes that the deceased had significant cognitive impairment at the time he executed his new Will. Dr. Hughes points to several objective findings in the medical records in support of this opinion.

In determining whether Summary Judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party *Baughman v American Telephone and Telegraph* 410 SE 2d 537 (Sup Ct. 1991). Further, in cases applying the preponderance of 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-South Management Op. No. 26587* (Sup Ct. 2009).

In this case there is at least a scintilla of evidence to support a fact finder's determination that Mr. Shoemaker lacked testamentary capacity at the relevant time. The affidavit of Dr. Hughes points to several findings in the medical records that establish a finding of cognitive impairment and a lack of testamentary capacity. There is evidence from which a

fact finder could infer a lack of testamentary capacity. The existence of this evidence creates a question of fact for a fact finder to weigh and decide during a full trial on the merits. For each and all of the forgoing reasons, the Petitioner respectfully requests that the Motion be denied.

Respectfully submitted,

Blinchow Griffin Law Firm


John Blincow, Jr.

126 Meeting St.

Charleston, S.C. 29401

843-872-6449

jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date: 4/6/21

FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
GREENVILLE COUNTY
PROBATE COURT

APR 12 2021

IN THE PROBATE COURT

Case No. 18-ES-23-01729

IN THE MATTER OF:

James Marshall Shoemaker, Jr.
Decedent

James Marshall Shoemaker, III
Petitioner

v

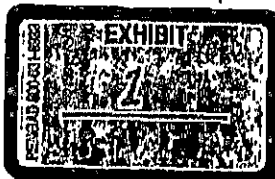
Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

AFFIDAVIT OF THOMAS HUGHES, M.D.

Personally appeared before me, Thomas Hughes, M.D., who, being duly sworn, avers as follows:

1. I am Thomas Hughes, M.D. I am over the age of eighteen (18) and fully competent to make this affidavit.
2. I am a physician licensed to practice medicine in the State of South Carolina. I received my medical degree from the Medical University of South Carolina in Charleston, S.C. and completed my residency training at Vanderbilt University in Nashville, Tenn. I am Board Certified in the field of Neurology.
3. I am the founder and one of the owners of Tidewater Neurology, a general neurology practice in Mt Pleasant, S.C.



4. I have been retained by John Blincow, Jr., counsel for Marshall Shoemaker, III, to review certain medical records and opine about certain matters that are within my field of expertise in neurology.

5. In connection with my review I have been provided the following records:

- a) hospice records from Kindred Hospice in Greenville
- b) hospice records from Regency Southern Care in Greenville
- c) hospital records from a St. Francis Hospital admission beginning July 5, 2018
- d) S.C. case law on testamentary capacity
- e) letter from Dr. Dan Matthews dated June 29, 2020.
- f) affidavit from Dr. Daniel Grover dated December 3, 2019.

6. Based on my review, Mr. Shoemaker had some level of cognitive impairment. Up to 70% of patients with idiopathic pulmonary fibrosis (IPF) have cognitive impairment. IPF is a progressive disease. Mr. Shoemaker was at the end stage of his disease so he, most probably, had significant cognitive impairment during the relevant time period.

7. I saw no documentation that Mr. Shoemaker saw any physicians prior to signing the new Will. A physician would have been able to perform an assessment of his cognitive function and mental status at that time. In my opinion this should have been done especially considering the consequential nature of the decision to exclude a beneficiary from his Estate.

8. There are indications in the medical records that he had very poor saturation rates while on supplemental oxygen, was at times angry and irate, was at times agitated and confused, was at times impulsive, and had refused to see family members before he died (which he had never done before). These are all indications of cognitive impairment and evidence that he lacked the requisite mental capacity.

9. In my opinion, a fact finder will need to consider all of the evidence, including the objective evidence in the medical records that tends to support significant cognitive

impairment, in order to decide whether Mr. Shoemaker had or didn't have the requisite mental capacity at the time.

10. My opinions are based on my education, training and experience. My opinions are given to a reasonable degree of medical certainty.

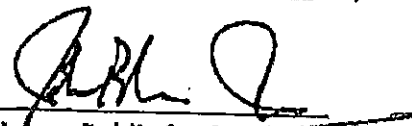
11. I reserve the right to modify or change my opinions if additional material becomes available.

Further, affiant saith not.

Witness my hand and seal this 6 day of April, 2021.


Thomas Hughes, M.D.

Sworn before me this 6th day of April, 2020


Notary Public for South Carolina
My Commission expires _____

CERTIFICATE OF SERVICE

FILED

APR 12 2021

**GREENVILLE COUNTY
PROBATE COURT**

I hereby certify that, on this 6th day of April 2021, a copy of Petitioner's Response to Motion for Summary Judgment and Affidavit has been emailed and mailed to counsel for the Respondents, postage pre-paid and properly addressed as follows:

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod and Haynsworth, LLC
PO Box 2464
Greenville, S.C. 29602


John Blincow, Jr.

STATE OF SOUTH CAROLINA **FILED** IN THE PROBATE COURT

COUNTY OF GREENVILLE MAY 19 2021 CASE NO: 2018ES2301729
GREENVILLE COUNTY
PROBATE COURT

ORIGINAL

IN THE MATTER OF:

JAMES MARSHALL SHOEMAKER, JR., Deceased

JAMES MARSHALL SHOEMAKER, III,
PETITIONER,

MARY HUNTER SLOAN SHOEMAKER, EDWARD SLOAN SHOEMAKER,
JONATHAN EVANS SHOEMAKER, and LESLEY MOORE,
RESPONDENTS.

Probate hearing taken in the aforementioned matter was heard before the Honorable Clayton L. Jennings taken before Treasa Hix, Court Reporter and Notary Public, at Probate Court, Greenville County Square, 301 University Ridge, Greenville, South Carolina, on the 7th day of April, 2021, commencing at the hour of 2:06, p.m.

REPORTED BY: Treasa Hix, Reporter
Notary Public for S.C.

LEGAL EAGLE

Post Office Box 5682

Greenville, South Carolina 29606

864-587-7050 or 864-467-1373

depos@legaleagleinc.com

1 APPEARANCES: 2 3 JOHN BLINCOW, JR., Esquire 4 Blincow Griffin Attorneys At Law 5 126 Meeting Street 6 Charleston, South Carolina 29401 7 jblincow@blincowgriffin.com 8 Attorney for Petitioner, 9 10 11 KNOX L. HAYNSWORTH, III, Esquire 12 Brown, Massey, Evans, McLeod, & Haynsworth, LLC 13 106 Williams Street 14 Post Office Box 2464 15 Greenville, South Carolina 29602 16 knoxhaynsworth@bmemhlaw.com 17 Attorney for Respondent. 18 19 20 21 22 23 24 25	2 3 1 THE COURT: 2 We are here today in the matter of James Marshall 3 Shoemaker, III. The Petitioner is James Marshall 4 Shoemaker -- I'm sorry. We're here today in the matter 5 of James Marshall Shoemaker, Jr.; correct? 6 MR. BLINCOW: 7 That's correct. 8 THE COURT: 9 The Petitioner is James Marshall Shoemaker, III. The 10 Respondents are Mary Hunter Sloan Shoemaker, Edward 11 Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley 12 Moore, and John and Jane -- or Jan Doe. And we are 13 here on a Motion for Summary Judgment filed by the 14 Respondents. The Respondents are represented by Mr. 15 Knox Haynsworth, III. And the Petitioner is 16 represented by Mr. John Blincow (pronounces blon co). 17 Am I pronouncing your last name correctly? 18 MR. BLINCOW: 19 That's it. Yes, sir. That's correct. 20 THE COURT: 21 Very well. Respondents provided notice of today's 22 hearing and Mr. Haynsworth, I'll let you proceed. 23 MR. HAYNSWORTH: 24 Your Honor, as a housekeeping matter, and I can address 25 it on the back end or the front end. I received an
2 1 INDEX 2 3 Colloquy Between The Court and Counsel..... 4 4 5 Certificate of Reporter..... 35 6 7 EXHIBITS: 8 (None marked) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH 25 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)	4 1 Affidavit and a Memo opposing my Motion, I guess, 2 yesterday. I wasn't sure whether the Court had that or 3 not. I have some thoughts as to whether that Affidavit 4 is proper and can be considered. 5 THE COURT: 6 I received it today, and I did notice that the 7 Affidavit did not have any signature or execution by a 8 notary public, if you're referring to that issue? 9 MR. HAYNSWORTH: 10 That is, Your Honor. And we're sort of -- on that 11 there are a couple of issues if -- why we're talking 12 about it. And I've got cases I'll hand up and a copy 13 for Mr. Blincow that address these issues. It's got to 14 be notarized. Under rule 5 it is crystal clear an 15 opposing Affidavit has got to be filed two days before 16 the hearing. This was not. This Petition was brought 17 June of '19. Mr. Blincow appeared May of 2020. I've 18 never ever, ever received any Interrogatory Answer 19 update listing any expert witness. Now, obviously had 20 I known about this guy I would have gone and deposed 21 him and would have been able to address it. But for 22 the reason that he's never been identified in Discovery 23 given the length of time, and rule 5, and the fact it 24 is not notarized, I don't think it can be considered 25 for purposes of our hearing today. That's my two cents

1 worth on that issue, obviously. But the important
 2 opinion is yours, but I wanted to get that out to the
 3 extent the Affidavit is -- has been filed or --
 4 THE COURT:
 5 All right. I'll let Mr. Blincow respond to that after
 6 you have already proceeded with your arguments.
 7 MR. HAYNSWORTH:
 8 Okay.
 9 THE COURT:
 10 You may proceed.
 11 MR. HAYNSWORTH:
 12 Okay. All right, Judge. Would it be possible --
 13 THE COURT:
 14 It's okay with me if everyone else is okay with removal
 15 of Mr. Haynsworth's mask.
 16 MR. BLINCOW:
 17 It's okay with me.
 18 MR. HAYNSWORTH:
 19 I figure you're the one in the line of fire and you've
 20 got the plexiglass --
 21 THE COURT:
 22 And I've had --
 23 MR. HAYNSWORTH:
 24 -- and the distance.
 25 THE COURT:

1 -- one shot, and I've got a plexiglass shield. And so
 2 I'm about 12 feet from you, so I'm protected.
 3 MR. HAYNSWORTH:
 4 I'll try not to project any further than --
 5 THE COURT:
 6 All right.
 7 MR. HAYNSWORTH:
 8 -- six feet. Your Honor, I don't know if you've had a
 9 chance to read our Memo or the Affidavits filed with
 10 the Motion, but essentially Marshall Shoemaker, one of
 11 three children, has challenged his father's Estate and
 12 Trust and brought a lawsuit contending that the will
 13 and Trust should not be considered proper because
 14 they're the product of undue influence and lack of
 15 testamentary capacity. I have submitted, Your Honor,
 16 you know, ten give or take Affidavits, including from
 17 Mr. Shoemaker's physician, Danny Grover out at IMA, who
 18 saw Mr. Shoemaker I believe eight days before the
 19 testamentary documents that bring us here today. And
 20 to a man and a woman, as the case may be, all of the
 21 Affidavits I submitted specifically address
 22 testamentary capacity, and specifically address those
 23 people's firsthand knowledge of Jim Shoemaker's
 24 competency. And, Judge, probably the most significant
 25 fact for you to consider in this overall case is the

1 claim initially that Mr. Shoemaker brought contending
 2 that he and his brothers have always been treated
 3 equally by their father. That the only possible
 4 explanation for Marshall being cut out of his father's
 5 estate plan is undue influence brought to bear by his
 6 two younger brothers, Sloan and Jonathan, and by his
 7 mother, Polly, and that his dad was out of his mind.
 8 And that's the only possible reason that he could have
 9 cut Marshall out. Well, Judge, through discovery, and
 10 it's there before you, that's just a misrepresentation
 11 to the Court. Marshall Shoemaker was not cut out for
 12 the very first time in June of '18. A decade earlier
 13 Marshall Shoemaker was completely cut out by both his
 14 mother and father. He has been -- at times been
 15 treated equally with his brothers, but at other times
 16 been treated completely different. The deposition
 17 testimony of Marshall Shoemaker and the emails that he
 18 sent -- to sort of give you, I guess, the penultimate
 19 reason of what happened, in our submissions, Judge,
 20 there's an email that Marshall sent his younger brother
 21 Sloan essentially threatening to kill Sloan if Sloan
 22 came to Marshall's son Peter's graduation. Sloan shows
 23 up at his mom and dad's house instead of at graduation
 24 having flown to Atlanta. "what are you doing here?"
 25 "oh, I got this email from Marshall." That email

1 tipped off the parents. And it was what I phrase "the
 2 straw that broke the camel's back this latest time."
 3 There had been a series of episodes of dissension
 4 between Marshall and his family. It began in high
 5 school and continued off and on until the present day.
 6 Lesley Moore has been sued. I'm not exactly sure what
 7 the claims are against Ms. Moore. But just like his
 8 brothers it has forced Ms. Moore to put her malpractice
 9 carrier on notice. It's forced the family to spend
 10 tens of thousands of dollars to basically chase down
 11 rabbit holes. For the very first time yesterday we see
 12 the first bit of potential evidence speaking to these
 13 issues. Up until yesterday there was nothing Mr.
 14 Shoemaker had submitted at all over the entire course
 15 of this lawsuit that took issue with or presented any
 16 evidence, scintilla or otherwise, to refute the
 17 evidence we've submitted to the Court, which is that on
 18 the day he executed the documents Jim Shoemaker had
 19 testamentary capacity to do that. As Your Honor is
 20 aware it takes less capacity to draft a will than to
 21 draft a contract saying "Give me a hundred dollars and
 22 I'll build you a wall." It doesn't require very much
 23 at all. And importantly what it requires is knowledge
 24 of the condition on the day the documents were
 25 executed. There is case law, Your Honor, and I forget

9 1 the name of the case, but it's a guy who lives in a 2 hollow tree log out in the woods. It's a very, very 3 old case. But the gist of it was you can be crazy as a 4 bad bug, but on the day that you did your documents as 5 long as you knew the objects of your bounty -- and I 6 won't properly articulate the other two criteria. But, 7 again, the point is if you have enough capacity the day 8 you do the documents, that's it. That's what you look 9 to. And there is zero evidence. Zero evidence in this 10 record from the Petition speaking to anything the day 11 the documents were done. On the other hand, Judge, Ms. 12 Moore, who's seated right here, gave a lengthy 13 Affidavit with exhibits attached to it explaining 14 firsthand from her sitting there talking to him and 15 witnessing it the competency of both Mr. And Mrs. 16 Shoemaker. Their long-time -- the Shoemaker's long- 17 time accountant, Martha Louise Ramage Lewis, gave an 18 Affidavit. It was discussed with her over the years 19 the estrangement that existed between Marshall and his 20 family. This was no great surprise that Marshall was 21 cut out. And, Judge I guess, you know, in point of 22 fact there's just no evidence to support their claims 23 period. And there is an enormous amount of evidence to 24 support our position that not only was the documents 25 not the subject of undue influence and that Mr.	11 1 Carolina Supreme Court opinion from 2003. It says "The 2 standard of proof in an undue influence case is 3 unmistakable and convincing evidence. There must be 4 more than a scintilla of evidence in order to defeat a 5 Motion for Summary Judgment. A heightened standard for 6 Summary Judgment is required." So even if the 7 Affidavit submitted in opposition is considered 8 notwithstanding the defects in it, it still doesn't 9 address the legal standard, nor if you read it does it 10 say Mr. Shoemaker lacked testamentary capacity. 11 Whereas all my Affidavits, including from his 12 physician, say he had testamentary capacity. So for 13 those reasons, Your Honor, we believe that the 14 respondents are entitled to judgment as a matter of 15 law. And unless you have any questions for me right 16 now I'll sit down. 17 THE COURT: 18 Not yet. 19 MR. HAYNSWORTH: 20 Okay. 21 THE COURT: 22 Mr. Blincow. 23 MR. BLINCOW: 24 May it please the Court. Good afternoon, Judge. My 25 name is John Blincow and I do represent the Petitioner.
10 1 Shoemaker had capacity. But frankly, Judge, that this 2 lawsuit was not brought for the legitimate purpose of 3 challenging those documents, but was instead brought as 4 a continuation of the family strife that's existed 5 between Marshall and his two brothers, and his mom, and 6 dad. As you may recall, Judge, twice before in this 7 one case the Court has had to sanction Mr. Shoemaker 8 for his conduct. And in my humble opinion this whole 9 lawsuit is just a bigger version of that. It's a jab 10 to stick his family. And it has no basis in fact and 11 it has no basis in law. And final point I would like 12 to make before I side down and shut up: to the extent, 13 Your Honor, that the Affidavit that's been submitted 14 untimely and unnotarized is considered, it doesn't 15 address the standard of care that they need to meet. 16 It's not a scintilla of evidence in a proceeding 17 attacking a will for undue influence or lack of 18 capacity. And I don't want to misquote, so let me -- 19 bear with me, Your Honor. I don't want to -- 20 THE COURT: 21 Take your time. 22 MR. HAYNSWORTH: 23 -- spout off a quote that's inaccurate. And, Your 24 Honor, I'm quoting from Russell versus Wachovia Bank 25 353S.C.208, 578S.E.2d329. It's a Supreme -- South	12 1 Marshall Shoemaker, III. If I could start and address 2 a couple of things that have been mentioned, and then 3 I'll get to the merits of my argument. First of all 4 there is this contention that the Affidavit should not 5 be considered because it's not notarized. I witnessed 6 Mr. Hughes sign the Affidavit. I'm an officer of this 7 court. I know who he is, and I watched him sign it. I 8 think when it comes down to standing on some sort of 9 procedural rule or letting the case turn on their 10 merits, I think we need let the case turn on its merits 11 rather than kicking the party out of court because an 12 Affidavit has not been notarized by a notary, and 13 instead has been witnessed by a lawyer. And I'm 14 telling you I watched him sign that Affidavit. There's 15 just no question about that. And the law is clear that 16 these cases need to turn on their merits and not some 17 technicality. And we've avoided getting into -- 18 whatever the history has been with regard to Marshall 19 and his family really is not relevant. If there was a 20 period of time when Marshall was out of the will, so to 21 speak, that was followed by long stretches of time 22 where there's letters from Mr. Shoemaker, the dad, to a 23 son ending with "love, dad." There's no question that 24 he was to share equally with his two brothers until 25 June the 24th before he died in July. There's no

1 question about that. So here we are at Summary
2 Judgment. We've got to get over this hump, and to do
3 that we cite to the Affidavit of Dr. Thomas Hughes. He
4 is a board certified neurologist. He has reviewed the
5 medical records. The way this went, Your Honor, is Mr.
6 Shoemaker had this terrible idiopathic pulmonary
7 fibrosis and had it for years and years. And in May
8 he, in consultation with his family and his doctors,
9 decided to become a hospice patient. And he was at
10 home but his disease was such that he had skilled
11 nurses who were doing assessments, so we have a number
12 of records. In June -- in July, excuse me, signed a
13 new will on June 21st. On July 5th has a real episode
14 and ends up through the emergency room and in the Saint
15 Francis Hospital for five days. So we've got a good
16 stack of records from that admission. And then back
17 home and in the care of another hospice, and so we have
18 the assessments from all of those nurses. And Dr.
19 Hughes has looked at those records and can opine that
20 Mr. Shoemaker had cognitive impairment. Seventy
21 percent of the folks that have idiopathic pulmonary
22 fibrosis have cognitive impairment in some form or
23 fashion. And if you think about it being a spectrum on
24 one hand you could -- if you forget where you put your
25 car keys on one end, and full blown dementia and you're

1 not sure what world you're in on the other hand, the
2 line for testamentary capacity is somewhere between
3 those two extremes. And he can say he clearly had
4 cognitive impairment. This is a progressive disease.
5 It's a situation where you get a little worse each day.
6 He had it for years. And so this doctor can go as far
7 as saying he had substantial cognitive impairment. And
8 there are a number of examples of that in these medical
9 records. For example, we know that when he signed this
10 new will at the end of June he was on supplemental
11 oxygen all the time, six liters a minute. We know he
12 went and got -- went to the emergency room on July 5th
13 and came home on 15 liters of oxygen a minute. Clearly
14 a fact finder could infer that if he needed 15 liters
15 of oxygen on -- in early July, six liters at the end of
16 June would not have been nearly enough in order for the
17 brain to function. And we acknowledge it's a high bar.
18 We can read the cases. There's no question
19 testamentary capacity is a high bar. But there are
20 examples where the disease was getting the better of
21 Mr. Shoemaker. If he spilled his medicine and became
22 so angry and irate that the nurses and the pharmacist
23 made a note of it, that it wasn't just anger, it was
24 sort of irrational, that is the disease talking. If he
25 was so agitated that the nurse had to give several

1 units of Morphine just to get him to a baseline, that
2 is evidence of significant impairment. And so at the
3 end of the day, yes, there may be ten Affidavits from
4 Mr. Shoemaker's primarily law partners that witnessed
5 him signing the new will, but there's also evidence
6 going the other way. And the Court is going to have to
7 weigh that evidence. And in order to grant the Motion
8 The Court will just have to reject the other evidence.
9 There's evidence going both ways in this case. You
10 know we could argue that it better falls to a medical
11 expert than a law partner. And Mr. Shoemaker had been
12 retired for years and years. And naturally you sort of
13 lose touch with your friends and so forth. The folks
14 that witnessed the will being signed in June had seen
15 him less and less and less over the years, and had a
16 smaller sample size to pick from. Never mind the fact
17 that the easiest thing to do would have been to say
18 "Hey, before we make a big decision like this let's get
19 a doctor to look at him and check neurological status."
20 That could have been done and wasn't. So I think at
21 the end of the day the question -- the evidence stacks
22 up on one side, but there's evidence that stacks on the
23 other side. And in order for a fact finder to decide
24 whether he had testamentary capacity in June when he
25 made this new will, you're going to have to weigh all

1 of the evidence. And that is something that should be
2 done at a full trial on the merits and not at Summary
3 Judgment.

4 THE COURT:

5 Let me ask you: what evidence do you have of undue
6 influence? I mean all you've cited so far is this
7 purported Affidavit of an expert which really relates
8 to mental capacity. And in addition that Affidavit
9 only opines that there was quote "some level of
10 cognitive impairment."

11 MR. BLINCOV:

12 I think -- I don't have it right -

13 THE COURT:

14 So let me go back to my question. What evidence do you
15 have of any undue influence?

16 MR. BLINCOV:

17 I'm not going to answer the question. I meant to
18 mention earlier that that heightened burden of proof
19 applies to an undue influence claim, and not to a
20 testamentary capacity claim.

21 THE COURT:

22 All right.

23 MR. BLINCOV:

24 But there is evidence that Mr. Shoemaker had a meeting
25 with the other two sons and the stockbroker, and there

1 was discussion of "This is my plan." And I think both
2 of the brothers said that was the first time they
3 really understood what sort of Estate was -- had been
4 built up over the years. This son was excluded from
5 that meeting. There are --

6 THE COURT:

7 What does that have to do with undue influence?

8 MR. BLINCOV:

9 Well --

10 THE COURT:

11 Or specifically bearing upon the testator's
12 testamentary act of signing a Will or an Estate for --
13 I mean a Trust Agreement for Estate planning purposes?

14 MR. BLINCOV:

15 Yeah, I get your question, and it doesn't. You're
16 correct. And I've told my client that maybe from a
17 lawyer's perspective anytime you've got that clear and
18 convincing standard, that's a tough road. And we
19 understand that that claim is not as good for us as the
20 testamentary capacity claim. I would also acknowledge
21 that what we've put forth in our response to the Motion
22 and in the Affidavit all deals with testamentary
23 capacity and not undue influence.

24 THE COURT:

25 Do you wish to dismiss the claim for undue influence or

1 there's no claim against attorney Moore for
2 professional liability or malpractice?

3 MR. BLINCOV:

4 Never has been, and never have we alleged that.

5 THE COURT:

6 Okay. So her involvement in the case according to the
7 Petitioner relates solely to her role or capacity as a
8 Trustee of the Trust or Personal Representative of the
9 Estate?

10 MR. BLINCOV:

11 Correct.

12 THE COURT:

13 Okay. Tell me what evidence you have related to the
14 lack of mental capacity of Mr. Shoemaker, the decedent.
15 Is it all --

16 MR. BLINCOV:

17 It's --

18 THE COURT:

19 -- found in the Affidavit of your expert?

20 MR. BLINCOV:

21 Well, I think the Affidavit of the expert points to the
22 evidence which exists. You know as a practical matter
23 Ms. Shoemaker lives in Atlanta and the two brothers
24 lived in New York and Colorado, and nobody was really
25 involved day-to-day with either parent. So what we are

1 --

2 MR. BLINCOV:

3 I would rather not dismiss it --

4 THE COURT:

5 Okay.

6 MR. BLINCOV:

7 -- but I acknowledge that the response is what it is,
8 and the burden of proof is what it is.

9 THE COURT:

10 Okay. Can you tell me why attorney Moore is still a
11 defendant in this Action?

12 MR. BLINCOV:

13 Well, only that she is the Trustee of the Estate.

14 THE COURT:

15 Well, I don't think she's named as a Trustee. She's
16 named individually.

17 MR. BLINCOV:

18 I don't have it in front of me. I think that when I
19 entered an appearance -- if I -- I've tried to make it
20 clear that I was appearing for the Petitioner. There's
21 no question no one has any claim against Ms. Moore. I
22 don't think we've ever said that. She's a Trustee of
23 the Estate is at issue.

24 THE COURT:

25 Okay. So for clarity are you informing The Court that

1 pointing to is the good bit of records -- as I
2 mentioned there's I want to say daily assessment by a
3 nurse beginning in May until he passes away in July.
4 And in there is evidence of the disease talking.
5 Idiopathic pulmonary fibrosis is this terrible,
6 aggressive lung disease, and it -- there's no
7 treatment. And it was a -- the day he had it I think
8 it was -- you know his prognosis was he was going to
9 die from this disease. But what the doctor can talk
10 about and what the nurses could talk about is evidence
11 in those records that supports here is a guy -- well, I
12 should have said this earlier. You know you've got to
13 have oxygen to the brain for it to function normally.
14 And, you know, if you get blue in the lips and short of
15 breath, taking off your pajamas in the morning, that is
16 evidence that you've got impaired oxygen to the brain
17 --

18 THE COURT:

19 Is that a symptom of hypoxemia?

20 MR. BLINCOV:

21 Yes.

22 THE COURT:

23 And what's the difference between that and anoxia, or a
24 lack of oxygen?

25 MR. BLINCOV:

1 I don't -- I would rather -- I don't know.

2 THE COURT:

3 okay.

4 MR. BLINCOV:

5 - But the point is there's no question he had this
6 disease. There's no question it was progressive.
7 There's no question he was getting worse. And towards
8 the end when he decides "I'm going to become a hospice
9 patient, sign a Do Not Resuscitate Order, and live out
10 these days at home," there's assessments which support
11 that his impairment was as the doctor said substantial.
12 Now, the doctor can't -- I don't know that -- only the
13 ultimate fact finder can say is -- was his impairment
14 on June the 24th, was it on this side or that side of
15 the line for testamentary capacity. Knox is right.
16 Dr. Hughes can't say that. He never saw the patient.
17 Never evaluated him. But he can point to plenty of
18 places where the disease is talking. And the disease
19 is saying "He's not of his right mind before he passed
20 away."

21 THE COURT:

22 Is the standard for execution of a Trust the same as
23 for execution of a will? Or is the Trust Agreement
24 contractual in nature and requiring a higher level of
25 mental capacity?

1 MR. BLINCOV:

2 I don't know the answer to that question. I would like
3 to research it. I've always taken the will and the
4 Trust together. Meaning they were signed on the same
5 day, I've sort of lumped them and considered that both
6 were the issue is did he have testamentary capacity on
7 June the 24th to sign both. Does that answer the -- in
8 other words I've never --

9 THE COURT:

10 I understand what you're saying. My final question to
11 you is: in the purported Affidavit of Mr. Thomas
12 Hughes, or Dr. Thomas Hughes, M.D., the only conclusion
13 I see is a conclusion of Dr. Hughes that Mr. Shoemaker
14 quote "had some level of cognitive impairment." Does
15 that clear the hurdle for the standard of Summary
16 Judgment if a doctor and your expert cannot opine that
17 the testator or settlor of a Trust lacked capacity to
18 understand the objects of his affection, or what assets
19 he had, or anything like that, then how could the jury
20 reach that conclusion?

21 MR. BLINCOV:

22 I totally get what you're -- I think the answer is
23 this. There exists evidence that a fact finder would
24 have to weigh and consider to find testamentary
25 capacity. There's ten Affidavits on one side of the

1 scale, and on the other there is evidence of impaired
2 cognition of diminished brain power. And that is going
3 to have to be weighed, and that's not proper at Summary
4 Judgment.

5 THE COURT:

6 And --

7 MR. BLINCOV:

8 I don't know that an expert -- I think you could object
9 if an expert said he did or didn't have testamentary
10 capacity because ultimately the fact finder is going to
11 have to weigh all of that out. In other words I -- for
12 better or worse Dr. Hughes can only go so far. I
13 believe he says in the Affidavit "substantial cognitive
14 impairment." Clearly had it. And because it's
15 progressive and because he was at end stage of his
16 disease, it was substantial. I don't know that anybody
17 -- a doctor can say substantial cognitive impairment is
18 on one side of the line or the other. But the point is
19 there's evidence to weigh and consider to decide that.

20 THE COURT:

21 And what about Mr. Haynsworth's argument that the
22 Affidavit of Dr. Hughes should not be considered
23 because it was not filed 48 hours prior to this
24 hearing?

25 MR. BLINCOV:

1 I would admit the rule says what it says. We go back
2 to I think that these cases need to turn on their
3 merits as opposed to a technicality. We would be happy
4 to hold everything in abeyance. Let Mr. Haynsworth
5 take the deposition, or wait two days and then -- or
6 submit reargument, or whatever. I ended up after work
7 yesterday going to his house and he signed it. Then I
8 raced back to the office and faxed or emailed it, so
9 there's no question about that. But that's an awfully
10 severe remedy under the circumstances.

11 THE COURT:

12 okay. All right. Mr. Haynsworth.

13 MR. HAYNSWORTH:

14 May it please The Court. Judge, let me work backwards.
15 Rule 3's there for a reason. You know if we're just
16 going to say "well, technicality, let's don't worry
17 about that because the system's geared to resolved it
18 on the merits," then why have any rules? I mean it
19 couldn't be clearer. And it's not like this is I filed
20 an Affidavit and you had a hearing a week later. My
21 Motion's been pending since November, Judge, of last
22 year. I mean anybody can figure out if one side's got
23 ten Affidavits, including from the guy's doctor, you're
24 going to need something to refute that other than the
25 Petitioner's self-serving testimony. So I cannot

1 believe that the need for an opposing Affidavit wasn't
2 something that the Petitioner figured out well before
3 now. Again, the whole purpose of Discovery -- and I
4 waited a long time. Judge, after I filed my Motion
5 before I requested a hearing because I knew Mr. Blicow
6 once he got in the case he needed an opportunity to do
7 Discovery. If he wanted to depose any of my affiants,
8 he needed to have time to do that. No sense in trying
9 to get a hearing before he had been able to do his
10 Discovery. You know Interrogatories are there for a
11 reason. If you're going to list an expert, list it so
12 Knox can go depose him so we don't get in the situation
13 we're in now where on the day that we should be able to
14 resolve this case we're throwing in problems that are
15 not excusing or neglect kind of problems. They're
16 problems that everyone involved knew or needed, and
17 everyone involved knew what the rules were, yet a day
18 before this hearing that's been set for quite a while
19 we get this Affidavit from a doctor who's never laid
20 eyes on Mr. Shoemaker, and an argument with you that
21 that's enough. That what we need to do, Judge, is
22 weigh -- it's weighing the evidence. "My Affidavit
23 versus the ten that Knox submitted." Well, Judge,
24 again, you didn't list the guy as a witness. You
25 didn't file the Affidavit on time, it ain't notarized.

1 All three are very problematic. If you consider it, it
2 still doesn't speak to two very important things;
3 testamentary capacity and what Mr. Shoemaker's
4 condition was the day he executed the documents. The
5 only evidence in this case of Mr. Shoemaker's condition
6 that day is Ms. Moore's Affidavit who was sitting right
7 there with him and had been working on the latest
8 Estate planning documents, and Martha Louise Ramage
9 Lewis, and then the two witness. All of those people
10 have firsthand personal knowledge of his condition the
11 day the documents were executed. And to a man and a
12 woman all of them explained that they're aware of
13 what's required for testamentary capacity. That he had
14 it that day. Ms. Moore's Affidavit goes into great
15 lengths to explore her interaction with Mr. and Mrs.
16 Shoemaker to make sure that these were their wishes.
17 They were -- articulated them correctly. They were
18 competent to make those requests. Let me jump for a
19 second too. It is wrong to claim that any of these
20 Pleadings were changed as to Ms. Moore. She was sued
21 as a defendant personally. And the allegation is, I'm
22 reading from page seven of Mr. Shoemaker's Petition
23 filed June 27 of '19 in this court, "The attorney is
24 presently tasked with and compensated for administering
25 the will and managing my father's Revocable Trust.

1 Lesley Moore knew or should have known my father's lack
2 of capacity and the undue influence of my mother and
3 brothers, and yet did nothing and allowed her personal
4 prejudice and her self-interest in earning fees for
5 services as Personal Representative, Trustee, and/or
6 counsel to the same to cloud her judgment. As such she
7 is unable to fulfil her fiduciary duties of loyalty to
8 all beneficiaries, including me and my children. The
9 Court remove Lesley Moore from serving as Personal
10 Representative of my father's estate and Trustee of any
11 Trust," et cetera, et cetera. Lesley has been accused
12 of wrong doing in this lawsuit. John represented some
13 facts to this court, and let me represent some facts.
14 I know for a fact she had to put her malpractice
15 carrier on notice 'cause she got sued by Marshall in
16 this lawsuit. And two years later all of a sudden "Ah,
17 we don't have any evidence against Ms. Moore. That was
18 just a typo." Huh-uh, Judge. That is not how the
19 legal system works. And there are responsibilities
20 attached for making allegations against people, and
21 dragging them into court, and forcing them to pay to
22 defend themselves when they did nothing wrong. On
23 this Affidavit issue, again, I -- there is zero excuse
24 for not listing that man before now. Zero excuse.
25 We've done a bunch of depositions since John Blicow

1 was retained as counsel, and I ain't heard mention one
2 of any expert until out of the blue this guy's
3 Affidavit comes in. And finally, Judge, if I could
4 turn your attention back to the Russell v. Wachovia
5 case that I referenced earlier -- in fact if you'll let
6 me approach enough to hand it to you --

7 THE COURT:

8 Sure thing.

9 MR. HAYNSWORTH:

10 -- I can give you a copy. I have highlighted
11 identically on your copy, Mr. Blicow's copy, and my
12 copy what I thought was important, Judge. For purposes
13 of my argument right now if you'll flip over to page
14 five of eight, and I've highlighted a provision that
15 says "Appellants argue that two expert witnesses, both
16 medical doctors, testified the testator was subject to
17 undue influence, and that this testimony is enough to
18 withstand Summary Judgment." We disagree. Neither of
19 the experts examined the Testator. Both experts
20 testified the Testator was competent to execute a Will.
21 Absent examination of the Testator by the expert on
22 opinion that the Testator was mentally incompetent, and
23 therefore more susceptible to undue influence, we fail
24 to see how expert medical testimony can be provided as
25 to undue influence. Further neither expert based his

1 opinion on the circumstances surrounding the execution
2 of the will. In this case, Judge, just like in the
3 Russell case, even if you overlook the other problems
4 with the Affidavit, that doctor never laid eyes on Jim
5 Shoemaker. Jim Shoemaker's doctor, who gave you an
6 Affidavit that he had capacity, is his long-term family
7 doctor. No one knows Jim Shoemaker better than Jim
8 Shoemaker's long time family doctor. This guy was
9 hired to create an Affidavit to try and gum up this
10 Summary Judgment Motion. His Affidavit, even if you
11 consider it, is not a weight of an evidence issue. It
12 is no evidence, and it's certainly not sufficient
13 evidence given the plaintiff's heightened burden to
14 overcome the evidence before The Court entitling us to
15 Summary Judgment.

16 THE COURT:

17 And let me ask you what I asked Mr. Blincow, and that
18 is: do you know what the mental capacity -- what mental
19 capacity is required for execution of a Trust Agreement
20 versus a Last Will and Testament? Is there a
21 difference because the Trust is contractual in nature,
22 or is it the same?

23 MR. HAYNSWORTH:

24 Your Honor, I will parrot Mr. Blincow's --

25 MR. BLINCOW:

1 Okay. Well, Mr. Blincow, any response?

2 MR. BLINCOW:

3 Yeah. Please. My memory wasn't good but it is what I
4 recall. After I appeared -- and if you look at the
5 caption that I used when we filed this filing
6 yesterday, Lesley R. Moore, Esquire, the defendant, is
7 sued as Personal Representative as -- and Trustee. So
8 --

9 THE COURT:

10 Well, this is a Brief filed. I mean it doesn't --

11 MR. BLINCOW:

12 I'm just --

13 THE COURT:

14 Changing that in the caption doesn't really change the
15 substance of the original Petition --

16 MR. BLINCOW:

17 Fair --

18 THE COURT:

19 -- or Complaint.

20 MR. BLINCOW:

21 Fair enough. But when I stepped in there was never any
22 question that this -- she was a party by virtue of the
23 fact she was the Trustee.

24 THE COURT:

25 Okay. Was your client alleging any wrong doing as

1 (Talking over each other.)

2 MR. HAYNSWORTH:

3 Yeah, you got us both there.

4 THE COURT:

5 You might want to ask the person beside you.

6 MR. HAYNSWORTH:

7 (Confers with Lesley Moore.)

8 THE COURT:

9 And I should know the answer to that but I don't know

10 --

11 MR. HAYNSWORTH:

12 We believe after consultation, Your Honor, it is the
13 same standard.

14 THE COURT:

15 All right.

16 MR. BLINCOW:

17 Well, then I was right and didn't even know it.

18 MR. HAYNSWORTH:

19 So -- yeah. So the two blind hogs have now confirmed
20 that we have --

21 THE COURT:

22 Okay.

23 MR. HAYNSWORTH:

24 -- had the right the law.

25 THE COURT:

1 Trustee or Personal Representative?

2 MR. BLINCOW:

3 No.

4 THE COURT:

5 All right. All right.

6 MR. BLINCOW:

7 Well, he was, but -- he was. Whatever, his Petition
8 says what it says, but I'm saying that now our position
9 is that she's a party simply by virtue of the fact
10 she's the Trustee.

11 THE COURT:

12 All right. And is there any evidence of any wrong
13 doing by Ms. Moore as Personal Representative or
14 Trustee?

15 MR. BLINCOW:

16 No, sir.

17 THE COURT:

18 All right.

19 MR. BLINCOW:

20 And I --

21 THE COURT:

22 I just wanted to clarify.

23 MR. BLINCOW:

24 Yeah, I do. I really do think this Russell case is an
25 undue influence case. And so to the extent they

1 concluded that a doctor's testimony didn't change the
2 result, that was not a testamentary capacity situation.
3 I think the law is clear on that.

4 THE COURT:

5 All right.

6 MR. BLINCOV:

7 you know it says, I believe in the line, the
8 highlighted parts -- I've read this case, but I don't
9 have it in front of me. But there's a heightened
10 standard for undue influence, but that is not the case
11 for testamentary capacity. So we take the position
12 that the doctor's Affidavit doesn't count because a
13 different level of proof is -- would not be accurate.
14 You know it would be just -- we could argue that an
15 Affidavit from a lay person is not as important as
16 someone who knows what they're talking about when they
17 talk about chronic idiopathic pulmonary fibrosis with
18 hypoxic respiratory failure. There is evidence that
19 the deceased lacked testamentary capacity, and that
20 needs to be weighed and considered.

21 THE COURT:

22 All right. Well, this is an interesting case and set
23 of facts, and I'm going to have to give it careful
24 deliberation and consideration. And I can tell you at
25 first glance it doesn't appear to be evidence

1 sufficient to withstand summary judgment on a cause of
2 action for undue influence. But I'm going to have to
3 do my homework and give everything proper consideration
4 before reaching any decision on this matter. I
5 appreciate both sides informing the court of all of the
6 relevant facts, and circumstances, and supplementing
7 the Motion with appropriate Affidavits. And so you've
8 both done an excellent job, and I appreciate that. And
9 I'm going to weigh through these materials and have a
10 decision hopefully within the next week or so.

11 MR. HAYNSWORTH:

12 Thank you. I appreciate it.

13 MR. BLINCOV:

14 Thank you.

15 THE COURT:

16 Thank you very much. We're adjourned.

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT
18 2:55 P.M.)

1 CERTIFICATE OF REPORTER

2
3 I, Treasa Hix, a Notary Public in and for the State of
4 South Carolina, do hereby certify that the foregoing hearing
5 was taken before me on the date and at the time and location
6 stated on page 1 of this transcript.

7 That the deponent was duly sworn to testify to the
8 truth, the whole truth, and nothing but the truth.

9 That I am not related to nor the employee of any of the
10 parties hereto, nor related to or employed by any attorney
11 or counsel employed by the parties hereto, nor interested in
12 the outcome of this action.

13
14
15 Treasa Hix, Reporter

16 Notary Public for S.C.

17 Commission Expires: 6/13/29

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Treasa Hix

A abeyance 24:4 able 4:21 25:9,13 Absent 28:21 accountant 9:17 accurate 33:13 accused 27:11 acknowledge 14:17 17:20 18:7 act 17:12 action 18:11 34:2 35:12 addition 16:8 address 3:24 4:13 4:21 6:21,22 10:15 11:9 12:1 adjourned 34:16 administering 26:24 admission 13:16 admit 24:1 affection 22:18 affiants 25:7 Affidavit 4:1,3,7 4:15 5:3 9:13,18 10:13 11:7 12:4 12:6,12,14 13:3 16:7,8 17:22 19:19,21 22:11 23:13,22 24:20 25:1,19,22,25 26:6,14 27:23 28:3 29:4,6,9,10 33:12,15 Affidavits 6:9,16 6:21 11:11 15:3 22:25 24:23 34:7 aforementioned 1:12 afternoon 11:24 aggressive 20:6 agitated 14:25 Agreement 17:13 21:23 29:19 Ah 27:16 ain't 25:25 28:1 allegation 26:21 allegations 27:20 alleged 19:4	alleging 31:25 allowed 27:3 amount 9:23 and/or 27:5 anger 14:23 angry 14:22 anoxia 20:23 answer 4:18 16:17 22:2,7,22 30:9 anybody 23:16 24:22 anytime 17:17 appear 33:25 appearance 18:19 APPEARANCES 2:1 appeared 4:17 31:4 appearing 18:20 Appellants 28:15 applies 16:19 appreciate 34:5,8 34:12 approach 28:6 appropriate 34:7 April 1:16 argue 15:10 28:15 33:14 argument 12:3 23:21 25:20 28:13 arguments 5:6 articulate 9:6 articulated 26:17 asked 29:17 assessment 20:2 assessments 13:11 13:18 21:10 assets 22:18 Atlanta 7:24 19:23 attached 9:13 27:20 attacking 10:17 attention 28:4 attorney 2:8,17 18:10 19:1 26:23 35:10 Attorneys 2:4 avoided 12:17 aware 8:20 26:12	awfully 24:9 B back 3:25 8:2 13:16 16:14 24:1 24:8 28:4 backwards 24:14 Bank 10:24 bar 14:17,19 based 28:25 baseline 15:1 basically 8:10 basis 10:10,11 bear 7:5 10:19 bearing 17:11 bed 9:4 began 8:4 beginning 20:3 believe 6:18 11:13 23:13 25:1 30:12 33:7 beneficiaries 27:8 better 14:20 15:10 23:12 29:7 big 15:18 bigger 10:9 bit 8:12 20:1 Blen 3:16 Blinco 2:3,4 3:6 3:16,18 4:13,17 5:5,16 11:22,23 11:25 16:11,16 16:23 17:8,14 18:2,6,12,17 19:3,10,16,20 20:20,25 21:4 22:1,21 23:7,25 25:5 27:25 29:17 29:25 30:16 31:1 31:2,11,16,20 32:2,6,15,19,23 33:6 34:13 Blinco's 28:11 29:24 blind 30:19 blown 13:25 blue 20:14 28:2 bmemhlaw.com 2:16 board 13:4	bounty 9:5 Box 1:22 2:14 brain 14:17 20:13 20:16 23:2 breath 20:15 Brief 31:10 bring 6:19 broke 8:2 brother 7:20 brothers 7:2,6,15 8:8 10:5 12:24 17:2 19:23 27:3 brought 4:16 6:12 7:1,5 10:2,3 Brown 2:12 bug 9:4 build 8:22 built 17:4 bunch 27:25 burden 16:18 18:8 29:13 C camel's 8:2 can't 21:12,16 capacity 6:15,22 8:19,20 9:7 10:1 10:18 11:10,12 14:2,19 15:24 16:8,20 17:20,23 19:7,14 21:15,25 22:6,17,25 23:10 26:3,13 27:2 29:6,18,19 33:2 33:11,19 caption 31:5,14 car 13:25 care 10:15 13:17 careful 33:23 Carolina 1:1,16,23 2:6,15 11:1 35:4 carrier 8:9 27:15 case 1:2 6:20,25 8:25 9:1,3 10:7 11:2 12:9,10 15:9 19:6 25:6 25:14 26:5 28:5 29:2,3 32:24,25 33:8,10,22 cases 4:12 12:16	14:18 24:2 cause 27:15 34:1 cents 4:25 certainly 29:12 Certificate 2:5 35:1 certified 13:4 certify 35:4 cetera 27:11,11 challenged 6:11 challenging 10:3 chance 6:9 change 31:14 33:1 changed 26:20 Changing 31:14 Charleston 2:6 chase 8:10 check 15:19 children 6:11 27:8 chronic 33:17 circumstances 24:10 29:1 34:6 cite 13:3 cited 16:6 claim 7:1 16:19,20 17:19,20,25 18:21 19:1 26:19 claims 8:7 9:22 clarify 32:22 clarity 18:25 Clayton 1:13 clear 4:14 12:15 17:17 18:20 22:15 33:3 clearer 24:19 clearly 14:3,13 23:14 client 17:16 31:25 cloud 27:6 cognition 23:2 cognitive 13:20,22 14:4,7 16:10 22:14 23:13,17 Colloquy 2:3 Colorado 19:24 comes 12:8 28:3 commencing 1:17 Commission 35:17 compensated 26:24

competency 6:24 9:15	course 8:14	34:4,10	11:8 17:15 26:2	12:24
competent 26:18 28:20	court 1:1,14,15 2:3 3:1,8,20 4:2,5	defeat 11:4	31:10,14 33:12	Esquire 2:3,11
Complaint 31:19	5:4,9,13,21,25	defects 11:8	33:25	31:6
completely 7:13 7:16	6:5 7:11 8:17	defend 27:22	doing 7:24 13:11	essentially 6:10
concluded 33:1 34:17	10:7,20 11:1,17	defendant 18:11 26:21 31:6	27:12 31:25	7:21
conclusion 22:12 22:13,20	11:21,24 12:7,11	deliberation 33:24	32:13	Estate 6:11 7:5
condition 8:24 26:4,5,10	15:6,8 16:4,13	dementia 13:25	dollars 8:10,21	17:3,12,13 18:13
conduct 10:8	16:21 17:6,10,24	deponent 35:7	don't 4:24 6:8	18:23 19:9 26:8
Confers 30:7	18:4,9,14,24,25	depos@legaleag... 1:25	10:18,19 16:12	27:10
confirmed 30:19	19:5,12,18 20:18	depose 25:7,12	18:15,18,22 21:1	estrangement 9:19
consider 6:25 22:24 23:19 26:1 29:11	20:22 21:2,21	deposed 4:20	21:1,12 22:2	et 27:11,11
consideration 33:24 34:3	22:9 23:5,20	deposition 7:16 24:5	23:8,16 24:16	evaluated 21:17
considered 4:4,24 6:13 10:14 11:7	24:11,14 26:23	depositions 27:25	25:12 27:17 30:9	Evans 1:9 2:12
12:5 22:5 23:22	27:9,13,21 28:7	didn't 23:9 25:24	33:8	3:11
33:20	29:14,16 30:4,8	25:25 30:17 33:1	Dr 12:6 13:3,18	evidence 8:12,16
consultation 13:8 30:12	30:14,21,25 31:9	dile 20:9	21:16 22:12,13	8:17 9:9,9,22,23
CONTAIN 2:24	31:13,18,24 32:4	died 12:25	23:12,22	10:16 11:3,4
contending 6:12 7:1	32:11,17,21 33:4	difference 20:23 29:21	draft 8:20,21	15:2,5,7,8,9,21
contention 12:4	33:21 34:5,15	different 7:16 33:13	dragging 27:21	15:22 16:1,5,14
continuation 10:4	crazy 9:3	diminished 23:2	duly 35:7	16:24 19:13,22
continued 8:5	create 29:9	disagree 28:18	duties 27:7	20:4,10,16 22:23
contract 8:21	criteria 9:6	Discovery 4:22 7:9 25:3,7,10	E	23:1,19 25:22
contractual 21:24 29:21	crystal 4:14	discussed 9:18	EAGLE 1:21	26:5 27:17 29:11
convincing 11:3 17:18	cut 7:4,9,11,13 9:21	discussion 17:1	earlier 7:12 16:18	29:12,13,14
copy 4:12 28:10,11 28:11,12	D	disease 13:10 14:4 14:20,24 20:4,6	20:12 28:5	32:12 33:18,25
correct 3:5,7,19 17:16 19:11	dad 7:7 10:6 12:22 12:23	20:9 21:6,18,18	early 14:15	exactly 8:6
correctly 3:17 26:17	dad's 7:23	23:16	earning 27:4	examination 28:21
couldn't 24:19	daily 20:2	dismiss 17:25 18:3	easiest 15:17	examined 28:19
counsel 2:3 27:6 28:1 35:11	Danny 6:17	dissension 8:3	Edward 1:9 3:10	example 14:9
count 33:12	date 35:5	distance 5:24	eight 6:18 28:14	examples 14:8,20
County 1:2,15	day 1:16 8:5,18,24 9:4,7,10 14:5	doctor 14:6 15:19	either 19:25	excellent 34:8
couple 4:11 12:2	15:3,21 20:7	20:9 21:11,12	email 7:20,25,25	excluded 17:4
	22:5 25:13,17	22:16 23:17	emailed 24:8	excuse 13:12 27:23
	26:4,6,11,14	24:23 25:19 29:4	emails 7:17	27:24
	day-to-day 19:25	29:5,7,8	emergency 13:14 14:12	excusing 25:15
	days 4:15 6:18 13:15 21:10 24:5	doctor's 33:1,12	employed 35:10 35:11	execute 28:20
	deals 17:22	doctors 13:8 28:16	employee 35:9	executed 8:18,25
	decade 7:12	documents 6:19	ended 24:6	26:4,11
	deceased 1:4 33:19	8:18,24 9:4,8,11	ends 13:14	execution 4:7
	decedent 19:14	9:24 10:3 26:4,8	enormous 9:23	21:22,23 29:1,19
	decide 15:23 23:19	26:11	entered 18:19	exhibits 2:7 9:13
	decided 13:9	Doc 3:12	entire 8:14	existed 9:19 10:4
	decides 21:8	doesn't 8:22 10:14	entitled 11:14	exists 19:22 22:23
	decision 15:18		entitling 29:14	expert 4:19 15:11
			episode 13:13	16:7 19:19,21
			episodes 8:3	22:16 23:8,9
			equally 7:3,15	25:11 28:2,15,21
				28:24,25
				experts 28:19,19
				Expires 35:17

explained 26:12	23:10	graduation 7:22	holes 8:11	3:15 12:1
explaining 9:13	fire 5:19	7:23	hollow 9:2	IMA 6:17
explanation 7:4	first 7:12 8:11,12	grant 15:7	home 13:10,17	impaired 20:16
explore 26:15	12:3 17:2 33:25	great 9:20 26:14	14:13 21:10	23:1
extent 5:3 10:12	firsthand 6:23	Greenville 1:2,15	homework 34:3	impairment 13:20
32:25	9:14 26:10	1:16,23 2:15	Honor 3:24 4:10	13:22 14:4,7
extremes 14:3	five 13:15 28:14	Griffin 2:4	6:8,15 8:19,25	15:2 16:10 21:11
eyes 25:20 29:4	flip 28:13	Grover 6:17	10:13,19,24	21:13 22:14
	flown 7:24	guess 4:1 7:18	11:13 13:5 29:24	23:14,17
	folks 13:21 15:13	9:21	30:12	important 5:1
F	followed 12:21	gum 29:9	Honorable 1:13	26:2 28:12 33:15
fact 4:23 6:25 9:22	forced 8:8,9	guy 4:20 9:1 20:11	hopefully 34:10	importantly 8:23
10:10 14:14	forcing 27:21	25:24 29:8	hospice 13:9,17	inaccurate 10:23
15:16,23 21:13	foregoing 35:4	guy's 24:23 28:2	21:8	including 6:16
22:23 23:10	forget 8:25 13:24		Hospital 13:15	11:11 24:23 27:8
27:14 28:5 31:23	form 13:22	H	hour 1:17	incompetent 28:22
32:9	forth 15:13 17:21	hand 4:12 9:11	hours 23:23	INDEX 2:1
facts 27:13,13	found 19:19	13:24 14:1 28:6	house 7:23 24:7	individually 18:16
33:23 34:6	Francis 13:15	happened 7:19	housekeeping 3:24	infer 14:14
fail 28:23	frankly 10:1	happy 24:3	Hughes 12:6 13:3	influence 6:14 7:5
failure 33:18	friends 15:13	Haynsworth 2:11	13:19 21:16	9:25 10:17 11:2
Fair 31:17,21	front 3:25 18:18	2:12 3:15,22,23	22:12,12,13	16:6,15,19 17:7
falls 15:10	33:9	4:9 5:7,11,18,23	23:12,22	17:23,25 27:2
family 8:4,9 9:20	fulfil 27:7	6:3,7 10:22	Huh-uh 27:18	28:17,23,25
10:4,10 12:19	full 13:25 16:2	11:19 24:4,12,13	humble 10:8	32:25 33:10 34:2
13:8 29:6,8	function 14:17	28:9 29:23 30:2	hump 13:2	informing 18:25
far 14:6 16:6	20:13	30:6,11,18,23	hundred 8:21	34:5
23:12	further 6:4 28:25	34:11	Hunter 1:9 3:10	initially 7:1
fashion 13:23	34:17	Haynsworth's	hurdle 22:15	interaction 26:15
father 7:3,14	G	5:15 23:21	hypoxemia 20:19	interested 35:11
father's 6:11 7:4	geared 24:17	he's 4:22 21:19	hypoxic 33:18	interesting 33:22
26:25 27:1,10	getting 12:17	heard 1:13 28:1	I	Interrogatories
faxed 24:8	14:20 21:7	hearing 1:12 3:22	I'll 3:22 4:12 5:5	25:10
fees 27:4	gist 9:3	4:16,25 23:24	6:4 8:22 11:16	Interrogatory
feet 6:2,8	give 6:16 7:18 8:21	24:20 25:5,9,18	12:3	4:18
fibrosis 13:7,22	14:25 28:10	34:17 35:4	I'm 3:4 6:2,2 8:6	involved 19:25
20:5 33:17	33:23 34:3	heightened 11:5	10:24 12:6,13	25:16,17
fiduciary 27:7	given 4:23 29:13	16:18 29:13 33:9	16:17 21:8 26:21	involvement 19:6
figure 5:19 24:22	glance 33:25	hereto 35:10,11	31:12 32:8 33:23	irate 14:22
figured 25:2	go 14:6 16:14	Hey 15:18	34:2,9	irrational 14:24
file 25:25	23:12 24:1 25:12	high 8:4 14:17,19	I've 4:12,17 5:22	issue 4:8 5:1 8:15
filed 3:13 4:15 5:3	goes 26:14	higher 21:24	6:1 17:16 18:19	18:23 22:6 27:23
6:9 23:23 24:19	going 15:6,6,9,25	highlighted 28:10	22:3,5,8 28:14	29:11
25:4 26:23 31:5	16:17 20:8 21:8	28:14 33:8	33:8	issues 4:11,13 8:13
31:10	23:2,10 24:7,16	hired 29:9	identically 28:11	it's 4:13 5:14,17
filing 31:5	24:24 25:11	history 12:18	identified 4:22	7:10 8:9 9:1,2
final 10:11 22:10	33:23 34:2,9	Hix 1:14,19 35:3	idiopathic 13:6,21	10:9,16,25 12:5
finally 28:3	good 11:24 13:15	35:15	20:5 33:17	14:5,17 19:17
find 22:24	17:19 20:1 31:3	hogs 30:19	III 1:6 2:11 3:3,9	23:14 24:19
finder 14:14 15:23		hold 24:4		25:22 29:12
21:13 22:23				

J	20:12,14 21:1,12 22:2 23:8,16 24:15 25:10 27:14 29:18 30:9 30:9,17 33:7,14 knowledge 6:23 8:23 26:10 known 4:20 27:1 knows 29:7 33:16 Knox 2:11 3:15 21:15 25:12,23 knoxhaynsworth 2:16	listing 4:19 27:24 liters 14:11,13,14 14:15 little 14:5 live 21:9 lived 19:24 lives 9:1 19:23 LLC 2:12 location 35:5 log 9:2 long 9:5 12:21 25:4 29:8 long- 9:16 long-term 29:6 long-time 9:16 look 9:8 15:19 31:4 looked 13:19 lose 15:13 Louise 9:17 26:8 love 12:23 loyalty 27:7 lumped 22:5 lung 20:6	19:22 34:4 McLeod 2:12 mean 16:6 17:13 24:18,22 31:10 Meaning 22:4 meant 16:17 medical 13:5 14:8 15:10 28:16,24 medicine 14:21 meet 10:15 meeting 2:5 16:24 17:5 Memo 4:1 6:9 memory 31:3 mental 16:8 19:14 21:25 29:18,18 mentally 28:22 mention 16:18 28:1 mentioned 12:2 20:2 merits 12:3,10,10 12:16 16:2 24:3 24:18 mind 7:7 15:16 21:19 minute 14:11,13 misquote 10:18 misrepresentation 7:10 mom 7:23 10:5 Moore 1:9 3:12 8:6,7,8 9:12 18:10,21 19:1 26:20 27:1,9,17 30:7 31:6 32:13 Moore's 26:6,14 morning 20:15 Morphine 15:1 mother 7:7,14 27:2 Motion 3:13 4:1 6:10 11:5 15:7 17:21 25:4 29:10 34:7 Motion's 24:21	named 18:15,16 naturally 15:12 nature 21:24 29:21 nearly 14:16 need 10:15 12:10 12:16 24:2,24 25:1,21 needed 14:14 25:6 25:8,16 needs 33:20 neglect 25:15 neither 28:18,25 neurological 15:19 neurologist 13:4 never 4:18,22 15:16 19:4,4 21:16,17 22:8 25:19 29:4 31:21 new 13:13 14:10 15:5,25 19:24 normally 20:13 notarized 4:14,24 12:5,12 25:25 notary 1:14,20 4:8 12:12 35:3,16 note 14:23 notice 3:21 4:6 8:9 27:15 notwithstanding 11:8 November 24:21 number 13:11 14:8 nurse 14:25 20:3 nurses 13:11,18 14:22 20:10
L	L 1:13 2:11 lack 6:14 10:17 19:14 20:24 27:1 lacked 11:10 22:17 33:19 laid 25:19 29:4 latest 8:2 26:7 law 2:4 8:25 10:11 11:15 12:15 15:4 15:11 30:24 33:3 lawsuit 6:12 8:15 10:2,9 27:12,16 lawyer 12:13 lawyer's 17:17 lay 33:15 legal 1:21 11:9 27:19 legitimate 10:2 length 4:23 lengths 26:15 lengthy 9:12 Lesley 1:9 3:11 8:6 27:1,9,11 30:7 31:6 let's 15:18 24:16 letters 12:22 letting 12:9 level 16:9 21:24 22:14 33:13 Lewis 9:17 26:9 liability 19:2 line 5:19 14:2 21:15 23:18 33:7 lips 20:14 list 25:11,11,24	M M.D 22:12 making 27:20 malpractice 8:8 19:2 27:14 man 6:20 26:11 27:24 managing 26:25 marked 2:8 Marshall 1:4,6 3:2 3:3,5,9 6:10 7:4 7:9,11,13,17,20 7:25 8:4 9:19,20 10:5 12:1,18,20 27:15 Marshall's 7:22 Martha 9:17 26:8 Mary 1:9 3:10 mask 5:15 Massey 2:12 MATERIAL 2:24 2:25 materials 34:9 matter 1:3,12 3:2 3:4,24 11:14	N name 3:17 9:1 11:25	O object 23:8 objects 9:5 22:18 obviously 4:19 5:1 office 1:22 2:14 24:8 officer 12:6 Oh 7:25 okay 5:8,12,14,14 5:17 11:20 18:5 18:10,25 19:6,13 21:3 24:12 30:22
K	keys 13:25 kicking 12:11 kill 7:21 kind 25:15 knew 9:5 25:5,16 25:17 27:1 know 6:8,16 9:21 12:7 14:9,11 15:10 19:22 20:8	M M.D 22:12 making 27:20 malpractice 8:8 19:2 27:14 man 6:20 26:11 27:24 managing 26:25 marked 2:8 Marshall 1:4,6 3:2 3:3,5,9 6:10 7:4 7:9,11,13,17,20 7:25 8:4 9:19,20 10:5 12:1,18,20 27:15 Marshall's 7:22 Martha 9:17 26:8 Mary 1:9 3:10 mask 5:15 Massey 2:12 MATERIAL 2:24 2:25 materials 34:9 matter 1:3,12 3:2 3:4,24 11:14	N name 3:17 9:1 11:25	O object 23:8 objects 9:5 22:18 obviously 4:19 5:1 office 1:22 2:14 24:8 officer 12:6 Oh 7:25 okay 5:8,12,14,14 5:17 11:20 18:5 18:10,25 19:6,13 21:3 24:12 30:22

31:1,25 old 9:3 once 25:6 opine 13:19 22:16 opines 16:9 opinion 5:2 10:8 11:1 28:22 29:1 opportunity 25:6 opposed 24:3 opposing 4:1,15 25:1 opposition 11:7 order 11:4 14:16 15:7,23 21:9 original 31:15 outcome 35:12 overall 6:25 overcome 29:14 overlook 29:3 oxygen 14:11,13 14:15 20:13,16 20:24	26:10 27:3,5,9 31:7 32:1,13 personally 26:21 perspective 17:17 Peter's 7:22 Petition 4:16 9:10 26:22 31:15 32:7 Petitioner 1:7 2:8 3:3,9,15 11:25 18:20 19:7 25:2 Petitioner's 24:25 pharmacist 14:22 phrase 8:1 physician 6:17 11:12 pick 15:16 places 21:18 plaintiff's 29:13 plan 7:5 17:1 planning 17:13 26:8 Pleadings 26:20 please 11:24 24:14 31:3 plenty 21:17 plexiglass 5:20 6:1 point 9:7,21 10:11 21:5,17 23:18 pointing 20:1 points 19:21 Polly 7:7 position 9:24 32:8 33:11 possible 5:12 7:3,8 Post 1:22 2:14 potential 8:12 power 23:2 practical 19:22 prejudice 27:4 present 8:5 presented 8:15 presently 26:24 primarily 15:4 prior 23:23 probably 6:24 Probate 1:1,12,14 problematic 26:1 problems 25:14,15 25:16 29:3 procedural 12:9	proceed 3:22 5:10 proceeded 5:6 proceeding 10:16 product 6:14 professional 19:2 prognosis 20:8 progressive 14:4 21:6 23:15 project 6:4 pronounces 3:16 pronouncing 3:17 proof 11:2 16:18 18:8 33:13 proper 4:4 6:13 23:3 34:3 properly 9:6 protected 6:2 provided 3:21 28:24 provision 28:14 public 1:14,20 4:8 35:3,16 pulmonary 13:6 13:21 20:5 33:17 purported 16:7 22:11 purpose 10:2 25:3 purposes 4:25 17:13 28:12 put 8:8 13:24 17:21 27:14	raced 24:8 Ramage 9:17 26:8 reach 22:20 reaching 34:4 read 2:25 6:9 11:9 14:18 33:8 reading 26:22 real 13:13 really 12:19 16:7 17:3 19:24 31:14 32:24 reargument 24:6 reason 4:22 7:8,19 24:15 25:11 reasons 11:13 recall 10:6 31:4 received 3:25 4:6 4:18 record 9:10 records 13:5,12,16 13:19 14:9 20:1 20:11 referenced 28:5 referring 4:8 refute 8:16 24:24 regard 12:18 reject 15:8 related 19:13 35:9 35:10 relates 16:7 19:7 relevant 12:19 34:6 remedy 24:10 removal 5:14 remove 27:9 REPORTED 1:19 Reporter 1:14,19 2:5 35:1,15 represent 11:25 27:13 Representative 19:8 27:5,10 31:7 32:1,13 represented 3:14 3:16 27:12 REPRODUCED 2:25 requested 25:5 requests 26:18 require 8:22	required 11:6 26:13 29:19 requires 8:23 requiring 21:24 research 22:3 resolve 25:14 resolved 24:17 respiratory 33:18 respond 5:5 Respondent 2:17 Respondents 1:10 3:10,14,14,21 11:14 response 17:21 18:7 31:1 responsibilities 27:19 result 33:2 Resuscitate 21:9 retained 28:1 retired 15:12 reviewed 13:4 Revocable 26:25 Ridge 1:15 right 5:5,12 6:6 9:12 11:15 16:12 16:22 21:15,19 24:12 26:6 28:13 30:15,17,24 32:5 32:5,12,18 33:5 33:22 road 17:18 role 19:7 room 13:14 14:12 rule 4:14,23 12:9 24:1,15 rules 24:18 25:17 Russell 10:24 28:4 29:3 32:24
P				S
p.m 1:17 34:18 page 26:22 28:13 35:6 pajamas 20:15 parent 19:25 parents 8:1 parrot 29:24 parties 35:10,11 partner 15:11 partners 15:4 parts 33:8 party 12:11 31:22 32:9 passed 21:19 passes 20:3 patient 13:9 21:9 21:16 pay 27:21 pending 24:21 penultimate 7:18 people 26:9 27:20 people's 6:23 percent 13:21 period 9:23 12:20 person 30:5 33:15 personal 19:8		Q		
		question 12:15,23 13:1 14:18 15:21 16:14,17 17:15 18:21 21:5,6,7 22:2,10 24:9 31:22 questions 11:15 34:17 quite 25:18 quote 10:23 16:9 22:14 QUOTED 2:24,25 quoting 10:24		
		R		
		R 31:6 rabbit 8:11		

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FILED

STATE OF SOUTH CAROLINA JUN 16 2021
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

JUDGMENT IN A CIVIL CASE
IN THE PROBATE COURT

CASE NO. 2018ES2301729

IN THE MATTER OF:

James Marshall Shoemaker, Jr., Deceased

James Marshall Shoemaker, III, Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward Sloan
Shoemaker, Jonathan Evans Shoemaker and Lesley
Moore, Respondents.

CHECK ONE:

- ☒ DECISION BY THE COURT
☐ JURY VERDICT
☐ ACTION DISMISSED
☐ ACTION STRICKEN

See attached Order.

Dated at Greenville, South Carolina, this 15th day of June, 2021.

Clayton L. Jennings
ASSOCIATE PROBATE JUDGE

This judgment was entered on the 15th day of June, 2021 and a copy is being sent via ordinary first-class mail this 16th day of June, 2021, to the attorneys and all respondents.

Petitioning Attorney: John Blincow, Jr. – 126 Meeting Street Charleston, SC 29401

Respondent's Attorney: Knox L. Haynsworth, III – P.O. Box 2464 Greenville, SC 29602

Respondents:

-Edward Sloan Shoemaker – 1071 County Road 111, Carbondale, CO 81623

-Jonathan Evans Shoemaker – 301 West 108 Street, Apt.6A, New York, NY 10025

Kim Campos-Juey, CS
Judicial Assistant for Probate Court
Greenville County, South Carolina

IN THE MATTER OF:

NOTICE OF APPEAL

V

To: Knox Haynsworth, III, attorney for the Respondents:

R-372

BLINCOW GRIFFIN LAW FIRM

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Attorneys for Petitioner

June 21, 2021

FILED

STATE OF SOUTH CAROLINA JUN 15 2021 IN THE PROBATE COURT
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE MATTER OF:

James Marshall Shoemaker, Jr.,
Deceased

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III,

Petitioner,

vs.

Mary Hunter Sloan Shoemaker, Edward
Sloan Shoemaker, Jonathan Evans
Shoemaker, Lesley Moore and John and
Jan Doe,

Respondents.

ORDER GRANTING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

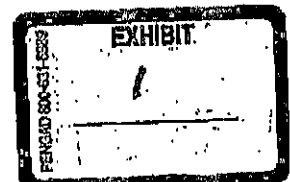
This matter came before the court for a hearing on Wednesday April 7, 2021 concerning Respondents' Motion for Summary Judgment. After a careful consideration of the pleadings, the Court's file, the Respondents' Motion, the Memorandum in Support of Summary Judgment with Exhibits, the Petitioner's Memorandum in Opposition to Summary Judgment with Exhibit, the arguments of counsel, the applicable law, I find and rule as follows.

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, III ("Petitioner") instituted a *pro se* action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long-time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court, certain claims of Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore. By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John

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Blinco, Jr. of the firm Blinco Griffin Law, P.C. appeared on behalf of Petitioner. Following a process of lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the Last Will and Testament of Trust of James M. Shoemaker, III dated June 24, 2018 (the "Will"), and the Restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the grounds of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once "the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation." Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew [(1)] his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks, 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent

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Pg 2 of 7 MELL

to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 So. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to found his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Ann. §62-7-601)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

"Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influence—"there [must be] additional evidence that such influence was actually utilized." Howard v. Nasser, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock, 266 S.C. at 277, 222 S.E.2d at 774).

"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallas, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at

333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Sinoak, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)).

III. Analysis

Petitioner relies exclusively on the Affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr. With regard to Affidavit of Thomas Hughes, M.D., the Court notes that the affidavit was not notarized at the time of filing with the Court. However, attorney John Blincow represented at the hearing that, as an officer of the court, he actually saw Dr. Hughes execute the affidavit. He then notarized the Affidavit of Thomas Hughes, M.D. after the hearing. In addition, Rule 5(d) of the South Carolina Rules of Civil Procedure specifically provides that except as otherwise provided in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence or argument was provided to explain why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Furthermore, pursuant to Rule 33(b) SCRCPP, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The Court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing, yet Dr. Hughes has never been listed as a witness. The affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

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Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker, but instead reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, supra. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that, based on a review of the records Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Exhibits B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate, or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom the decedent

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Pg 5 of 10

shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the State of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding a lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the wills and trusts of his parents. The record establishes that, decades ago, Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021, the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any

By *Geoffrey*

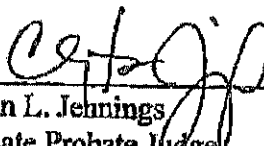
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obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

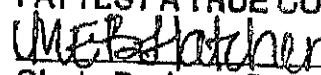
1. The Motion for Summary Judgment of Respondents is granted; and
2. Lesley Moore is hereby dismissed from this action with prejudice.

AND IT IS SO ORDERED.



Clayton L. Jennings
Associate Probate Judge

June 15, 2021
Greenville, SC

I ATTEST A TRUE COPY


Clerk, Probate Court
Greenville County, SC
Dated: 6/16/21

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
James Marshall Shoemaker, Jr.,)
Decedent)
James Marshall Shoemaker, III)
Petitioner)
vs.)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker, and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-23-02955

SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO
DISMISS APPEAL AND TO AFFIRM
SUMMARY JUDGMENT IN FAVOR
OF RESPONDENTS

Petitioner Marshall Shoemaker's dispute with his family began on June 27, 2019 when he sued his mother, his father's estate, his parent's longtime housekeeper, his two younger brothers and attorney Lesley R, Moore, Personal Representative of Mr. Shoemaker's estate. Perhaps the most telling aspect of petitioner's challenge to his parents' wishes was a statement made in open court at the very first hearing in this matter wherein petitioner stated in response to the following question from the court

Q. Alright. Have you had the opportunity to consult with an attorney?

Mr. Shoemaker: "about a hundred of them looking for them to take the case on contingency, cause I can't afford to hire one."

The reason Mr. Shoemaker could not find an attorney to take his case on a contingency basis after consulting with about a hundred of them is because he has no meritorious case and his challenges to his parents' wishes are spurious and wholly unsupported in both fact and law.

I. Appellant failed to comply with S.C. Code Ann. §62-1-308(a)

On December 15, 2021, the probate court issued its final Order confirming summary judgment in favor of respondents. The order was entered on December 15, 2021 and written notice was provided on December 16, 2021. Pursuant to S.C. Code Ann. §62-1-308(a), petitioner had until at latest, December 17, 2021 to file and serve his Notice of Appeal. The Notice of Appeal was not filed until January 10, 2022.

II. Appellant attempts to argue and frame an issue on appeal regarding an Order never appealed

In appellant's statement of issues on appeal, Issue 1 is stated to be "did the Lower Court err in refusing to vacate its Order while granting Appellant's Motion to Recuse made on the same grounds?" In order to address appellant's "issue", appellant's notice of appeal must be consulted. The order attached to the notice of appeal filed with the circuit court and served on opposing counsel is the "amended order granting summary judgment to respondents." What has never been appealed is Judge Jennings' separate order, also dated December 15, 2021 denying petitioner's motion to vacate the court's prior order granting summary judgment and granting petitioner's motion for recusal for any future matters. As such, this court cannot consider any arguments relative to issues of recusal, as petitioner has not appealed the probate's court Order regarding recusal.

In this regard, petitioner also asserts in his statement of issues on appeal the following: "Did the lower court err by applying the same legal standard to the deceased IRA account as opposed to a higher standard to contract?" Petitioner misunderstands the lawsuit he instituted in probate court. That lawsuit challenged his father's Will and Trust. Mr. Shoemaker's IRA passed outside of his probate estate and no suit has ever been instituted by petitioner relative to the IRA account. That horse long ago left the barn and is neither an issue in the present appeal nor has been an issue in litigation before the probate court.

III. The appeal should be dismissed on the merits and summary judgment affirmed

Petitioner goes to great lengths to allege that the probate court's granting of summary judgment in favor of respondents was somehow tainted because of the unsupported allegation that Judge Jennings had a conflict of interest and should never have heard the summary judgment motion, much less ruled on it. Petitioner's arguments fail for two reasons. First, "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004)." *Simpson v. Simpson*, 660 S.E.2d 274, 377 S.C. 519 (S.C. App. 2008) Clearly then, if there is no evidence of judicial prejudice a judge's decision to disqualify himself only on a going forward basis likewise will not be reversed on appeal. Further, the code of judicial conduct actually **required** Judge Jennings to decide the summary judgment motion assigned to him. The Code requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. When disqualification is not required, however, the Code states, "A judge **shall** hear and decide matters assigned to the judge...." Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR. "It is not sufficient for a party seeking disqualification to simply allege bias; rather, the

party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.* (citations omitted). "The fact a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his rulings." *Mallett v. Mallett*, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct.App.1996). *Mortgage Electronic Systems v. White*, 682 S.E.2d 498, 384 S.C. 606 (S.C. App. 2009)

The record in this matter is extensive regarding the rulings by Judge Jennings as well as Judge Horlbeck. Judge Jennings made extensive findings regarding the issue of recusal and to this day, petitioner has failed to come forth with any substantive evidence supporting the positions he advances.

IV. Summary judgment on the merits

As noted in the amended Order granting summary judgment filed with the Probate Court on December 15, 2021 (the order appealed), petitioner submitted an unnotarized affidavit of a Dr. named Thomas Hughes who had never seen the decedent and whose affidavit was submitted in violation of Rule 5(d) but more importantly, simply failed to address what level of incapacity the decedent allegedly suffered on the date of the execution of his Will and Trust. It is also noted in the Order that in contrast to the affidavit of Dr. Hughes, respondents submitted affidavits that clearly established Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by instructing his trusted estate planning attorney, in consultation with his long time accountant, to modify his estate planning documents.

In support of summary judgment respondents submitted affidavits of witnesses to Mr. Shoemaker's Will and his Trust; his personal physician; his pastor; his longtime estate planning attorney and his longtime CPA. Based on the foregoing and other evidence, the probate court

held there was no genuine issue of material fact in dispute regarding petitioner's claims and accordingly, respondents were granted summary judgment.

In this appeal, absolutely nothing has changed relative to the merits of the petition other than the change in petitioner's attorney. Petitioner has never come forth with evidence sufficient to create a genuine issue of material fact and merely seeks to continue to delay the disposition of his parents' estates in accordance with their wishes as outlined in their testamentary documents.

V. Conclusion.

Based on the foregoing, respondents respectfully submit that petitioner has submitted no evidence based upon either fact or law sufficient to reverse the granting of summary judgment by the probate court and as such, summary judgment should be affirmed and petitioner's appeal dismissed.

1

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

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September 6, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

James Marshall Shoemaker, III.....Appellant,
v.
Lesley R. Moore, Esq. as Personal Representative and Trustee, Edward Sloan Shoemaker and
Jonathan Evans Shoemaker.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

July 20, 2023



William R. McKibbon, III
Attorney for Appellant