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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. Brian M. Gibbons, Circuit Judge

Case No. 2022-CP-19-0114
Appellate Case No. 2023-000541

George William Rauton, III, Appellant,

vs.

Patsy R. Lightle, Respondent.

RECORD ON APPEAL

October 9, 2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CASE NO. 2022-CP-19-0114
	)	
George William Rauton, III,	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING
vs.	)	MOTION TO DISMISS
	)	
Patsy R. Lightle,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER COMES BEFORE THE COURT on motion of Defendant Patsy R. Lightle to dismiss this action pursuant to Rules 12(b)(3) and 12(b)(6). A hearing was held on January 30, 2023. Present were Plaintiff's counsel, D. Randolph Whitt, Esquire, Defendant, and Defendant's counsel, Adam T. Silvernail, Esquire. Based on the arguments presented by the parties, the court **GRANTS** the motion to dismiss in light of Plaintiff's failure to state facts sufficient to support a cause of action, as set forth below, and finds the remainder of Defendant's motion to be **MOOT**.

RULE 12(B)(6) STANDARD

A 12(b)(6) Motion may not be granted if the pleadings, viewed in the light most favorable to the Plaintiff, and the inferences drawn therefrom, show that the Plaintiff could prevail on any theory of the case. *Gray v. State Farm Auto Ins. Co.*, 491 S.E 2nd 272, 274-75 (Ct. App. 1995). "In deciding a motion to dismiss pursuant to Rule 12(b)(6), the trial court should consider only the allegations set forth on the face of the" complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

DISCUSSION

This action was commenced by the filing and service of a summons and complaint asserting a single cause of action, titled “Intentional Interference with Inheritance.”

Defendant was served and filed the instant motion in lieu of an answer. She seeks dismissal under Rule 12(b)(6) based on the fact that the South Carolina Supreme Court has to date declined to recognize Intentional Interference with Inheritance as a cause of action, but she further asserts that Plaintiff has failed to set forth facts sufficient to support the cause of action, even if it were recognized.

Specifically, Defendant argues that, although the Supreme Court has discussed the law on Intentional Interference with Inheritance in other jurisdictions, it has noted that the cause of action is not specifically recognized in South Carolina law. *See Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 542 S.E.2d 715 (2001). Defendant’s argument, in part, is that no facts could be plead to support a cause of action which does not exist in South Carolina, thereby justifying dismissal under Rule 12(b)(6).

Plaintiff counters, first, that the existence of this potential cause of action is a novel issue which should not be disposed of on a Rule 12(b)(6) motion, but instead allowed to proceed to a developed record for any appellate review at a later time. *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 226, 456 S.E.2d 907, 909 (1995) (“[A] novel issue . . . should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss.”).

Second, Plaintiff noted that, while the South Carolina Supreme Court has not yet recognized Intentional Interference with Inheritance, the Court appears likely to do so when presented with the proper case.

Plaintiff relies on the Federal District Court case of *Wellin v. Wellin*, 135 F. Supp.3d 502 (D.S.C. 2015) to support his assertion that his claim would be recognized by the South Carolina Supreme Court. Defendant agrees that Judge Norton's prediction is well-reasoned and that the South Carolina Supreme Court would likely recognize Intentional Interference with Inheritance.

Despite the likelihood of the Supreme Court's recognizing Intentional Interference, Defendant argues that the case is still ripe for dismissal because Plaintiff fails to plead the required elements identified by South Carolina and other Courts. The Supreme Court in *Louthian* noted:

[4] We have adopted the closely analogous tort of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int'l Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 179, see also *Allen v. Hall*, 328 Or. 276, 974 P.2d 199(1999) (intentional interference with inheritance closely analogous to intentional interference with economic relations). Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. See, e.g., *Nemeth v. Banhalmi*, 99 Ill. App. 3d 493, 55 Ill. Dec.14, 425 N.E. 2d 1187 (1981); *Morrill v. Morrill*, 712 A. 2d 1039(Me.1998); *Doughty v. Morris* 117 N.M. 284, 871 P. 2d 380(Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St. 3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis. 2D 426, 570 N.W. 2D 889(1997); see also Restatement (Second) of Torts § 774B (1979). *Louthian*, *supra* at n. 4.

Defendant argues that Plaintiff's allegation that he had an expectancy is made in such a conclusory manner that it is not a "properly pleaded factual allegation" which is deemed admitted for review under Rule 12. See *Hambrick v. GMAC Mortg. Corp.*, 634 S.E.2d 5, 7 (Ct.App. 2006). Defendant argues that this fails to meet the first element of Intentional Interference with Inheritance which both the *Louthian* and *Wellin* Courts identified. This Court agrees.

Defendant further argues that the *Wellin* Court also found that the “South Carolina Supreme Court would likely adopt [the] prerequisite” that a Plaintiff must have no remedy at probate in order to pursue a claim for intentional interference with inheritance. *Wellin* at 517.

Plaintiff makes the bald allegation that he has no remedy at probate, allegedly because Defendant “converted 100% of the funds in question to nonprobate assets,” but offers no explanation for this statement. *See* Complaint, ¶13. The Court agrees with Defendant that this allegation is insufficient to support his cause of action, even if it were recognized in South Carolina Courts. The only basis offered for this conclusory statement is that Defendant somehow converted assets into non-probate assets, and Plaintiff does not offer an explanation for why conversion of assets evades the Probate Court’s jurisdiction. Elsewhere in the Complaint, Plaintiff asserts that Defendant somehow retitled bank accounts and/or inappropriately deposited the proceeds of a sale of real estate into accounts which were non-probate. These matters are squarely within the Probate Court’s jurisdiction, as established in S.C. Code Ann. §62-1-302(a)(1):

SECTION 62-1-302. Subject matter jurisdiction; concurrent jurisdiction with family court.

(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

- (1) estates of decedents, including the contest of wills, construction of wills, **determination of property in which the estate of a decedent or a protected person has an interest**, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court. . . [emphasis supplied]

Plaintiff alleges Defendant acted improperly under a Power of Attorney for their deceased father, and the Probate Court also has jurisdiction to address any alleged loss(es) caused by an Agent under a Power of Attorney – either under the above-quoted statute or under the following statute:

SECTION 62-8-401. Jurisdiction.

The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article.

Plaintiff's allegations could have been brought more naturally in the form of one or more actions in the Probate Court to try title to any asset(s) allegedly retitled or misappropriated and/or to address any alleged breach(es) of fiduciary duty by Defendant.

Finally, Plaintiff is a co-Personal Representative of the Estate of George William Rauton, Jr., and he has authority in that capacity to try title to and/or recover any asset which may have been converted to non-probate property.

SECTION 62-3-709. Duty of personal representative; possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property. . . **He may maintain an action to recover possession of property or to determine the title thereto.** [emphasis supplied]

Plaintiff argues that his allegation that property has been converted to non-probate property would leave the Probate Court without jurisdiction to entertain the matter, but this Court finds that the above-quoted statutes demonstrate that Plaintiff could have brought one or more actions in the Probate Court to address the allegations made in this case.

CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff has failed to set forth facts sufficient to support his cause of action. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant's motion to dismiss pursuant to Rule 12(b)(6), *SCRCP*, is **GRANTED**, and this case is dismissed. Because of the result reached, the Court finds that Defendant's motion to dismiss pursuant to Rule 12(b)(3) or, alternatively, to transfer venue, is **MOOT**.

AND IT IS SO ORDERED.

Brian M. Gibbons, Presiding Judge

February , 2023



Edgefield Common Pleas

Case Caption: George William Rauton III VS Patsy Rauton Lightle

Case Number: 2022CP1900114

Type: Order/Dismissal

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2023-02-09 11:18:49 page 7 of 7

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Edgefield
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1900114

George William Rauton, III
PLAINTIFF(S)

Patsy Rauton Lightle
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter comes before the court by way of Plaintiff's motion to reconsider the court's order granting the Defendant's motion to dismiss. After further review and deliberation, the court respectfully denies the Plaintiff's motion to reconsider. No further hearing is necessary. this matter is dismissed

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/03/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Edgefield Common Pleas

Case Caption: George William Rauton III VS Patsy Rauton Lightle

Case Number: 2022CP1900114

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2023-03-03 12:10:58 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS
Case No.

George William Rauton, III
Plaintiff,

vs.

Patsy R. Lightle,
Defendant.

Summons

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon either of the Plaintiff's attorney, 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 complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

/s/D. Randolph Whitt

D. Randolph Whitt,
S.C. Bar No. 13068
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel
dwhitt2001@aol.com

April 21, 2022

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS
Case No.

George William Rauton, III
Plaintiff,

vs.

Patsy R. Lightle,
Defendant.

**Complaint
(Intentional Interference With Inheritance)
Jury Trial Demanded**

The Plaintiff alleges:

General Allegations

- 1) This action involves a cause of action based on acts and omissions, the most substantial part of which occurred in Edgefield County, South Carolina.
- 2) The Plaintiff is a citizen and resident of Edgefield County, South Carolina.
- 3) The Decedent that is the source of the inheritance that is the subject of this action was domiciled in Edgefield County at the time of his death, as found in Edgefield County Probate Court in Case No 2020-ES-19-0047.
- 4) The Decedent's surviving spouse resided in Edgefield County until she was removed by the Defendant to a rental property in controlled by Defendant in Lexington County and sometimes to Defendant's Lexington County residence.
- 5) The Decedent's surviving spouse still owns the marital home that she shared with the Decedent and which is located in Edgefield County.
- 6) The Defendant is currently a citizen and resident of Lexington County, South Carolina.

However, Defendant is co-personal representative of the above referenced Estate in Edgefield County, and was born and educated in Edgefield County and conducts business in Edgefield County. Further, Defendant has held powers of attorney for both the Decedent and the Decedent's spouse recorded in Edgefield County and has used and attempted to use those instruments in transactions involving real property in Saluda County.

- 7) This court has jurisdiction over the parties to this action and venue is appropriate in Edgefield County.

**For a First Cause of Action
(Intentional Interference With Inheritance)**

- 8) Plaintiff incorporates the allegations of the previous paragraphs as if repeated verbatim.
- 9) Plaintiff had an expectation of receiving liquid assets as part of the Decedent's estate.
- 10) Defendant's actions and omissions interfered with the realization of this expectancy through the following tortious conduct:
 - (a) Alienating both of Plaintiff's parents from him by isolating them and controlling the information they were provided
 - (b) Taking advantage of the Decedent' and Decedent's spouse declining physical and mental health, vulnerability, and advanced age to take total control of their financial affairs
 - (c) Altering or causing the alteration of the holders of bank accounts to insure that they passed outside of the probate process and in the manner the Defendant desired.
 - (d) The Defendant may also have altered or caused the alteration of life insurance policies related to the Decedent.
 - (e) Forcing the Plaintiff to buy real estate, that should have passed to him under the Decedent's will, by threatening a sale on the open market.
 - (f) Causing the proceeds of such sale to be transferred to accounts that prevented any scrutiny of how these funds were spent and preventing any part of them from becoming part of the

Decedent's Estate.

- 11) But for Defendant's interference, there is a reasonable certainty that the expectancy would have been realized.
- 12) Plaintiff has suffered damages as a direct and proximate result of Defendant's conduct.
- 13) As Defendant's actions converted 100% of the funds in question to nonprobate assets, no adequate remedy exists in the probate court.

THEREFORE, the Plaintiff requests that this court enquire into these matters and grant judgment awarding damages to the Plaintiff and such other and further relief as is proper.

/s/D. Randolph Whitt
D. Randolph Whitt,
S.C. Bar No. 13068
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel
dwhitt2001@aol.com

April 21, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CASE NO. 2022-CP-19-0114
	)	
George William Rauton, III,	)	
	)	
Plaintiff,	)	DEFENDANT'S MOTION TO DISMISS
	)	PURSUANT TO RULE 12(B)(3) AND (6)
vs.	)	OR, IN THE ALTERNATIVE, TO
	)	TRANSFER VENUE
Patsy R. Lightle,	)	
	)	
Defendant.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE THAT, ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, Defendant Patsy R. Lightle ("Defendant") will move before the Presiding Judge of the Edgefield County Court of Common Pleas for an Order dismissing this action in its entirety pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*, or, in the event the Court declines to dismiss any portion of this action, for an Order transferring venue to the Lexington County Court of Common Pleas. The grounds of this motion are as follows.

MOTION TO DISMISS

1. Plaintiff fails to state facts sufficient to constitute a cause of action, and this matter must be dismissed pursuant to Rule 12(b)(6), *SCRCP*. Specifically, Plaintiff asserts a sole cause of action, which is titled "Intentional Interference with Inheritance." No such cause of action has been recognized by the Courts of this State, and so neither the facts plead by Plaintiff nor any set of facts could support this cause of action. *See Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 542 S.E.2d 715 (2001). Further, Plaintiff has failed to state facts sufficient to constitute this cause of action under the caselaw of jurisdictions which *do* recognize it. *Id.* at n. 4.

2. Venue is improper in Edgefield County, because Defendant is not a resident of Edgefield County; does not have substantial connections to Edgefield County; and the alleged acts and/or omissions which are pled as the basis of Plaintiff's complaint are not alleged to have occurred in Edgefield County. Defendant is and has been for decades a citizen and resident of Lexington County, and based on S.C. Code Ann. §15-7-30(c), this matter should be heard, if at all, in the Lexington County Court of Common Pleas. Therefore, pursuant to Rule 12(b)(3), this action must be dismissed for improper venue.

ALTERNATIVE MOTION TO TRANSFER VENUE

3. In the event the Court does not dismiss this action in its entirety, Defendant moves that the case be transferred to the Lexington County Court of Common Pleas. As set out in the Affidavit of Defendant, filed herewith, she has not been a resident of Edgefield County in decades and has no substantial connection with Edgefield county other than her status as a co-Personal Representative of her father's Estate. As is evidenced by Plaintiff's bringing this separate action outside of the Probate Court, the matters alleged in his Complaint do not relate to the Estate or assets of the Estate. Therefore, pursuant to S.C. Code Ann. §15-7-30(c), this action should have been brought, if at all, in the Lexington County Court of Common Pleas, as that is where the sole Defendant resides.

For the reasons set forth above, Defendant moves that this action be dismissed in its entirety for Plaintiff's failure to state facts sufficient to constitute a cause of action and/or for improperly bringing this action in Edgefield County when proper venue is elsewhere. If the Court declines to dismiss any portion of this action, Defendant respectfully submits that it must be transferred to Lexington County Court of Common Pleas, as venue does not properly lie in Edgefield County. This motion is supported by applicable law and Rules, especially

Rule 12 of the *South Carolina Rules of Civil Procedure*, as well as the Affidavit of Defendant filed herewith any additional affidavit(s) and/or memoranda presented at or before the hearing on this matter.

Respectfully submitted,

s/Adam T. Silvernail

Adam T. Silvernail (Bar No. 80219)
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Counsel for Defendant

Columbia, South Carolina
May 27, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CASE NO. 2022-CP-19-0114
	)	
George William Rauton, III,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF PATSY R. LIGHTLE
	)	
vs.	)	
	)	
Patsy R. Lightle,	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY APPEARED BEFORE ME Patsy R. Lightle, who being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and competent to testify.
2. I give this affidavit of my own personal knowledge.
3. I currently reside at 129 John Preston Drive, Lexington, South Carolina 29072, and I have lived at that address since 2016.
4. Between 1995 and 2016, I lived at 343 Carola Lane, Lexington, South Carolina 29072.
5. Both of these homes are in Lexington County, and I have exclusively resided in Lexington County for more than forty (40) years.
6. I have not lived in or conducted meaningful business in Edgefield County in decades, with the exception of matters related to my late father's Estate.
7. I, along with my brother who is the Plaintiff herein, am co-Personal Representative of the Estate of our late father, George William Rauton, Jr., which is being probated in the Edgefield County Probate Court.

8. While our father's Estate owns certain real estate in Edgefield County, it is not the real estate my brother accuses me of somehow "forcing him to buy." That property was sold to my brother at well under market value by my mother (who is not named as a party to this action) prior to my father's death.

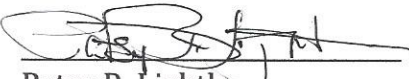
9. I have never held a power of attorney for my father, as alleged by my brother, so no such document could be on file in Edgefield as alleged by my brother.

10. While I am Attorney-in-Fact for my mother under her Power of Attorney, I have not utilized that document to conduct any transaction related to the assets with which my brother falsely alleges I have interfered.

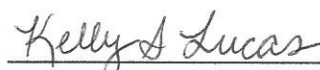
11. My brother has not, to my knowledge, instituted any court proceeding or other action to challenge any beneficiary designation on life insurance or any ownership of any bank account(s) prior to filing this case.

12. Further, my brother willingly purchased the land mentioned in his complaint at substantially below market value, and that transaction took place between my brother and our mother, as Attorney-in-Fact for our father; I was not a party to that or any other transaction involving Edgefield County real estate.

FURTHER DEPONENT SAYETH NOT.


 Patsy R. Lightle

SWORN TO BEFORE ME this 26
 Day of May, 2022.


 Notary Public for South Carolina
 My Commission Expires: 4-29-2031

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS
Case No.

George William Rauton, III
Plaintiff,

vs.

Patsy R. Lightle,
Defendant.

Memorandum in Opposition to Motion to Dismiss

Defendants' 12(b)(6) Motion is without merit and the relief sought should be denied. A 12(b)(6) Motion may not be granted if the Pleadings, viewed in the light most favorable to the Plaintiff, and the inferences drawn therefrom, show that the Plaintiff could prevail on any theory of the case. *Gray v. State Farm Auto Ins. Co.*, 491 S.E. 2nd 272, 274-75 (S.C. Ct. App. 1995). "In deciding a motion to dismiss pursuant to Rule 12(b)(6), the trial court should consider only the allegations set forth on the face of the" complaint. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)

"All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *Hambrick v. GMAC Mortg. Corp.*, 634 S.E.2d 5, 7 (S.C. Ct. App. 2006).

Factual Allegations Deemed Admitted

1. This action involves a cause of action based on acts and omissions, the most substantial part of which occurred in Edgefield County, South Carolina.
2. The Plaintiff is a citizen and resident of Edgefield County, South Carolina.
3. The Decedent that is the source of the inheritance that is the subject of this action was domiciled in Edgefield County at the time of his death, as found in Edgefield County Probate Court in Case No 2020-ES-19-0047.
4. The Decedent's surviving spouse resided in Edgefield County until she was removed by the

Defendant to Defendant's Lexington County residence.

5. The Decedent's surviving spouse still owns the marital home that she shared with the Decedent and which is located in Edgefield County.
6. The Defendant is currently a citizen and resident of Lexington County, South Carolina. However, Defendant is co-personal representative of the above referenced Estate in Edgefield County, and was born and educated in Edgefield County. Further, Defendant has held powers of attorney for both the Decedent and the Decedent's spouse recorded in Edgefield County and has used and attempted to use those instruments in transactions involving real property in Edgefield County.
7. This court has jurisdiction over the parties to this action and venue is appropriate in Edgefield County.
8. Plaintiff had an expectation of receiving liquid assets as part of the decedent's estate.
9. Defendant's actions and omissions interfered with the realization of this expectancy through the following tortious conduct:
 - a) Alienating both of Plaintiff's from him by isolating them and controlling the information they were provided
 - b) Taking advantage of the parent's declining health to take total control of their financial affairs
 - c) Altering or causing the alteration of the beneficiaries of life insurance policies
 - d) Altering or causing the alteration of the holders of bank accounts to insure that they passed outside of the probate process and in the manner the defendant desired.
 - e) Forcing the Plaintiff to buy real estate, that should have passed to him under the decedent's will, by threatening a sale on the open market.
 - f) Causing the proceeds of such sale to be transferred to accounts that prevented any scrutiny of how these funds were spent and preventing any part of them from becoming part of the

Decedent's Estate.

10. But for Defendant's interference, there is a reasonable certainty that the expectancy would have been realized.
11. Plaintiff has suffered damages as a direct and proximate result of defendant's conduct.
12. As defendant's actions converted 100% of the funds in question to nonprobate assets, no adequate remedy exists in the probate court.

A Cause of Action for Intentional Interference With Inheritance

South Carolina has not yet explicitly recognized a cause of action for Intentional Interference With Inheritance. However, this name for the cause of action comes from our Supreme Court's opinion in *Douglass ex rel. Louthian v. Boyce*, 344 S.C.5, 542 S.E.2d 715(2001) While noting that it was unnecessary to decide whether to adopt this cause action in the Douglass case, the court noted in Footnote 4:

[4] We have adopted the closely analogous tort of intentional interference with prospective contractual relations. *Crandall Corp. v. Navistar Int'l Transp. Corp.* 302 S.C. 265, 395 S.E. 2d 179, *see also Allen v. Hall*, 328 Or. 276,974 P.2d 199(1999) (intentional interference with inheritance closely analogous to intentional interference with economic relations). Most jurisdictions adopting the tort of intentional interference with inheritance have required the plaintiff to prove the following elements: (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. *See, e.g., Nemeth v. Banhalmi*, 99 Ill. App. 3d 493, 55 Ill. Dec.14, 425 N.E. 2d 1187 (1981); *Morrill v. Morrill*, 712 A. 2d 1039(Me.1998); *Doughty v. Morris* 117 N.M. 284, 871 P. 2d 380(Ct.App.1994); *Firestone v. Galbreath*, 67 Ohio St. 3d 87, 616 N.E.2d 202 (1993); *Wickert v. Burggraf*, 214 Wis. 2D 426, 570 N.W. 2D 889(1997); *see also* Restatement (Second) of Torts § 774B (1979).

Thus, although the Supreme Court did not address the adoption of our cause of action, it did go to the trouble of providing a name for it, and listed the essential elements of the cause of action.

The U.S. District Court in South Carolina had occasion to examine South Carolina Law on this issue in *Wellin v. Wellin*, 135 F. Supp. 3D 502 (D. S.C. 2015). Judge David Norton concluded that the South Carolina case law “strongly suggests” that the South Carolina Supreme Court would adopt the tort of intentional interference with inheritance.

Judge Norton also noted that adopting the tort is the majority rule in looking at decisions from other states and that it is recognized in the Restatement (Second) of Torts and other treatises. The adoption of the tort was also supported by the recent general pronouncements of the South Carolina Supreme Court in cases such as *Fabian v. Lindsay*, 410 S.C. 475, 765 S.E. 2d 132 (2014) also are cited by Judge Norton. Finally Judge Norton noted that situations where there is no adequate remedy in the probate court also weigh in favor of adoption.

Novel Issues

It is axiomatic that deciding a case involving novel issues on a motion to dismiss is disfavored. The South Carolina Supreme Court has specifically held that “a novel issue . . . should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss.” *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 226, 456 S.E.2d 907, 909 (1995).

Change of Venue

Defendant's Motion to dismiss under Rule 12(b)(3) should be denied, because the face of the complaint establishes a basis for venue in Edgefield County. Likewise, no factual basis exists for a change of venue at this point, however Defendant can obviously revisit this question when a fuller factual record has been developed. Also Defendant's similar request to change venue in the related probate estate was denied.

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Attorney for Plaintiff George William Rauton, III

January 27, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CASE NO. 2022-CP-19-0114
	)	
George William Rauton, III,	)	
	)	
Plaintiff,	)	DEFENDANT’S REPLY TO PLAINTIFF’S
	)	MEMORANDUM IN OPPOSITION
vs.	)	TO MOTION TO DISMISS
	)	
Patsy R. Lightle,	)	
	)	
Defendant.	)	
	)	

Defendant Patsy R. Lightle (“Defendant”) replies to the Plaintiff’s Memorandum in Opposition to Motion to Dismiss as follows:

MOTION TO DISMISS

Plaintiff primarily restates the allegations of his Complaint, without further explanation of how said allegations support his single cause of action for “Intentional Interference with Inheritance,” but relies on the Federal District Court case of *Wellin v. Wellin*, 135 F. Supp.3d 502 (D.S.C. 2015) to support his assertion that his claim would be recognized by the South Carolina Supreme Court. While Defendant acknowledges the finding in Judge Norton’s well-researched and well-reasoned decision, Defendant would show that the *Wellin* case also found that the “South Carolina Supreme Court would likely adopt [the] prerequisite” that a Plaintiff must have no remedy at probate in order to pursue a claim for intentional interference with inheritance. *Id.* at 517.

While Plaintiff makes the conclusory statement that he has no remedy at probate, allegedly because Defendant “converted 100% of the funds in question to nonprobate assets,” he offers no explanation and no support for this statement. *See* Complaint, ¶13. Reviewing the granular allegations in his complaint, Plaintiff’s, though meritless, could have

been addressed in the Probate Court. Plaintiff asserts that Defendant somehow retitled bank accounts and/or inappropriately deposited the proceeds of a sale of real estate into accounts which were nonprobate. These matters, if any of them had actually occurred, are squarely within the Probate Court's jurisdiction.

SECTION 62-1-302. Subject matter jurisdiction; concurrent jurisdiction with family court.

(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, **determination of property in which the estate of a decedent or a protected person has an interest**, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court. . . [emphasis supplied]

Plaintiff, who is a co-Personal Representative of his father's Estate, could absolutely have brought an action in Probate Court to try title to any account(s) he believed had been inappropriately converted.

Further, to the extent Plaintiff alleges Defendant somehow breached any duty under or acted improperly under a Power of Attorney for their deceased father (which she has never held), the Probate Court also has jurisdiction to address any alleged loss(es) caused by an Agent under a Power of Attorney – either under the above-quoted statute or under the following statute:

SECTION 62-8-401. Jurisdiction.

The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article.

Plaintiff's allegations are meritless, but could have been brought more naturally in the form of one or more actions in the Probate Court to try title to any asset(s) allegedly retitled or misappropriated and/or to address any alleged breach(es) of fiduciary duty by Defendant. Plaintiff is a co-Personal Representative of the Estate of George William Rauton, Jr., and he has a duty in that stead to collect and protect Estate assets.

SECTION 62-3-709. Duty of personal representative; possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. **He may maintain an action to recover possession of property or to determine the title thereto.** [emphasis supplied]

Instead of properly addressing his meritless claims in the Probate Court, which is specifically equipped and empowered to handle matters related to estate assets, Plaintiff has instead come to this Court in an improper effort to litigate this matter without the involvement of the Probate Court or other interested persons in the Estate.

IMPROPER VENUE

Plaintiff's has offered no argument or evidence to rebut Plaintiff's affidavit confirming that she is a longtime resident of Lexington County with no substantial ties to Edgefield County. Plaintiff submits that this action should be dismissed for improper venue or, alternatively, transferred to Lexington County as the proper venue.

Respectfully submitted,

s/Adam T. Silvernail

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Counsel for Defendant

Columbia, South Carolina
January 30, 2023

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS
Case No. 2022-CP-19-0114

George William Rauton, III
Plaintiff,

vs.

Patsy R. Lightle,
Defendant.

Motion for Reconsideration

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, George William Rauton, III will move before the Hon. Brian M. Gibbons Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP) for an Order reconsidering the Order filed February 9, 2023 on the issues set forth herein, because the court overlooked or misapprehended the points of law raised herein

Dismissal without Granting Leave to Amend

The February 9 Order concludes that: "Plaintiff's allegation that he had an expectancy is made in such a conclusory manner that it is not a "properly pleaded factual allegation". However it was error to dismiss this action without allowing to Plaintiff an opportunity to amend his complaint to elaborate on his expectancy. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as

the trial court."). "When a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a)[, SCRCP,] before filing the final order of dismissal." *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019) (quoting Rule 12(b)(6), SCRCP); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating when a complaint is dismissed pursuant to Rule 12(b)(6), leave to amend should be freely given). A trial court does not have discretion to "dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a)." *Skydive*, 426 S.C. at 189, 826 S.E.2d at 592. Therefore, it was erroneous to "dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted." *Id.* "Rule 15(a) 'strongly favors amendments and the court is encouraged to freely grant leave to amend.'" *Id.* at 180, 826 S.E.2d at 587 (quoting *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017)).

Jurisdiction of the Probate Court

The February 9 Order is also premised on the conclusion that the Plaintiff's "bald assertion" that no adequate remedy exists in the probate court is incorrect. The Defendant's memorandum, which was filed at 7:41 a.m. before the 10:00 a.m. hearing, cites several general provisions of the S.C. Probate Code. However the Plaintiff argued that the bank accounts referenced in Paragraph 10(d) of the complaint could not be transformed into probate assets. Article 6 of the S.C. Probate Code is titled Nonprobate Transfers. Section 62-6-101 contains the following definition: (1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements. Section 202 of Article 6 provides for payment to the surviving party on a survivorship account. Article 6 of the

probate code also contains Section 62-6-204 which provides:

SECTION 62-6-204. Transfers not testamentary.

A transfer resulting from the application of Section 62-6-202 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Articles 1 through 4 (estate administration) unless there is clear and convincing evidence that the deceased party did not intend for the account to be joint with right of survivorship.

Likewise, the insurance policies which are payable to a named beneficiary that are addressed in Paragraph 10(c) of the complaint are not probate assets. The official South Carolina form for the Inventory and Appraisement, which is designated as Form 350ES includes life insurance in Schedule D. Part 1 includes policies payable to the estate. Part 2, which is optional, includes life insurance payable to a beneficiary, and the Recapitulation at the end of this form also makes it clear that both survivorship bank accounts and insurance policies payable to a beneficiary other than the estate are nonprobate assets.

Moreover, the S.C. Probate Code Section 623-706(b) requires a personal representative to : “prepare a list of the property owned by the decedent at the time of his death that is not probate property...” In this probate court case, counsel for Ms. Lightle, filed such a list identifying 4 bank accounts and 3 life insurance policies.

Finally, Defendant's citation of the Probate Court's authority related to powers of attorney is inapposite to the question of the adequacy of remedy. The sole import of the power of attorney is to show Defendant's connection with Edgefield county for venue purposes, No subsection of Paragraph 10 of the Complaint is based on misuse of a power of attorney.

Nothing in the probate code allows the probate court to obtain jurisdiction over a financial institution or insurance company and order them to perform in a manner inconsistent with the account agreement or contract of insurance.

Therefore, plaintiff request that this Court grant reconsideration of the February 9 Order and enter an order denying the motion to dismiss.

All of which is respectfully submitted.

/s/D. Randolph Whitt

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Attorney for George William Rauton III

February 20, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 30 2023

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. Brian M. Gibbons, Circuit Judge

Case No. 2022-CP-19-0114

Appellate Case No. _____

George William Rauton, III, Appellant

vs.

Patsy R. Lightle, Respondent

NOTICE OF APPEAL

George William Rauton, III appeals the order of the Honorable Brian M. Gibbons. dated February 9, 2023 and filed February 9, 2023. A motion under Rule 59 SCRPC was timely filed and served on Monday, February 20, 2023. Appellants received written notice of entry of the order denying reconsideration on March 3, 2023.

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March 30, 2023

Attorney for Appellant

Other counsel of Record:

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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 2014-CP-32-02795

Federal National Mortgage Association
("Fannie Mae"), a corporation organized
and existing under the laws of the United
States of America, and its assignee
Nationstar Mortgage LLC d/b/a Mr. Cooper
("Mr. Cooper"),

Respondent,

v.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Of whom D. Randolph Whitt is

Appellant.

RECEIVED

Mar 30 2023

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent listed above via emailing a copy of it on March 30, 2023, addressed to their attorney of record as follows:

Adam T. Silvernail adam@silvernaillawfirm.com



D. Randolph Whitt
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March 30, 2023

Attorney for Appellant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	2022-CP-19-0114
	)	
	)	
	)	
	)	
GEORGE WILLIAM RAUTON, III,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
PATSY R. LIGHTLE,	)	
DEFENDANT.	)	
_____	)	

January 30, 2023
Edgefield, South Carolina

B E F O R E:

THE HONORABLE BRIAN GIBBONS, JUDGE.

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

D. RANDOLPH WHITT, ESQ.
Attorney for the Plaintiff

ADAM SILVERNAIL, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(No witnesses were called.)

E X H I B I T S

(No exhibits were submitted.)

P R O C E E D I N G S

THE COURT: You are Mr. Randolph?

MR. WHITT: Randy Whitt, Your Honor, on behalf of the Plaintiff. And I do have a copy of the memorandum, a paper copy of the memorandum that I filed --

THE COURT: That's a beautiful thing.

MR. WHITT: -- U.S. District Court case that I cited.

THE COURT: Thank you. I apologize, Counsel. My law clerk is trying to get me on -- he's on the Wifi. For whatever reason, my laptop isn't getting on it. I normally read or look over the public index during arguments and then look at them so I can make a decision pretty quickly.

Have you got your response?

MR. SILVERNAIL: I'm Adam Silvernail, here on behalf of the Defendant, Patsy Lightle, who's here with me. I've got a couple things --

THE COURT: All right. You can hand those up. Perfect.

All right. So it is the -- tell me what we're here for. I appreciate you handing up all this stuff.

Yes, sir, go ahead.

MR. SILVERNAIL: Your Honor, we're here on our motion to dismiss the Complaint. If it suits Your Honor, I will go ahead and kind of launch into a little bit of background.

THE COURT: Absolutely.

1 MR. SILVERNAIL: This action was filed by George
2 William Rauton against Patsy Lightle. They are siblings.
3 This is a Complaint. And I've handed up a copy of that for
4 Your Honor's reference.

5 THE COURT: Are these mine to keep?

6 MR. SILVERNAIL: Yes, sir.

7 There is one cause of action alleged in the Complaint,
8 which is for intentional interference with inheritance. We
9 filed a motion under 12(b)(3) and 12(b)(6). If I may
10 approach the 12(b)(6) first, which is that South Carolina
11 has not yet recognized the tort of intentional interference
12 with inheritance.

13 I believe in the filing, the Defendant has acknowledged
14 that, but asserted that there is the Welling (ph) case,
15 which I think that ended up, Your Honor, from the federal
16 court in 2015 wherein, Judge Norton, I believe made the
17 finding that the South Carolina courts would likely
18 recognize the tort of intentional interference with
19 inheritance.

20 And a little bit of background on that, Your Honor, the
21 most recent case, I believe is the Louthian V. Boyce case,
22 which is one of the few where the appellate courts in South
23 Carolina in the last 20 or 25 years had acknowledged the
24 existence in other states of this tort and set out some of
25 the elements of what that tort requires proof of in other

1 states. And for one reason or another, each case has
2 declined to either recognize or not recognize explicitly
3 this tort in South Carolina.

4 We are here, number one, because this tort can't be
5 brought -- this cause of action can't be brought in South
6 Carolina. We have not recognized it. We believe that's a
7 basis for dismissal. The Defendant has submitted that the
8 Court should not on a Rule 12(b)(6) motion make a decision
9 on what may be a novel issue of law in South Carolina. But
10 based on their own position and what's set out in the
11 Welling case, this is a matter related allegedly to assets
12 belonging to the parties' father, who is now deceased. The
13 allegations are pretty general in nature, but seem to amount
14 to moving accounts or beneficiary designations around and
15 the proceeds of some land sales being put into nonprobate
16 assets.

17 Under the Welling case, part of what Judge Norton
18 recognized is that in most states that have recognized this
19 cause of action, they have required a Plaintiff to
20 demonstrate that they don't have an opportunity for recourse
21 in the probate court. In determining it was likely the
22 South Carolina Supreme Court would recognize this cause of
23 action, His Honor also found that it was likely they would
24 require that you not have an alternative avenue for
25 addressing the underlying issues.

1 And so the reply that I filed this morning and handed
2 up a copy of, Your Honor, sets out that -- in the
3 Plaintiff's Complaint in, I believe, Paragraph 13, they say
4 that there is no opportunity for recourse at probate because
5 assets have been converted to nonprobate assets.

6 Our position on that, Your Honor -- and I've cited the
7 statutes from the probate code that apply. Number one, in
8 62-1-302, the probate code jurisdiction statute, Matters
9 related to estates of decisions and there's a little bit of
10 a laundry list of subcategories there, but they include
11 issues related to the ownership of property that may belong
12 to an estate. Those are within the exclusive jurisdiction
13 of the probate court.

14 In effect, if the complaint here is the conversion of
15 probate assets to nonprobate assets, there is the
16 opportunity for recourse in the probate court by bringing,
17 basically, an action to try title. Their allegations, and
18 they're general enough that it's a little hard to get a
19 handle on them, but it seems clear that it is about
20 converting accounts or retitling accounts or adding
21 beneficiaries to accounts --

22 THE COURT: Conversion?

23 MR. SILVERNAIL: Yes.

24 THE COURT: Okay.

25 MR. SILVERNAIL: And, you know, that is a matter that's

1 squarely within the probate court's jurisdiction if the
2 question is whether they should have been assets within the
3 estate. And I would note, Your Honor, and it's stated in
4 the Complaint, my client and her brother are the co-personal
5 representatives of their father's estate in the probate
6 court here.

7 I also cited the code statute that stands from the
8 proposition one of the responsibilities, one of the duties
9 of personal representatives is, in fact, to collect and
10 distribute assets of an estate, take possession of them. I
11 think that, again, would urge that if there were any merit
12 to these allegations, they certainly could have and really
13 should have been brought in the course of the probate
14 administration, which is incomplete. They were within the
15 jurisdiction of the probate court. They could all have been
16 addressed there.

17 It's stated in the Complaint and it's not directly tied
18 to any of the substantive allegations, but it is stated in
19 there that my client was allegedly the attorney-in-fact for
20 her father under a Durable General Power of Attorney. And
21 because we're here on a 12(b)(6) motion, we have to assume
22 that that is true.

23 I, also, cited the code section from Uniform Power of
24 Attorney Act, which is part of the probate code, that states
25 that the probate court and circuit court have concurrent

1 jurisdiction over matters relating to the validity and use
2 of powers of attorney.

3 So, again, if any of these allegations were intended
4 more in the nature of a breach of fiduciary duty allegation
5 against the former Attorney-in-Fact, that, again, is well
6 within the jurisdiction of the probate court and
7 administration of the estate of the former principle under
8 such Power of Attorney.

9 And so, for all these reasons, we submit that this case
10 certainly does not demonstrate all the elements that even
11 Judge Norton found would have been necessary to support a
12 cause of action for intentional interference if the South
13 Carolina courts were going to recognize that at all.

14 So that being the case, I don't think we have a novel
15 issue of law here. Number one, it's been to the appellate
16 courts in multiple cases. They have not directly decided
17 it, but we don't have allegations here that would rise to
18 what the appellate courts have considered likely to be the
19 elements of this cause of action if we were to recognize it
20 in South Carolina at all. So that is our first basis for
21 why this should be dismissed under Rule 12.

22 Now, second to that is Edgefield County is not the
23 proper venue. And I've got to make a note at the beginning
24 of this because it gets slightly confusing. Were this a
25 probate matter related to the Estate of G.W. Rauton, Jr.,

1 Edgefield County Probate Court would certainly be proper
2 venue because it has jurisdiction over the administration of
3 that estate. This case, however, is couched as a tort
4 action, brother versus sister. Nobody is named as a
5 fiduciary. The estate is not a party to it. The probate
6 court is not a part of it as is set out in the Complaint.

7 My client is and has been for decades a resident of
8 Lexington County. And she has no connection, there is no
9 allegation of any event which constitutes the allegedly
10 subject matter of this case that took place in Edgefield
11 County. In fact, one of the most specifically set out items
12 in the Complaint is a real estate transaction, which the
13 Complaint states was Saluda County.

14 My client under the applicable statute, if she's to be
15 sued at all should be sued in her county of residence and
16 that is indisputably Lexington County. The Complaint
17 acknowledges that she is a resident of Lexington County. So
18 we would submit under Rule 12(b)(3) that that is grounds for
19 a dismissal.

20 And that leads me to the final portion of our motion,
21 which is if the Court should determine that the case is not
22 dismissed, then we would alternatively move that the Court
23 transfer venue to Lexington County to cure the venue issue.
24 Again, I believe that as it's brought on the substantive
25 matter on the claims, dismissal is warranted. Again, under

1 Rule 12(b)(3), the Court has the opportunity to dismiss
2 this. And if it needs to be done again, it should be
3 brought in the proper venue.

4 If for any reason, the Court declines to do any of
5 that, it is unquestionable and on the matter of transferring
6 venue, my client has executed an affidavit that's on file, I
7 think you have a copy of it, it gives some level of detail
8 about the length of time she's resided in Lexington County,
9 the lack of connection she currently has to Edgefield County
10 and the fact that she was not, in fact, ever an
11 Attorney-in-Fact under a Power of Attorney for her father in
12 Edgefield County. So there is no demonstrable tie to
13 Edgefield here. If this case goes forward at all, we would
14 submit it should be transferred to Lexington for the
15 remainder of defense.

16 And unless the Court has any questions, I'll sit down
17 and let opposing counsel go forth.

18 THE COURT: Thank you, sir. I don't have any
19 questions.

20 Yes, sir, Mr. Whitt.

21 MR. WHITT: Your Honor, first things first. The issue
22 is not -- and this goes to the adequacy of a remedy in the
23 probate court. The issue is not converting probate assets
24 to nonprobate, it's converting assets that were owned by the
25 parties' father to assets that would pass outside of

1 probate.

2 To give you a specific example, putting funds in an
3 account that is payable on death, a survivorship account.
4 There's no universe in which that can become a probate
5 asset. Probate court has limited jurisdiction. They can't
6 go back and get that bank account. That bank account is a
7 contractual relationship and with it being a payable on
8 death account, that money is not a probate asset. It will
9 never see the light of probate court. So there's no
10 adequate remedy relating to the money in a bank account that
11 was payable on death between Mr. Rauton's father and Ms.
12 Lightle. That money passes to her outside of probate,
13 outside of any power for the probate court to do anything
14 with.

15 Likewise, life insurance policies where the beneficiary
16 is named as not the estate, but an individual person, such
17 as Ms. Lightle. Once again, nothing probate court can do in
18 its limited jurisdiction.

19 THE COURT: I got that, but that begs the question, why
20 not just bring a conversion cause of action, a tort that's
21 recognized?

22 MR. WHITT: Your Honor, because there's got to be a
23 reason why that transfer is wrongful. We don't allege that
24 Ms. Lightle slipped in in the dark of night and put this
25 money in a bag and took it away. We allege that she

1 influenced improperly her father to engage in these actions,
2 make these changes as part of a tortious behavior, that is
3 what makes it wrongful. Just taking something is not always
4 a conversion. There's got to be some reason why you have
5 taken something you don't have the right to. So I think
6 just a conversion cause of action would fall flat on --
7 where is the wrong? Where is the sort of basis that
8 improper action --

9 THE COURT: Okay, I get it.

10 MR. WHITT: And to go further with that, as to the
11 recognition of this cause of action, every new cause of
12 action has a first case where it is recognized having never
13 been recognized before. In this case, we certainly have
14 some pretty strong hints from our Supreme Court in Douglas
15 ex. rel Louthian case, which has the footnote that's both
16 cited in my memorandum and cited in Judge Norton's opinion
17 that quotes the entire footnote, where they said we're not
18 going to recognize this because even if it was recognized,
19 it doesn't apply in this case.

20 It was a case against some lawyers. And the Court
21 decided the case on these lawyers didn't have any a duty,
22 so, therefore, even if this cause of action exist, it
23 doesn't lie against them because they, as attorneys, didn't
24 have a legal duty that was violated.

25 And they say we've recognized -- they go to the trouble

1 to say we've recognized the closely analogous tort of
2 interference with perspective contractual relations. And
3 then they give us a name for what this cause of action that
4 they haven't recognized yet, they take the trouble to give
5 it a name and they take further trouble to lay out the
6 evidence of it. And it's that there's an existence of an
7 expectancy, intentional interference with the expectancy,
8 reasonable certainty that the expectancy would be realized
9 and damages.

10 And going to that trouble is a pretty strong hint, I
11 would argue, that we're not recognizing this cause of action
12 today, but we're certainly aware of it. We're giving you
13 some guidance for the future and it's certainly not
14 something that would -- if the Court was hostile to this
15 tort, it seems a lot of trouble to go to to tell people how
16 to plead and what to call it if it's something that you're
17 hostile to and you're never going to recognize.

18 In Judge Norton's opinion, he goes through looking at
19 the South Carolina cases and looking at the fact that he
20 quotes this footnote in its entirety in his opinion. He,
21 also, talks about recognition of a tort of intentional
22 interference being the majority rule of the states that have
23 come down one way or the other. He also cites the treatises
24 that have recognized the cause of action, statement of torts
25 and other treatises. He, also, talks about the fact that

1 it's consistent with general pronouncements of our Supreme
2 Court on other issues. And he cites a Fabian vs. Lindsay
3 where there's -- the Court recognized -- stating some
4 general principles, which he believes, also, supports the
5 conclusion that the South Carolina Supreme Court would
6 recognize this.

7 And then it's his fifth thing, not really as an element
8 of the cause of action, but part of his reasoning for why it
9 needs to be is that frequently there's no remedy in probate
10 for these issues. And the tort is necessary because there's
11 things that evade the limited jurisdiction of the probate
12 court so that there ought to be another vehicle for the
13 state to express its public policy that this conduct is okay
14 or it's not okay. And that this tort in a number of cases
15 is the only way to get to the point where that public policy
16 can be expressed.

17 So it's a cause of action that I believe we may finally
18 have the case where it is necessary to make the decision on
19 recognizing this cause of action. And in the event the
20 Supreme Court is presented with this issue that they would
21 follow through on the hints they gave in their footnote to
22 recognize the cause of action.

23 Your Honor, also, at 12(b)(6), we're looking at the
24 factual allegations of the client being deemed admitted.
25 I've listed those in my memorandum. I think if you go

1 through those, there's ample basis because this is a 12(b)
2 motion for concluding that the elements of the cause of
3 action have been met and that the 12(b)(6) should be denied.
4 The fact that those are disputed or there's differences in
5 opinion, really, under 12(b)(6) is not relevant to this
6 decision.

7 The question is if what we've pled is true and,
8 ultimately, proven, would that make our facts sufficient to
9 meet the elements that the Court has set out? And things
10 like alienating Plaintiff's parents from him by isolating
11 and controlling the information they were provided, altering
12 and causing the alteration of life insurance policies,
13 altering and causing the alteration of holder's bank
14 accounts making sure they passed outside the probate, those
15 are all things that I believe establish -- since they're
16 deemed to be true, a sufficient factual basis for denying
17 the motion to dismiss on 12(b)(6).

18 And, again, it also ties back into the issue of
19 adequacy remedy because, as we discussed previously, those
20 two things are outside the probate court's jurisdiction.
21 And they'll either be addressed in this court or not at all.

22 And, finally, Your Honor, on the venue issue,
23 certainly, there's no basis for dismissing the case on the
24 venue issue. It's, also, a situation where until there's
25 been discovery, looking at how many of these acts and

1 omissions occurred in Edgefield County where the Plaintiff's
2 -- where the parties' father and mother both resided at the
3 time that these transfers were going on, we believe, until
4 we have discovery, we don't know when the changes were made
5 on the bank accounts, when the life insurance beneficiaries
6 were changed, but that in the event those acts and omissions
7 occurred in Edgefield County, regardless of the residence of
8 the Defendant, that, plus the probate court action still
9 being pending, plus the parties being co-personal
10 representatives in Edgefield County are an ample basis for
11 denying the motion to change venue now and pending discovery
12 shedding some light on whether the acts and omissions --
13 which, again, it's one of the allegations of the complaint
14 -- are sufficient to keep it here.

15 So that's what I have, Your Honor. I'd be happy to
16 answer any questions. I'm glad we had some paper today in
17 this modern world.

18 THE COURT: Thank you, Mr. Whitt.

19 Mr. Silvernail, coming back to you. It's your motion.
20 Mr. Whitt brings up a good point toward the end. I
21 understand arguments about whether or not this cause of
22 action exist or not, but this is styled as a 12(b)(6)
23 motion. And, you know, I'm constrained to look at the four
24 corners of the pleadings and determine if, you know, it's
25 well-pled Complaint and does it deserve to survive another

1 day as the lawsuit moves on. Tell me why I should go ahead
2 and nix it at this point in time.

3 MR. SILVERNAIL: Your Honor, I want to zoom in on the
4 issue of remedies at probate. And I want to be clear. Mr.
5 Whitt mentioned that that was separate from being an
6 element. He's correct that the way our courts, the footnote
7 that sort of set out numbered elements did not include that.
8 But in Judge Norton's order finding that he would likely
9 recognize it, he uses the word with regard to available
10 remedies at probate -- availability, excuse me, of remedies
11 at probate. Without this restriction, the tort would be --

12 THE COURT: What page are you on?

13 MR. SILVERNAIL: These pages are not numbered, but I'll
14 tell you --

15 THE COURT: If you'll look to your left, they are --

16 MR. SILVERNAIL: 518, I'm sorry.

17 THE COURT: 518.

18 MR. SILVERNAIL: My eyes are not great. So the very
19 last paragraph of that page or the very last paragraph of
20 the physical page --

21 THE COURT: It starts with "moreover"?

22 MR. SILVERNAIL: Yes, sir.

23 THE COURT: I'm following you. Go ahead.

24 MR. SILVERNAIL: So that paragraph goes into his
25 reasoning for finding that we would not allow a case on

1 intentional interference with inheritance to go forward
2 without a finding that there wasn't an adequate remedy at
3 probate.

4 I struggle with how to present this, but I just have to
5 fundamentally disagree. The matter of nonprobate accounts
6 that might previously or properly have been probate assets
7 is absolutely something that can be and is regularly dealt
8 with in probate court. The section under 62-1-302(d), the
9 bold print statute that we filed this morning states clearly
10 that determining property of an estate is within the probate
11 court's jurisdiction.

12 If the question is was this a nonprobate account that
13 passed via contract to a third party or was it an account
14 that should pass through the estate to the beneficiaries of
15 the estate, the probate court absolutely has jurisdiction to
16 make that determination and regularly does. If I'm wrong
17 about that, so are about 20 probate judges that I've done
18 that in front of over the years. That is fully their job,
19 to figure out what the assets of the estate are. Who the
20 heirs are? What the valid controlling documents are? That
21 is (unintelligible) contracts in addition to wills and
22 trusts.

23 You know, that question normally comes up. Okay, this
24 was a POD, a payable on death account. Well, if momma
25 signed that when momma was ten years into deep dementia,

1 it's not a payable on death case. That amendment to the
2 contract, that portion of the contract is invalid. The
3 probate court absolutely does, can and is very well equipped
4 to determine those matters.

5 It gets a little hard to argue about some of this. I
6 would take some issue with whether this Complaint is well
7 pled. It has some very general allegations including one
8 very important one, which is simply the bald statement that
9 the Plaintiff had an expectancy that he would inherit liquid
10 assets. There is no detail given for why he would expect
11 that, what that expectancy is based on.

12 Again, Your Honor, I agree that under 12(b)(6) or in
13 this hearing, we're confined to assuming the truth of what's
14 alleged, but I also believe that you have to make your
15 allegations detailed enough that they could support it.
16 That statement offers no life in this case, none whatsoever.
17 I don't know that we're entitled to a bald, blanket
18 statement of the law, a conclusory statement being presumed
19 true when there's no basis offered for it.

20 And it brings me back around. Your Honor hit the nail
21 on the head about the word conversion, which appears in
22 their Complaint. Conversion of assets to nonprobate assets.
23 As far as I can tell from the broad allegations made here,
24 that's what everything here amounts to. And that absolutely
25 could be processed and dealt with in the probate court. So

1 we may recognize this tort. I'm afraid one day I'll be
2 involved in a case that does, but I don't think it should be
3 this one where we don't have the basic necessary elements in
4 front of the court. Sending this case down the road through
5 discovery stands mostly to produce a lot of expense to the
6 parties and a lot of wasted time for the Court. Ultimately,
7 with the Supreme Court saying maybe again, we're not going
8 to recognize this because in this case, we wouldn't pass
9 muster. And that seems to be what they've done the last
10 couple of times.

11 We're acknowledging it's out there. We'll probably get
12 to it one day, but this is not the case because we're going
13 to need one that brings us all the elements to say okay, if
14 there ever were such a cause of action, here it is. And
15 this is not that case, Your Honor. So we submit it should
16 be dismissed.

17 And, again, on the transfer of venue, the statute is
18 very clear that we sue where the Defendant lives. And they
19 have not made any details allegations that would support
20 coming here instead.

21 THE COURT: Thank you, sir.

22 Mr. Whitt, anything else briefly?

23 MR. WHITT: Just very briefly. The issue is not lack
24 of capacity. We don't assert the parties' father was
25 incompetent at the time any of this happened. We assert

1 that as a result of tortious conduct, he was ill disposed
2 towards my client.

3 And, finally, the issue of the expectancy. Expectancy
4 is his state of mind. So I'm not sure how you could ever do
5 anything much more than say my state of mind was thus. You
6 know, it's like any of those things where that's an issue,
7 the only person that acknowledge this Court on his state of
8 mind is --

9 THE COURT: The person who has the state of mind, I get
10 it. All right.

11 Gentlemen, thank you very much. Y'all have given me
12 every bit of information I think I'm going to need. I'm
13 going to look through everything and, of course, look at the
14 public index. Let me think about it for a while and I'll
15 issue a decision just as soon as I've made one.

16 MR. WHITT: Thank you, Your Honor.

17 MR. SILVERNAIL: Thank you, Your Honor.

18 THE COURT: Thank you very much. That concludes this
19 hearing. I'll take this matter under advisement.

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

July 9, 2023

Penny M. Johnson
Penny M. Johnson
Court Reporter III

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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 no other material.

October 9, 2023

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