

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-28-00680  
Appellate Case No. 2022-001789

RECEIVED

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SC Court of Appeals

Randy Bowers, ..... Appellant,

v.

The Estate of Claude E. Campbell by and through Sonja Campbell Parker and  
Barry Campbell, Thomas Clayter Campbell, The Estate of Colbert Harold  
Campbell by and through Francis Campbell, Vivian C. Gardner and the Estate of  
Charles E. Campbell by and through Maxine Watts Campbell, individually and as  
representatives, ..... Respondents.

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**INITIAL BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... i

**STATEMENT OF CASE** ..... 1

**STATEMENT OF ISSUES ON APPEAL**..... 2

**STANDARD OF REVIEW**.....2

**STATEMENT OF FACTS**..... 3

**LEGAL ARGUMENT** ..... 6

**I. THE TRIAL COURT ERRED IN RULING THE CLAIMS WERE TIME BARRED**..... 6

**II. THE TRIAL COURT ERRONEOUSLY RULED APPELLANT FAILED TO PRESENT A GENUINE ISSUE OF ANY MATERIAL FACT REGARDING HIS CLAIMS AGAINST THE RESPONDENTS** ..... 9

**CONCLUSION**..... 14

**TABLE OF AUTHORITIES**

**Cases**

*Ama Mgmt. Corp. v. Strasburger*,  
309 S.C. 213, 420 S.E.2d 868 (1992) ..... 11

*Arant v. Kressler*,  
327 S.C. 225, 489 S.E.2d 206 (1997) ..... 8

*Bayle v. S.C. DOT*,  
344 S.C. 115, 542 S.E.2d 736 (2001) ..... 7

*Brown v. Finger*,  
240 S.C. 102, 124 S.E.2d 781 (1962) ..... 7

*Cricket Cove Ventures, L.L.C. v. Gilland*,  
390 S.C. 312, 701 S.E.2d 39 (2010) ..... 13

*Elam v. S.C. DOT*,  
361 S.C. 9, 602 S.E.2d 772 (2004) ..... 3

*Gastineau v. Murphy*,  
331 S.C. 565, 503 S.E.2d 712 (1998) ..... 3

*Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 437, 23 S.E.2d  
372, 376 (1942) ..... 11

*Holly Woods Ass'n of Residence Owners v. Hiller*,  
392 S.C. 172, 708 S.E.2d 787 (2011) ..... 7

*Johnston v. Bowen*,  
313 S.C. 61, 437 S.E.2d 45 (1993) ..... 8

*Logan v. Cherokee Landscaping & Grading Co.*,  
389 S.C. 611, 698 S.E.2d 879 (2010) ..... 7

*Macaulay v. Wachovia Bank of S.C., N.A.*,  
351 S.C. 287, 569 S.E.2d 371 (2002) ..... 14

*McLaughlin v. Williams*,  
379 S.C. 451, 665 S.E.2d 667 (2008) ..... 11

*McMillan v. Oconee Mem'l Hosp., Inc.*,  
367 S.C. 559, 626 S.E.2d 884 (2006) ..... 13

*Moore v. Benson*,  
390 S.C. 153, 700 S.E.2d 273 (2010) ..... 7

*Schnellmann v. Roettger*,  
373 S.C. 379, 645 S.E.2d 239 (2007) ..... 10

<i>Straight v. Goss</i> , 383 S.C. 180, 678 S.E.2d 443 (2009) .....	14
<i>Strange v. S.C. Dep't of Highways &amp; Pub. Transp.</i> , 314 S.C. 427, 445 S.E.2d 439 (1994) .....	3
<i>Turner v. Milliman</i> , 392 S.C. 116, 708 S.E.2d 766 (2011) .....	11
<i>Vaught v. Waites</i> , 300 S.C. 201, 387 S.E.2d 91 (1989) .....	13
<i>Walbeck v. I'On Co.</i> , 426 S.C. 494, 827 S.E.2d 348 (2018) .....	7
<i>Welch v. Epstein</i> , 342 S.C. 279, 536 S.E.2d 408 (2000) .....	3
<i>West v. Gladney</i> , 341 S.C. 127 (2000) .....	12
<i>Wilson v. Jones</i> , 281 S.C. 230, 314 S.E.2d 341 (1984) .....	4
<i>Young v. S.C. Dep't of Corr.</i> , 333 S.C. 714, 511 S.E.2d 413 (1999) .....	7
<b>Statutes</b>	
S.C. Code Ann. § 15-3-530 .....	7
S.C. Code Ann. § 15-3-530 (2005) .....	7
S.C. Code Ann. § 21-3-30 .....	4
U.S. Const. amend. XIV .....	4

## STATEMENT OF THE CASE

This appeal arises out of a directed verdict granted by the trial court in favor of the Respondents after the Appellant's case in chief. Appellant filed his Summons and Complaint with the Court of Common Pleas for the 28<sup>th</sup> Judicial Circuit in Kershaw County, South Carolina, on June 28, 2019. (Complaint). Respondents filed a motion to dismiss on July 26, 2019. The court entered a Form 4 Order denying the motion on September 25, 2019. Thereafter, Appellant filed an Amended Summons and Complaint on October 21, 2019. (Amended Summons and Complaint). Respondents filed their Answer on November 14, 2019. (Answer). That answer was later amended on March 20, 2020 by Respondents. (Amended Answer). Appellant then moved on July 21, 2020 for an order permitting the DNA transmittal and testing of Willie C. Campbell (Motion for DNA Test), which was granted by the trial court on the same day. (Order Granting DNA Test). Respondents then filed their first motion for summary judgment on the grounds that Appellant's claims were time barred and not within the jurisdiction of the court on September 3, 2020. Appellant filed a motion to amend his Complaint on October 7, 2020. (Motion to Amend). A hearing on both the motion for summary judgment and motion to amend was had on October 12, 2020. The court entered an order denying Respondents' motion for summary judgment and granting Appellant's motion to amend on October 14, 2020. Appellant then filed his Second Amended Complaint on November 10, 2020. (Second Amended Complaint). The Appellant's Second Amended Complaint sought civil redress in the form of compensatory damages, punitive damages, and a constructive trust based upon fraud, negligent misrepresentation, and negligence. Respondents filed their Answer to Appellant's Second Amended Complaint on December 2, 2020. Respondents then filed their second motion for summary judgment on the grounds that the claims of Appellant lacked sufficient evidence on April 30, 2021. Appellants filed their

memorandum in opposition and supporting documents on May 21, 2021. (Memorandum in Opposition with Supporting Documents). Almost a year after ruling in Respondents' favor at the hearing on Respondents' second motion for summary judgment, the trial court entered an order denying this second motion for summary judgment on April 22, 2022. (Order Denying Second Motion for Summary Judgment).

On November 15, 2022, the matter came up for trial and a jury was impaneled. The Honorable Debra R. McCaslin presided. At the conclusion of Appellant's case, Respondents moved for a directed verdict on the ground that Appellant had failed to present any evidence supporting his claims and that his claims were time barred. Over Appellant's strenuous objection, the Court granted Respondents' Motion for a Directed Verdict.

The Court entered judgment by way of a Form 4 Judgment dated November 21, 2022. (First Form Order). Appellant moved to have the Court reconsider the order and grant a new trial on November 22, 2022. (Motion to Reconsider). The Court, again by way of a Form 4 Judgment, denied the motion on November 29, 2022. (Second Form Order) On December 21, 2022, Appellant duly filed his Notice of Appeal from the Judgment in a Civil Case and served a copy on Respondents' counsel.

### **STATEMENT OF ISSUES ON APPEAL**

- I. Whether the trial court erroneously held that the Appellant's claims were time barred?**
- II. Whether the Trial Court erroneously found that Appellant failed to present the genuine existence of a triable issue of fact regarding his claims?**

### **STANDARD OF REVIEW**

When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable

inferences in the light most favorable to the nonmoving party. *Elam v. S.C. DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004). The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (2000). In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Id.* at 300, 536 S.E.2d at 419.

#### **STATEMENT OF FACTS**

In 1957, T.E. Campbell ("Mr. Campbell") fathered Randy Bowers ("Randy" or "Appellant") with Tina Bowers ("Randy's Mother"). (Tr. p. 61 ¶¶ 7-19). Both were married to other individuals at the time. Mr. Campbell had five adult children with his wife at the time, Charles, Thomas Clayter, Vivian, Claude, and Colbert ("Mr. Campbell's Legitimate Children"). (Tr. p. 62 ¶¶ 8-11; p. 68 ¶¶ 18-20; pp. 69-70). From an early age Randy suspected he was the biological son of Mr. Campbell. (Tr. p. 61 ¶¶ 8-16; p. 62 ¶¶ 3-14). Many of his interactions with Mr. Campbell indicated a familial relationship, including gifts, meals, trips and special treatment. (Tr. p. 61 ¶¶ 22-24; p. 62 ¶¶ 20-25; p. 101 ¶¶ 9-17). Randy recalls at least one instance where Mr. Campbell referred to him as his son to some of his Legitimate Children. (Tr. p. 91 ¶¶ 2-7).

As might have been expected for the time, from an early age, Mr. Campbell's Legitimate Children had a strained relationship with Randy. (Tr. p. 63 ¶¶ 14-17; pp. 78-79; p. 86 ¶¶ 10-18). Sometimes the Legitimate Children would show acts of kindness to him and other times

they were cruel. (Tr. p. 78 ¶¶ 14-24; p. 82 ¶¶ 1-4 p. 85 ¶¶ 3-22; p. 86 ¶¶ 10-18; pp. 87-88; p. 90). At no time did Mr. Campbell's Legitimate Children publicly acknowledge Randy's likely parentage, even going so far as denying the existence of any relationship between Mr. Campbell and Randy's mother in court proceedings. (Tr. p. 85 ¶¶ 7-19). Not only did Mr. Campbell's Legitimate Children publicly deny any familial relationship with Randy, but would privately blame him for the ultimate divorce between Mr. Campbell and their mother. (Tr. p. 62 ¶¶ 6-14). Considering the alleged abuse between their parents, such frustration might be understandable. (Tr. pp. 68-70).

As Randy grew older, he continued to spend time with Mr. Campbell. On at least one occasion, Mr. Campbell shared his desire for Randy to be buried next to him. (Tr. p. 101 ¶¶ 18-25).

On June 12, 1982, Mr. Campbell was murdered in his home. (Tr. pp. 61 ¶ 25 – p. 62 ¶¶ 1-14; p. 118 ¶¶ 2-10).

While administering the estate of Mr. Campbell, rather than honestly confront the reality of their father's infidelity and their biological sibling, Mr. Campbell's Legitimate Children continued to publicly deny any relationship with Randy and made sworn statements denying the same. (Tr. p. 80 ¶¶ 2-13; p. 96). Similarly, they avoided any discussions with Randy concerning the estate of his biological father. (Tr. p. 79 ¶¶ 15-21; p. 80 ¶¶ 2-13; p. 81 ¶¶ 8-13).

In June of 1982, the Supreme Court of South Carolina had yet to rule that the limitation in S.C. Code Ann. § 21-3-30 allowing illegitimate children to inherit only from their mothers' estates was violative of the Equal Protection Clause of the U.S. Const. amend. XIV. *See Wilson v. Jones*, 281 S.C. 230, 232, 314 S.E.2d 341, 342 (1984). While that decision would have applied retroactively as to allow Randy to inherit, that inheritance would have been contingent upon an

evidentiary showing by Randy, which at the time would not have included blood samples and certainly not a DNA test, and Randy believed would not have included supporting testimony of Mr. Campbell's Legitimate Children. (Tr. p. 102 ¶¶ 8-20). The countless public statements and treatment by his siblings reasonably left him with the belief that such a showing was impossible. (Tr. p. 86 ¶¶ 7-18).

After many years of continued mistreatment from his siblings and their families, both publicly and privately, one of the very last conversations between Randy and his brother Charles in or around December of 2017 was the acknowledgment that Randy was, in fact, known by his siblings to be their brother. (Tr. pp. 92-93; pp. 95-97). Not only did Charles make this statement to Randy, but his publicly published obituary did the same. (Tr. pp. 92-93; p. 103). It was only then that Randy understood the actions of Mr. Campbell's Legitimate Children in publicly disowning him as their sibling. It was only then that he could have realized that, under oath, his brothers and sister, in 1982, would have been obligated to testify to the same. (Tr. p. 100 ¶¶ 19-25; p. 101 ¶¶ 1-8).

Finally, after the filing of this action, Randy was able to secure DNA from a brother of Mr. Campbell, establishing that he had a 99.9999% probability of being the son of Mr. Campbell. (Tr. pp. 99-100). The acts of Mr. Campbell's Legitimate Children and their family whereby they worked together to publicly assert that Randy had no relation to them not only in public settings, but in court proceedings and filings, all the while using the inheritance to collect profit and rent that was to a degree more rightly Randy's, more than gives rise to the claims asserted at the trial court and are in no way time barred.

## ARGUMENT

Distinct from a claim against the estate of Mr. Campbell, Appellant amply presented evidence that (a) the collective efforts of his siblings and their families to (b) repeatedly and fraudulently represent that they would always believe and assert that Appellant was not their brother (c) directly led to Appellant's detrimental reliance. The Appellant was intentionally and fraudulently omitted from the filings as to the Estate of Mr. Campbell as a child of the Decedent. The Respondents had full knowledge of and/or reasonable cause to believe that the Appellant was a son of the Decedent due to their knowledge of the Decedent's social interactions and relationships, and despite that knowledge, represented to Appellant that they would not acknowledge Appellant as a son of the decedent, all so as to protect their financial interests in the estate of the Decedent. These actions, amply supported by evidence at trial, all give rise to direct claims by the Appellant not against his father's estate, but rather, against the Respondents for fraud, negligent misrepresentation, negligence, civil conspiracy and for the institution of a constructive trust. Thus, the trial court's erroneous granting of a directed verdict should be reversed.

### **I. THE TRIAL COURT ERRED IN RULING THE CLAIMS WERE TIME BARRED.**

The trial court not only applied the wrong standard of discovery for purposes of the statute of limitations, but also applied the wrong analysis of the facts with relation to the standard. Under the circumstances of the facts before the trial court a person of common knowledge and experience would not have been on notice of the fraudulent and conspiratorial acts of the Respondents until less than three years prior to this action being instituted. Therefore, the trial court's order granting a directed verdict should be reversed.

South Carolina law holds that claims for fraud and negligent misrepresentation are subject to the three-year statute of limitations period provided in S.C. Code Ann. § 15-3-530. *See Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (2010) (holding an action for fraud was governed by the three-year statute of limitations period); *Walbeck v. I'On Co.*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (2018), petition for cert. filed (S.C. June 21, 2019) (noting the three-year statute of limitations applies to negligent misrepresentation claims under S.C. Code Ann. § 15-3-530(5) (2005)). "The three-year statute of limitations 'begins to run when the underlying cause of action reasonably ought to have been discovered.'" *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (2011) (quoting *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (2004)). Thus, the three-year clock starts ticking on the "date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Bayle v. S.C. DOT*, 344 S.C. 115, 123, 542 S.E.2d 736, 740 (2001). This determination is objective, rather than subjective. *Id.* As such, the question is not whether the particular plaintiff in this case actually knew she had a claim. Instead, we approach this inquiry by deciding "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (1999).

Further, the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and if there is a conflict upon the question, it becomes an issue for the jury to decide. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962). As stated in *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (2010), if there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause

of action, the question is one for the jury.”); *Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (“When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide.”); *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) (“Whether a claimant knew or should have known that they had a cause of action is question for the jury.”).

In ruling the Appellant’s claims were time-barred, the trial court held that the Appellant knew all of the facts concerning the alleged fraud and misrepresentations in 1982 when his father was murdered. Such an understanding could not be further from the case. The Appellant has alleged and presented evidence that, while the collective efforts of his siblings and their families to repeatedly and fraudulently represent that their belief that Appellant was not their brother began earlier than the death of his father, it was precisely at the time of his father’s death that these false representations began to have an effect. The trial court relied almost entirely on the testimony that Appellant presented that he firmly believed he was the child of Mr. Campbell as early as his childhood. This reliance is entirely misplaced. Again, in 1982, Appellant was faced with the belief that his biological father just passed, a statute that precluded him from raising any right to an inheritance, a burden of proof to any claim regardless of the statute that would be reasonably considered insurmountable without the supporting testimony of the Respondents. It was this understanding, the inability to procure their public acknowledgement of his familial relationship, that was relied upon and ultimately harmed him. Thus, the correct question before the court should have not been, when did Appellant believe he was an heir, but rather, whether the circumstances of the case (the then enforceable probate code, the relationship between Appellant and the Respondents, and the public and private statements of Respondents) would put a person of common knowledge and experience on notice that some claim against Respondents

for these fraudulent acts might exist. It was precisely this analysis that leads to the consideration of the public statement in the obituary by one of the Respondents that would provide the most likely date to tie a person of common knowledge and experience to be on notice that the Respondents had conspired to mislead the Appellant concerning their actual belief as to his claim to an inheritance. Thus, the trial court's grant of a directed verdict should be reversed.

## **II. THE TRIAL COURT ERRONEOUSLY RULED APPELLANT FAILED TO PRESENT A GENUINE ISSUE OF ANY MATERIAL FACT REGARDING HIS CLAIMS AGAINST THE RESPONDENTS**

The facts presented at the trial court presented more than ample evidence to support the Appellant's claims for fraud, negligent misrepresentation, negligence, and civil conspiracy. Similarly, the facts presented provided ample evidence to support a finding of a constructive trust. The trial court erroneously ruled that such evidence was insufficient and such ruling should be reversed by this Court.

### **A. Appellant Presented Ample Evidence to Support His Action for Fraud**

In directing the verdict for the Respondents, the trial court erred in misplaced the alleged fraud being presented by Appellant and supported by the evidence. The Appellant properly presented ample evidence that Mr. Campbell's Legitimate Children and their relatives represented to Randy that they, in fact, knew or strongly believed that Randy was not the child of Mr. Campbell or that they would be willing to publicly state the same. This fraud directly harmed Appellant as was properly presented at trial. Thus, this Court should overturn the directed verdict erroneously granted by the trial court.

The fraud of Mr. Campbell's Legitimate Children and their relatives was presented by ample evidence at trial.

To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its

truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

*Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) (citing *M.B. Kahn Constr. Co. v. S.C. Nat'l Bank*, 275 S.C. 381, 271 S.E.2d 414 (1980)). All of these elements were met in the Appellant's case in chief. First, Mr. Campbell's Legitimate Children and their relatives made several significant false public statements before Appellant, namely that he was not only not their sibling, but that they firmly knew such to be the case. Contrary to the ruling of the trial court, the Appellant did not reply upon the misrepresentation that his was not Mr. Campbell's son. He testified repeatedly and consistently to being under that belief. Rather, it was the fraudulent representations of the Respondents regarding their firmly held belief that led the Appellant to reasonably believe any action regarding the inheritance from his father was futile.

Second, they knowingly made these representations with the intent that Appellant not act in any way towards the inheritance upon his belief that he was, in fact, their sibling. Appellant testified that he relied upon such statements in refraining to take actions that would have resulted in the Respondents' fraud being disclosed and the inheritance being shared with him. Regardless, and perhaps because of, any discussions with attorneys in 1982, it would have been reasonable to rely upon such statements in understanding the futility of asserting any claim to the inheritance. Thus, all of the elements for fraud were presented at trial through ample evidence.

#### **B. Appellant Presented Ample Evidence to Support His Action for Negligent Misrepresentation and Negligence**

Similarly, the trial court erred in granting a directed verdict to the Respondents as to Appellant's action for negligent misrepresentation. To establish liability for negligent misrepresentation, the plaintiff must show by a preponderance of the evidence: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making

the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011) (citing *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010)). Under South Carolina law, the duty to disclose may be reduced to three distinct classes:

First, where it arises from a pre-existing definite fiduciary relation between the parties; second, where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied. The third class includes those instances where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary, and necessarily calls for perfect good faith and full disclosure, without regard to any particular intention of the parties. Such, for instance, as a contract of insurance.

*Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 437, 23 S.E.2d 372, 376 (1942) (citing Pom. Eq. Jur., Vol. 2, Sec. 902; Pom. Eq. Rem., Vol. 2, Sec. 784). “There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence.” *Ama Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (1992). “[W]hile issues of reliance are ordinarily resolved by the finder of fact, ‘there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.’” *McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (2008) (quoting *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 800 (1992)). “Thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact.” *Id.* at 458, 665 S.E.2d at 671. A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes

the positions and relations of the parties. *West v. Gladney*, 341 S.C. 127, 134 (2000). All of the elements of negligent misrepresentation were present in the evidence before the trial court.

First, not only did several of the Respondents have a duty to be truthful with previous courts, but also the Respondents had a known familial relationship with the Appellant. The Respondents knew of not only their own pecuniary interest in continuing to cover-up the reality of their knowledge of Appellant's rights to the inheritance, but of the Respondents' belief that he had a right, but lacked the necessary evidence.

Second, as previously discussed regarding Appellant's claim for fraud, the evidence more than supported a finding that the Respondents knew of the Appellant's reliance with, at the very least, a reckless disregard for Appellant's ability to act on his rights to the inheritance. Thus, the trial court erred in granting a directed verdict to the Respondents.

Finally, the Respondents wrongly asserted and the trial court erroneously conflated the statements that were being relied upon as the basis for his claims. The trial court relied upon the testimony of Appellant that he believed from an early age that he was the son of Mr. Campbell. This fact was not the fact upon which Appellant relied. Rather, the Appellant, operating at a time where establishing paternity would have not only been prohibited during the pendency of the probate estate under the laws of South Carolina, but even if permitted later, would prove extremely remote based upon the very public and very consistent statements made by the Respondents that they knew or firmly believed he was not their sibling. It was these statements and representations that Appellant relied upon to his detriment and, supported by ample evidence, provided Appellant with the right to assert such an action. Moreover, the evidence at trial showed Appellants diligence in discussing the matter with his siblings and seeking such public acknowledgment. Thus, the trial court's grant of the directed verdict should be reversed.

### **C. Appellant Presented Ample Evidence to Support His Action For Civil Conspiracy**

The actions evidenced at trial by the Respondents more than support a claim for civil conspiracy. “A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff.” *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). “Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage.” *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (1989). “The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design.” *Cricket Cove Ventures, L.L.C. v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (2010). In addition to the previously discussed facts concerning the action of Respondents to work together to prevent the Appellant from seeking redress concerning the inheritance, Appellant put forth expert testimony supporting the special damages he suffered as a result of this conspiracy. This evidence provided ample support for a claim against the Respondents for civil conspiracy.

### **D. Appellant Presented Ample Evidence to Support a Finding Constructive Trust was Presented at Trial**

Finally, Appellant presented ample evidence to support a finding that the Respondents held the inheritance in constructive trust. The fraud of the Respondents as presented to the trial court with specific relation to the inheritance from Mr. Campbell, provides the exact facts South Carolina law holds provides for the establishment of a constructive trust. “A constructive trust results when circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make

restitution.” *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (2002) (internal quotation marks omitted).

In general, a constructive trust may be imposed when a party obtains a benefit which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.

*Straight v. Goss*, 383 S.C. 180, 210, 678 S.E.2d 443, 459 (2009) (internal quotation marks omitted). South Carolina law directly applies to the facts as presented by the evidence. Counsel for Appellant has been unable to locate any decisions in South Carolina supporting the ruling of the trial court that somehow a party can use fraud for a prolonged period of time to avoid the application of a constructive trust. Thus, the order granting a directed verdict should be reversed.

#### CONCLUSION

Based on the foregoing, the Appellant respectfully requests that the Order granted the Respondents be reversed and the case remanded for a new trial.

February 20, 2024

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The Estate of Claude E. Campbell by and through Sonja Cambell Parker and Barry Campbell, Thomas Clayter Campbell, the Estate of Colbert Harold Campbell by and through Francis Campbell, Vivian C. Gardner, and the Estate of Charles E. Campbell by and through Maxine Watts Campbell, indiviudally and as representatives , ..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the Appellant’s Initial Brief and Designation of Matter on the Respondent by sending a copy of it via email, on February 20, 2024, addressed to its attorneys of record as follows:

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Dated: February 20, 2024