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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2009-CP-04-4335

RECEIVED
SEP 27 2012
S.C. Supreme Court

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett Respondent,

v.

Brigitte Quick Petitioner.

Appellate Case No. 2012-213025 ----- Opinion No. 5003

APPENDIX

Stephen R.H. Lewis
Covington, Patrick, Hagins, Stern & Lewis, P.A.
211 Pettigru Street, P.O. Box 2343
Greenville, SC 29602
(864) 242-9000
Attorney for Petitioner

Other Counsel of Record:

J. Michael Turner, Sr.
Turner & Burney, P.C.
P.O. Box 668
Laurens, SC 29360
(864) 984-6565
Attorney for Respondent

Carey B. Murphy
P.O. Box 809
Anderson, SC 29622
(864) 224-1569
Attorney for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 09-CP-04-4335

Brigitté Quick Respondent,

vs.

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

RECORD ON APPEAL

J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for the Appellant

Stephen Lewis, Esquire
Covington Patrick Hagins Stern & Lewis
Post Office Box 2343
Greenville, SC 29602
(864) 242-9000
Attorney for the Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-04-4335

Earl Phillips as Personal Representative of the Estate of Bobby
Gene Barnett v. Brigitte Quick

PLAINTIFF(S)

DEFENDANT(S)

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
- ☐ **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:

Dated at Anderson, South Carolina, this 9th day of July, 2010

The Probate Court's ruling is hereby AFFIRMED.

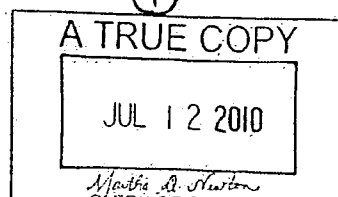
[Signature]
PRESIDING JUDGE

This judgment was entered on the 12th day of July, 2010, and a copy mailed first class this 12th day of July, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Brigitte Quick, pro se
ATTORNEY(S) FOR PLAINTIFF

Earl Phillips, pro se
ATTORNEY(S) FOR DEFENDANT

Martha A. Newton
CLERK OF COURT



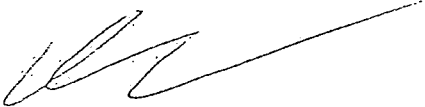
STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ANDERSON)

IN THE MATTER OF:)
)
ESTATE OF BOBBY GENE BARNETT) ORDER
) 03-ES-04-174
)

The Personal Representative timely filed a Motion for Reconsideration as concerns this Court's approval of a UGTMA claim filed by Bridget B. Quick as set out in Order, dated July 13, 2009.

After once again carefully considering all of the evidence presented and the arguments of counsel, this Court determines that the claim stands and the above Order shall remain in effect.

SO ORDERED.


DONALD B. HOCKER
SPECIAL PROBATE JUDGE FOR
ANDERSON COUNTY

Laurens, S.C.

Date: 10-14-09

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
IN THE MATTER OF)
BOBBY GENE BARNETT)

IN THE PROBATE COURT
C.A. NO: 2003-ES-04-00174

ORDER

PROCEDURAL HISTORY

THIS MATTER came before me on Petitioner Bridget B. Quick's Petition for Claim Under Uniform Gift to Minor's Act filed on November 5, 2008.

Mrs. Quick originally filed two Statements of Creditor's Claims on December 8, 2003, alleging monies due to her under the S.C. Uniform Gift to Minor's Act ("UGTMA"). Subsequently, she filed a Motion for Payment of \$41,646.27 Under the Uniform Gift to Minor's Act. Mrs. Quick alleges that her deceased father set up an account pursuant to the UGTMA and subsequently withdrew the funds in violation of the Act, whereby she never received the UGTMA funds. Mrs. Quick's motion, by Order of this Court, pursuant to a hearing held on February 6, 2004, was taken under advisement and held in abeyance. Following the resolution of the Will contest trial, Mrs. Quick filed the above referenced Petition. The Personal Representative of the Estate timely filed an Answer to the Petition on November 4, 2008, asserting affirmative defenses of statute of limitations, unclean hands, laches, and equitable estoppel as well as violation of the "Dead Man's" Statute. A hearing was held on April 1, 2009, wherein all parties were represented by counsel.

JURISDICTION

The S.C. Probate Code §62-1-302 gives the Probate Court exclusive jurisdiction concerning Uniform Gift to Minor's Act ("UGTMA") issues. At the hearing in this matter, the Personal Representative asserted that because monies allegedly gifted to Mrs. Quick were set up pursuant to

an Order of the Family Court relating to the divorce agreement between Mrs. Quick's mother and father, proper jurisdiction was with the Family Court. However, Petitioner's claim is based on the UGTMA and the fact that the decedent's divorce imposed a trust requirement for monies to be deposited on behalf of Mrs. Quick, without more, does not vest the Family Court with jurisdiction of this matter. This matter is a claim based on the UGTMA, and, therefore, this Court has jurisdiction pursuant to §62-1-302.

FINDINGS OF FACT

1. The burden of proof applicable to a UGTMA action is by a preponderance of the evidence.
2. The decedent, Bobby Gene Barnett, established an account (Account #) with A.G. Edwards and Sons, Inc., pursuant to the UGTMA. The evidence of the establishment of the account was presented by the Petitioner at the hearing in the form of two checks: a) Check # dated 10/10/2000 in the amount of \$41,646.27; and, b) Check # dated 11/25/2002 in the amount of \$107.29. Both checks contained the requisite language required by the UGTMA, proving by a preponderance of the evidence that the account was in existence prior to October 10, 2000. No evidence was presented as to why the two checks were issued in different years, but this fact is not significant as it has no bearing on the fact that both checks were drawn off of an account which was in compliance with the terms of the UGTMA. Evidence was presented that the funds were withdrawn from the account by Mr. Barnett on two separate occasions: 10/10/2000 and 11/25/2002.
3. No evidence was presented to this Court that Mrs. Quick received any of the monies withdrawn from the UGTMA account. Any finding in that respect would be based on mere speculation.

4. The Decedent, Bobby Gene Barnett, died on January 12, 2003.

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5. The Creditors Notice first ran on February 19, 2003, when Mrs. Quick was not the Personal Representative of the Estate.

6. Mrs. Quick filed her initial claim when she was the Personal Representative of the Estate on December 8, 2003. Mrs. Quick first learned of the existence of this account through the discovery process in the Will contest litigation in December of 2003 and promptly filed this claim. Mrs. Quick testified, as did her mother, Sandy Bolding, that Mrs. Quick never received any information to put her on notice of this account. No other evidence was presented to this Court which contradicted the testimony of Mrs. Quick and her mother.

7. The Personal Representative elicited testimony that the Decedent provided financial assistance to Mrs. Quick in the form of partial college tuition, the purchase of a vehicle, and other expenses. However, there was no evidence before this Court that these monies were any thing more than a father paying some of his daughter's expenses. No evidence was presented that Mrs. Quick received the benefit of the UGMA account money.

8. The Personal Representative asserted that during the course of the Will contest litigation, Mrs. Quick had not provided all of the documentation regarding her father's financial affairs. Mrs. Quick disputed this testimony. The Personal Representative asked this Court to speculate that if Mrs. Quick had turned over all documents during the Will contest litigation, there would have been evidence to dispute her claim. Again, any such finding would require speculation by this Court.

EVIDENCIARY MATTERS

I. "Dead Man's" Statute

The Personal Representative's Answer asserted as an affirmative defense that the "allegations as set forth are barred by the 'Dead Man's' Statute". §19-11-20 of the *S.C. Code of Laws* is known as the "Dead Man's" Statute and provides in pertinent part:

...no party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding, no person who, previous to such examination, has had such an interest...shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased...when such examination or any judgment or determination in such action or proceeding can in any matter affect the interests of such witness or the interest previously owned or represented by him.

The rule embodied in the "Dead Man's" Statute is intended to prevent testimony "as to communications and transactions with persons deceased on the grounds it is against public policy to allow witnesses to testify as to matters when, if such testimony is untrue, it cannot be contradicted. See, Trimmer v. Thompson, 41 S.C. 125, 19 S.E. 291 (1984) and Harris v. Berry, 231 S.C. 201, 91 S.E.2d 251 (1957). The "Dead Man's" Statute is not a defense but instead an evidentiary matter dealing with the qualification of a witness to testify. Mrs. Quick testified on direct examination that the checks drawn on the UGTMA account contained her father's, the Decedent's, signature. The "Dead Man's" Statute did not prevent Mrs. Quick's identification of her father's signature because it was not testimony concerning a transaction with her father. "Transaction" as used in the "Dead Man's" Statute means the carrying on or through of any matter of affair, and implies mutuality--- something done by both in concert in which both take some part. Barnes v. Gaughman, 255 S.C. 199, 178 S.E.2d 157 (1970) and Hicks v. Battey, 259 S.C. 426, 192 S.E.2d 477 (1972). In addition, the admission of the checks into evidence did not violate the "Dead Man's" Statute and are admissible. See Harris v. Berry, Idem, and Rushton v. Lott, 330 S.C. 418, 499 S.E.2d 222 (Ct. App. 1998).

The Personal Representative also argued that the admission of the checks violated §19-5-510 of the S.C. Code of Laws known as the Uniform Business Records as Evidence Act. This section provides:

A record of an act, condition, or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation and if it was made in the regular course of business at or near the time of the act, condition, or event and if, in

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the opinion of the court, the sources of information, method, and time of preparation was such as to justify its admission.

Although the admission of the checks could possibly constitute a violation of the Act, Rule 803(15) of the *S.C. Rules of Evidence*, provides a hearsay exception for the admission of these checks.

LEGAL ANALYSIS

1. UGTMA

This is a Uniform Gift to Minor's Act claim. Section 20-7-160 of the *S.C. Code of Laws* provides in pertinent part:

(1) An adult person may, during his lifetime, make a gift of ...money... to a person who is a minor on the date of the gift.

(c) If the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult or trust company followed in substance by the words: "As Custodian for _____ (name of minor) under the Uniform Gift to Minor's Act".

The evidence presented to this Court establishes that the account was in place and complied with §20-7-160(1)(c).

Section 20-7-170 provides for the effect of the gift:

(1) A gift made in a manner prescribed in this sub-article is irrevocable and conveys to the minor indefeasible vested legal title to the ...money...

Pursuant to this section, indefeasible vested legal title was established in Mrs. Quick.

2. Defenses

In his Answer, the Personal Representative raised the defenses of statute of limitations, the doctrine of unclean hands, and the doctrines of laches and equitable estoppel. At the hearing, the Personal Representative raised the issue of whether the fact that Mrs. Quick did not file her claim within the eight-month period prescribed by §62-5-803 of the *S.C. Probate Code* barred her claim.

a) Statute of Limitations:

The first check dated October 10, 2000, constitutes the first instance of the Decedent's violation of the UGTMA and, thus, the first event affecting Mrs. Quick's vested legal title to the gift. Pursuant to §62-3-802 of the *S.C. Probate Code*, any statute of limitations would have been tolled during the "eight months following the Decedent's death". The fact that Mrs. Quick did not file her claim within the eight-month period prescribed by §62-3-803 will be addressed in sub-section (e) of this Order.

b) Unclean Hands:

The Personal Representative argues that because there are allegations in a separate lawsuit that Mrs. Quick converted assets of the Estate of the Decedent, she is barred by the equitable principle of unclean hands. However, I find that the doctrine of unclean hands does not apply for two reasons. First, an action pursuant to the UGTMA is an action at law. The equitable doctrine of unclean hands has no application to an action at law. *Larson v. Muhl*, 381 S.C. 585, 674 S.E.2d 482 (2009). Secondly, the conduct complained of by the Personal Representative is conduct which is being litigated in a separate lawsuit distinct from the Will contest, and Mrs. Quick's petition pursuant to the UGTMA. Should such conduct be established and should a judgment be entered against Mrs. Quick in the other litigation, the Personal Representative will have a legal remedy for such conduct. Therefore, the defense of the doctrine of unclean hands is not applicable to Mrs. Quick's UGTMA claim.

c) Laches and Equitable Estoppel:

The Personal Representative argues that the Petitioner delayed unreasonably and negligently and without just cause to assert her claim pursuant to the UGTMA. The Personal Representative further asserts the Estate is unable to properly respond to the personal actions of the Decedent in this regard and has suffered undue prejudice by the delay of the Petitioner. I find this argument to be without merit as will be discussed in more detail below. The evidence presented at the hearing

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showed by a preponderance of the evidence that Mrs. Quick filed her claim as soon as she became aware that she had a claim. There is no evidence of "unreasonable and negligent delay" on the part of Mrs. Quick, and I find the Estate has suffered no prejudice in that regard.

d) Lack of Documentation:

The Personal Representative asserts Mrs. Quick failed to present any evidence that she did not receive money from the UGTMA account. Essentially, the Personal Representative is asking Mrs. Quick to provide documentation proving she received nothing. There has been no evidence presented to this Court that Mrs. Quick received any monies from the UGTMA account. Asking her to prove a negative is unreasonable and unduly burdensome.

e) Timeliness of Filing Her Claim:

Section 62-3-803 of the *S.C. Probate Code* provides in pertinent part:

(a) All claims against a decedent's estate which arose before the death of the decedent... whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the Personal Representative and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

1. One year after the decedent's death; or,
2. Within the time provided by §62-3-801(b) for creditors who are given actual notice, and within the time provided in §62-3-801(a) for all creditors barred by publication; provided claims barred by the non-claimed statute at the decedent's domicile before the giving of notice to creditors barred in this State are also barred in this State.

Section 62-3-801(b) provides an eight-month claim period from published notice as provided in §62-3-801(a). Section 62-3-801(a) provides an eight-month claims period after the date of the first publication of the notice.

At the time Mrs. Quick filed her claim, she was the Personal Representative of the Estate. This Court concedes there is very little case law dealing with a Personal Representative who is also a claimant/creditor and whether or not certain time limits are met concerning the filing of the claim.

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In an unpublished Delaware opinion, the Delaware Court held under a non-claim statute of six months that a Personal Representative is a creditor and bound by the same rules. Calvin v. Calvin, 1985 WL 22037.

Under a non-claims statute, a critical issue is notice to the creditor. In the normal scenario, notice would be given by the Personal Representative of the Decedent's death to the creditor. Notice is the essential element. In Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), the U.S. Supreme Court dealt with the issue of whether notice was given to a creditor who failed to timely file its claim. Although Tulsa dealt with actual notice versus publication notice, which is not significant in this case but demonstrates the importance of a creditor having notice (of something and, in most cases, of death) to trigger the act of filing a claim. Tulsa held that because there was substantial involvement of the Probate Court throughout the probate proceedings, there was sufficient government action to implicate the Due Process Clause. The clear extension of this reasoning would be a clear indication that there must be notice to the creditor of having a claim in order to file the claim. If a creditor (or anyone having a valid claim against the estate) does not have notice of the claim in order to file the claim within the requisite time period, due process would dictate that notice must be given.

The analysis now turns to whether Mrs. Quick had notice of the claim and whether she filed the claim in a timely manner following notice. In order to make this determination, this Court must look to the discovery rule in the context of statutory and common law with regard to limitation of actions. Section 15-3-530(5) of the S.C. Code of Laws provides a three-year statute of limitations for "any injury to the person or rights of another not arising on contract and not enumerated by law...". Section 15-3-535 provides that, "All actions initiated under §15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence, should have known he had a cause of action". South Carolina common law defines "diligence" within the meaning of the

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"discovery rule" as requiring that the injured party must "act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another might exist". Alapstovich v. Gardner, 361 S.C. 513, 604 S.E.2d 728 (S.C. App. 2004). Application of the discovery rule by a Personal Representative was the very issue in the most recent case of Gibson v. Bank of America, 2009 WL 1201102 (S.C. App.). In Gibson, the Court restated the above-referenced meaning of "exercise of reasonable diligence" and stated that "a key element in the reasonable diligence test is 'notice'". Therefore, this Court must determine whether Mrs. Quick knew or should have known that the UGTMA account had been set up and the funds later withdrawn by her father. In addition, the evidence must show she exercised reasonable diligence in discovering she had a claim.

Mrs. Quick testified she had no notice or knowledge of the UGTMA account until she became Personal Representative of the Estate and, through the discovery process, found out a UGTMA account had been established. She then promptly filed a UGTMA claim on December 8, 2003. Mrs. Quick's mother, Sandy Bolding, testified she never told her daughter about the account set up by the Decedent.

The Personal Representative asked this Court to find that Mrs. Quick and her mother should not be believed. However, this Court found no evidence apart from its discretionary ability of witnesses to prove by a preponderance of the evidence that Mrs. Quick and her mother were not telling the truth. Therefore, this Court finds that Mrs. Quick had no notice or knowledge of the claim prior to her discovering it after she became Personal Representative of the Estate.

CONCLUSION

For the reasons set forth above, I find that Mrs. Quick's claim pursuant to the S.C. Uniform Gift to Minor's Act is valid and hereby approve the claim. However, I am denying Mrs. Quick's request for interest on the claim as she is not seeking judgment but rather payment from the Estate

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on the claim. This Court does not believe it has any authority to approve an award of interest on a UGTMA claim.

AND IT IS SO ORDERED.



Honorable Donald B. Hocker

DATED: 7-13, 2009

Laurens, South Carolina



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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
BRIGITTE B. QUICK	)	
	)	
Plaintiff	)	PROBATE COURT
	)	RETURN
vs.	)	09-CP-04-_____
	)	09-ES-04-174
WILLIAM EARL PHILLIPS, ET.AL.	)	
	)	
Defendant	)	
IN RE: BOBBY BARNETT ESTATE	)	

Pursuant to Section 62-1-308, the Probate Court for Lancaster County makes the following Return by way of the following attachments:

1. There is no transcript of testimony. Tape recordings of the hearing April 1, 2009 are in existence.
2. Motions for Payment \$41,646.27/ \$107.29.
3. Petition for Claim.
4. Answer.
5. Plaintiff's Two Exhibits and Defendant's Two Exhibits.
6. Order, dated 7-13-09 and Order, dated 10-19-09.
7. Motion for Reconsideration.
8. Notice of Appeal with Grounds of Defendant.


 DONALD B. HOCKER
 ASSOCIATE PROBATE JUDGE FOR
 LAURENS COUNTY/SPECIAL PROBATE
 JUDGE FOR ANDERSON COUNTY

Laurens, S.C.
 Date: 11-27-09

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
)
)
IN THE MATTER OF:)
)
BOBBY GENE BARNETT)

IN THE PROBATE COURT
C.A. NO: 2003-ES-04-00174

**PETITION FOR CLAIM UNDER
UNIFORM GIFT TO MINOR'S ACT**

TO: WILLIAM EARL PHILLIPS, AS PERSONAL REPRESENTATIVE OF THE ESTATE
OF BOBBY GENE BARNETT, CAREY B. MURPHY, CHRYSTAL PHILLIPS,
DARLEEN KUYKENDALL AND JOHN SISK, AND THEIR ATTORNEY, J.
MICHAEL TURNER

COMES NOW, the Petitioner, by and through her counsel, who respectfully seeks
payment of the Statement of Creditors claim of Brigitte B. Quick made with this Court on
December 8, 2003.

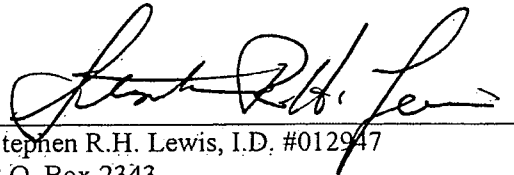
1. Brigitte Quick is the daughter of the Decedent, Bobby Gene Barnett.
2. On or about September 15, 1978, the Decedent, Bobby Gene Barnett, made a gift to
the Petitioner, Brigitte B. Quick, pursuant to the *S.C. Uniform Gift to Minor's Act*, §20-7-160(1)
S.C. Code of Laws in the amounts of \$41,646.27 and \$107.29.
3. On or about October 10, 2000 and November 25, 2002, respectively, (See Exhibit
"1", copies of two canceled checks attached hereto and incorporated herein by reference) without
the knowledge and/or consent of the Petitioner Brigitte B. Quick, the Decedent converted said
monies for his own use on two separate occasions, thereby violating the *S.C. Uniform Gift to
Minor's Act*, specifically, §20-7-160(3) *S.C. Code of Laws*.
4. That on or about December 8, 2003, Brigitte B. Quick filed a Statement of
Creditor's Claim and supporting documentation for each of these checks making a claim with

this Court for payment of the monies due (See Exhibit "2", copies of each Statement of Claims attached hereto and incorporated herein by reference).

5. The Decedent's conversion of the monies given to Brigitte B. Quick under the *S.C. Uniform Gift to Minor's Act* is a violation of that act and, therefore, Brigitte B. Quick is entitled to payment from the assets of the Estate of the Decedent Bobby Gene Barnett of the monies converted, and, in addition, is entitled to interest to be determined, no later than the merit's hearing regarding this case and the interest, if any, be paid thereafter.

WHEREFORE, Petitioner prays for payment of the monies due from the assets of the Estate of the Decedent Bobby Gene Barnett, including appropriate interest, pursuant to the *S.C. Uniform Gift to Minor's Act*, as well as such other and further relief as the Court may deem just and proper.

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.



Stephen R.H. Lewis, I.D. #012947
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

October 31, 2008

Greenville, South Carolina

86 Asheland Avenue Asheville, NC 28801		0418	A.G. Edwards & Sons, Inc. No.		100 EIGHTH ST. N.W. 1987
		Member New York Stock Exchange, Inc.		U.S. Bank NORFOLK CO. VA	
STANDARD	ACCOUNT NO.	AC	TYPE	November 25, 02	
418		011	1		
PAY THE SUM OF: **One hundred Seven and 29/100 Dollars**					
				VOID AFTER 60 DAYS	
PAY TO THE ORDER OF				107.29	
Bobby Gene Barnes				12-30-02 180	
Brigitte N. Barnett					
Under The SC Unif Gifts to Minors Act				SECOND SIGNATURE REQUIRED FOR AMOUNTS OF FIFTY DOLLARS AND OVER AUTHORIZED SIGNATURE	

STATE OF SOUTH CAROLINA

EXHIBIT "2"

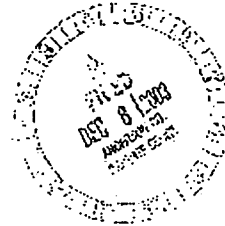
PROBATE COURT

COUNTY OF ANDERSON

IN THE MATTER OF BOBBY GENE BARNETT

CASE NUMBER 2003ES040174

Decedent's Date of Death (if known): January 12, 2003
Decedent's Last Mailing Address:



STATEMENT OF CREDITOR'S CLAIM

Creditor: Brigitte B. Quick

Address:

Telephone:

Basis of claim: Pursuant to the Subpoena issued to A.G. Edwards & Sons, Inc., on or about November 21, 2003, Brigitte B. Quick received copies of a cancelled check in the amount of \$107.29 (See attached copy of the Check). This check represents a gift to Brigitte B. Quick (f/k/a Brigitte N. Barnett), under the South Carolina Uniform Gifts to Minors Act. It is apparent that the decedent, Bobby Gene Barnett, took the funds belonging to Brigitte B. Quick under the Uniform Gifts to Minors Act without notifying Brigitte B. Quick and failed to provide her with the funds which were being held on her behalf. As of the date of the check, November 25, 2002, Brigitte B. Quick had long since reached the age of majority. The funds belong to Brigitte B. Quick.

Amount of claim: \$ 107.28 plus interest, plus the amount of monies/assets held in this account and which were disbursed prior to November 25, 2003.

Date claim will become due (if not already due): Immediately. Brigitte B. Quick just became aware that the money was allegedly taken by the Decedent.

Nature of uncertainty as to amount of claim and due date, if any: None.

Description of any security as to claim: A security is provided to this claim under the South Carolina Uniform Gifts to Minors Act. The Act provides that the funds in question belong to Brigitte B. Quick. The establishment of an account for a minor under the South Carolina Uniform Gifts to Minors Act is irrevocable and conveys to the minor indefeasibly vested legal title to the money.

Signature: Brigitte B. Quick

Title: Creditor/Personal Representative

Date: 12-8-03

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STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF ANDERSON

IN THE MATTER OF BOBBY GENE BARNETT

CASE NUMBER 2003ESD40174

Decedent's Date of Death (if known): January 12, 2003
Decedent's Last Mailing Address:

STATEMENT OF CREDITOR'S CLAIM

Creditor: Brigitte B. Quick

Address: _____

Telephone: _____

Basis of claim: Pursuant to the Subpoena Issued to A.G. Edwards & Sons, Inc., on or about November 21, 2003, Brigitte B. Quick received copies of a cancelled check in the amount of \$41,646.27. (See attached copy of the Check). This check represents a gift to Brigitte B. Quick (f/k/a Brigitte N. Barnett), under the South Carolina Uniform Gifts to Minors Act. It is apparent that the decedent, Bobby Gene Barnett, took the funds belonging to Brigitte B. Quick under the Uniform Gifts to Minors Act without notifying Brigitte B. Quick and failed to provide her with the funds which were being held on her behalf. As of the date of the check, October 10, 2000, Brigitte B. Quick had long since reached the age of majority. The funds belong to Brigitte B. Quick.

Amount of claim: \$ 41,646.27 plus interest.

Date claim will become due (if not already due): Immediately. Brigitte B. Quick just became aware that the money was taken by the Decedent.

Nature of uncertainty as to amount of claim and due date, if any: None.

Description of any security as to claim: A security is provided to this claim under the South Carolina Uniform Gifts to Minors Act. The Act provides that the funds in question belong to Brigitte B. Quick. The establishment of an account for a minor under the South Carolina Uniform Gifts to Minors Act is irrevocable and conveys to the minor indefeasibly vested legal title to the money.

Signature: Brigitte B. Quick

Title: Creditor/Personal Representative

Date: 12-8-03

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF ANDERSON)

C.A. NO: 2003-ES-04-00174

IN THE MATTER OF:)

CERTIFICATE OF SERVICE

BOBBY GENE BARNETT)

I did this date serve a copy of the Petition for Claim Under Uniform Gift to Minor's Act upon all counsel of record by placing a copy of the same in the United States mail, proper postage affixed thereto, and addressed as follows:

J. Michael Turner, Sr.
Turner & Burney, P.C.
P.O. Box 668
Laurens, SC 29360

C. Alice Whitesides, Esquire
Whitesides Law Offices
P.O. Box 222
Laurens, SC 29360

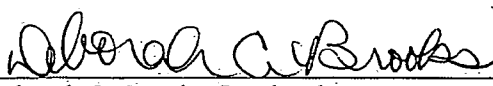
James P. Walsh, Esquire
Clarkson, Walsh, Rheney & Terrell
P.O. Box 6728
Greenville, SC 29606

G.P. Diminich, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

Michael O. Hallman, Esquire
16 Williams Street
Greenville, SC 29601

Carey B. Murphy, Esquire
P.O. Box 809
Anderson, SC 29622

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.


Deborah C. Brooks, Paralegal to
Stephen R.H. Lewis, S.C. Bar #12947
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

October 31, 2008

Greenville, South Carolina

COVINGTON PATRICK HAGINS STERN  LEWIS, PA

Writer's Direct E-Mail: Slewis@covpatlaw.com
Direct Dial: (864) 240-5518

October 31, 2008

The Honorable Donald B. Hocker
Judge of the Probate Court, Laurens
P.O. Box 194
Laurens, SC 29360

RE: In the Matter of: Bobby Gene Barnett
Case No. 2003-ES-04-0174

Dear Judge Hocker:

Eugene C. Covington, Jr.

Douglas F. Patrick

John A. Hagins, Jr.

T. S. Stern, Jr.

Stephen R. H. Lewis

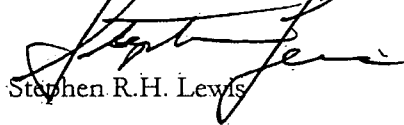
I received your letter of October 29, 2008, and am enclosing for your review a copy of the Petition for Claim Under Uniform Gift to Minor's Act that I have now sent to be filed with the Probate Court in Anderson County.

I assume you will get a copy of it, but out of an abundance of caution, I am forwarding it to you. By copy of this letter to all of the attorneys in the Estate and bond case, I am providing a copy of my Petition to them as well. As instructed in your letter, I will attempt to communicate with Cary and Mike to determine suitable times and dates for hearing on these issues.

I appreciate your attention to this matter, and should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.


Stephen R.H. Lewis

SRHL:dcB

Enclosure

cc:

Brigitte B. Quick

J. Michael Turner, Sr.

Alice Whitesides, Esquire

Carey B. Murphy, Esquire

James P. Walsh, Esquire

G.P. Diminich, Esquire

Michael O. Hallman, Esquire

211 Pettigru Street
Greenville, SC 29601
1.800.849.2988
864.242.9000
FAX 864.233.9777
Mailing Address:
Post Office Box 2343
Greenville, SC 29602
www.covpatlaw.com

(21)

COVINGTON PATRICK HAGINS STERN  LEWIS, PA

Writer's Direct E-Mail: Slewis@covpatlaw.com
Direct Dial: (864) 240-5518

October 31, 2008

Clerk of Court
Anderson County Probate Court
P.O. Box 8002
Anderson, SC 29622

RE: In the Matter of: Bobby Gene Barnett
Case No. 2003-ES-04-0174

Eugene C. Covington, Jr.

Douglas F. Patrick

John A. Hagins, Jr.

T. S. Stern, Jr.

Stephen R. H. Lewis

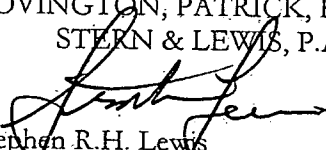
Dear Sir/Madam:

Please find enclosed an original and copies of a Petition for Claim Under Uniform Gift to Minor's Act to be filed in your offices. A self-addressed, stamped envelope is enclosed for your convenience in returning the clocked-in copies to us.

Should you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.


Stephen R.H. Lewis

SRHL:deb

Enclosures

cc: William O. Pressley, Jr., Esquire
Brigitte B. Quick
✓ J. Michael Turner, Sr.
Alice Whitesides, Esquire
Carey B. Murphy, Esquire
James P. Walsh, Esquire
G.P. Diminich, Esquire
Michael O. Hallman, Esquire

211 Pettigru Street
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1.800.849.2988
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Mailing Address:
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Greenville, SC 29602
www.covpatlaw.com

(22)

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF ANDERSON)

03-ES-04-0174

In re: Estate of Bobby Gene Barnett,)

**ANSWER TO PETITION FOR
CLAIM UNDER UNIFORM GIFT
TO MINORS ACT**

TO THE PETITIONER BRIGITTE QUICK AND HER ATTORNEY, STEPHEN
LEWIS, ESQUIRE

The Personal Representative of the Estate of Bobby Gene Barnett submits the following Answer to Petition:

1. Each and every allegation of the Petition not hereinafter admitted, qualified, or explained is denied.
2. That paragraph 1 is admitted.
3. As to paragraphs 2 and 3, the Respondent lacks sufficient information to form a belief and therefore, denies the same and demands strict proof thereof.
4. As to paragraph 4, it is admitted that Brigitte Quick filed a Statement of Creditor's Claim with the Probate Court, but the remaining allegations are denied.
5. That paragraph 5 is denied.

FOR A SECOND DEFENSE

6. That the Respondent realleges the previous allegations and incorporates the same herein by reference.
7. That the Respondent is informed and believes that the claim of the Petitioner is barred by the applicable statute of limitations. Further, this suit was not timely filed and is barred.

FOR A THIRD DEFENSE

8. That the Respondent realleges the previous allegations and incorporates the same herein by reference.
9. That the Petitioner did convert assets of the estate of Bobby Gene Barnett and has received assets far in excess of any claims that she can now assert against the estate. That the claims of the Petitioner are barred the equitable principles of "unclean hands."

FOR A FOURTH DEFENSE

10. That the Respondent realleges the previous allegations and incorporates the same herein by reference.
11. That the Petitioner has delayed unreasonably and negligently and without just cause or excuse to assert her claim for any wrong doing by the decedent Bobby Gene Barnett. That the estate is unable to properly respond to the personal actions of the decedent in this regard and has suffered undue prejudice by the delay of the Petitioner. That accordingly, the claims of the Petitioner are barred by laches and equitable estoppel.

FOR A FIFTH DEFENSE

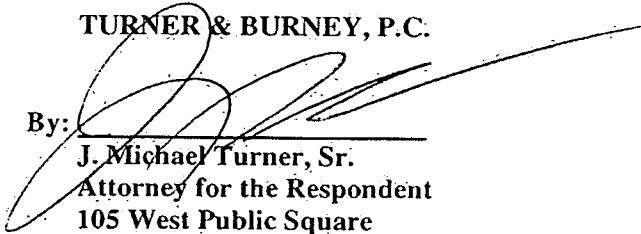
12. That the Respondent realleges the previous allegations and incorporates the same herein by reference.
13. That the allegations of the Petition failed to set forth sufficient facts to constitute a cause of action and therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE

14. That the Respondent realleges the previous allegations and incorporates the same herein by reference.
15. That the claim as asserted by the Petitioner is personally to the decedent Bobby Gene Barnett and is not a claim for which the estate should or could be held liable. That the allegations as set forth are barred by the "Deadman's Statute" and the claims of the Petitioner are not subject to being prosecuted against the estate or the Personal Representative.

WHEREFORE, the Respondent prays that the Petition be dismissed with costs.

TURNER & BURNEY, P.C.

By: 

J. Michael Turner, Sr.
Attorney for the Respondent
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Laurens, South Carolina
November 4, 2008.

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF ANDERSON)

03-ES-04-0174

In Re: Estate of Bobby Gene Barnett,)

**CERTIFICATE OF SERVICE
BY MAIL**

FILED
NOV 5 2008
ANDERSON CO.
PROBATE COURT

The undersigned hereby certifies that she is the Paralegal for J. Michael Turner, Sr., Attorney for the Personal Representative of the Estate, and that the within **Answer to Petition for Claim Under Uniform Gift to Minors Act** was served upon the below named, by depositing a copy of the same in the United States Mail, on the 4 day of **November, 2008**, with sufficient postage annexed thereto, addressed thereto and mailed to same at the address below:

Stephen Lewis, Esquire
Covington Patrick Hagins Stern & Lewis
Post Office Box 2343
Greenville, SC 29602

TURNER & BURNEY, P.C.

By: Lou M. McElrath

Lou M. McElrath, Paralegal for
J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Laurens, South Carolina
November 4, 2008.

(25)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE PROBATE COURT
04-ES-04-00174

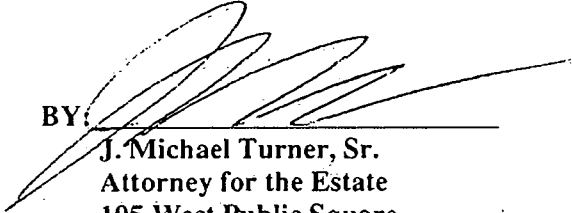
In Re: Estate of Bobby Gene Barnett,)
)
)
)

RULE 59(e) MOTION FOR
RECONSIDERATION
OR TO ALTER AND AMEND

The Personal Representative of the Estate of Bobby Gene Barnett would respectfully move before the Court pursuant to Rule 59(e) and Rule 60 for the Court to reconsider, alter and amend the Order issued July 13, 2009 and received by counsel on July 16, 2009. The grounds for said motion are as follows:

1. The Court erred ruling that the Probate Court has jurisdiction in this matter when this matter had been considered by the Family Court and proper jurisdiction was with the Family Court;
2. The Court erred in allowing the action to proceed when the same was barred by the statute of limitations;
3. The Court erred in allowing the matter to proceed when the same was barred by the statute of limitations as set forth in Section 62-3-803 of the South Carolina Code of Laws;
4. The Court erred in allowing the admission into evidence of the purported checks to establish that the Plaintiff had not received funds when the same were not authenticated or verified;
5. The Court erred in failing to rule that the claims were barred by *laches* and equitable *estoppel*. The Personal Representative in the estate were unduly prejudiced and unable to properly respond to the allegations and was unduly prejudiced by allowing this action to proceed;
6. That the Court erred in approving the claim when there was no evidence to substantiate that the Plaintiff did not receive funds except her biased and questionable testimony;
7. That the Court erred in ruling that the Plaintiff had met her burden of proof in establishing that the decedent violated the Uniform Gift to Minors Act.

TURNER & BURNEY, P.C.

BY: 

J. Michael Turner, Sr.
Attorney for the Estate
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

July 21, 2009
Laurens, South Carolina

STATE OF SOUTH CAROLINA)

APPEAL TO CIRCUIT COURT

COUNTY OF ANDERSON)

FROM PROBATE COURT

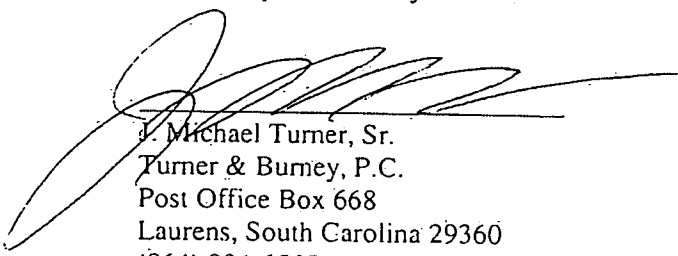
03-ES-04-174

In Re: Estate of Bobby Gene Barnett,)

NOTICE OF APPEAL

The Personal Representative of the Estate of Bobby Gene Barnett hereby appeals the Order of the Honorable Donald B. Hocker, Special Probate Judge for Anderson County dated July 13, 2009 and Order denying reconsideration dated October 19, 2009. Said Order denying the Motion for Reconsideration was received by Appellant's counsel on the 21st day of October, 2009.

The grounds for appeal are attached hereto and made a part hereof by reference.



J. Michael Turner, Sr.
Turner & Burney, P.C.
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565
Attorney for Appellant

October 27, 2009

Other Counsel of Record:

Stephen Lewis, Esquire
Covington Patrick Hagins Stern & Lewis
Post Office Box 2343
Greenville, SC 29602

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 02 2010

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 09-CP-04-4335

Brigitte Quick Respondent,

vs.

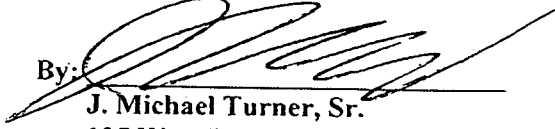
Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

NOTICE OF INTENT TO APPEAL

Earl Phillips, as Personal Representative of the Estate of Bobby Gene Barnett, appeals the Order of the Honorable J. Cordell Maddox, Jr. dated July 9, 2010 which affirmed the decision dated July 13, 2009 of the Honorable Donald B. Hocker for the Probate Court of Anderson County. Appellant received written notice of the Order on July 13, 2010.

July 27, 2010

TURNER & BURNEY, P.C.

By: 

J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565
Attorney for Appellant

Other Counsel of Record:

Stephen Lewis, Esquire
Covington Patrick Hagins Stern & Lewis
Post Office Box 2343
Greenville, SC 29602
(864) 242-9000
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED
AUG 02 2010
SC Court of Appeals

Case No. 09-CP-04-4335

Brigitte Quick Respondent.

vs.

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

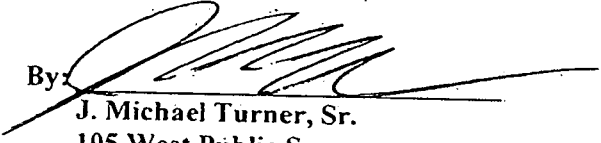
PROOF OF DELIVERY

I hereby certify that I have served a copy of the Appellant's Notice of Intent to Appeal on the below named, by depositing a copy of the same in the United States Mail, on the 27 day of July, 2010, with sufficient postage annexed thereto, addressed thereto and mailed to the same at the address below:

Stephen Lewis, Esquire
Covington Patrick Hagins Stern & Lewis
Post Office Box 2343
Greenville, SC 29602

July 27, 2010

TURNER & BURNEY, P.C.

By: 

J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565
Attorney for Appellant

State of South Carolina

County of Anderson

In the Court of Common Pleas

Earl Phillips,

Plaintiff,

-vs-

Bridget B. Quick,

Defendant.

2009-CP-04-4335

March 17, 2010

Transcript of Record

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge

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

Carey Murphy, Esquire
Attorney for the Plaintiff

Stephen Lewis, Esquire
Attorney for Defendant

Renee Tollison
Circuit Court Reporter

INDEX

WITNESSES	PAGE
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Certificate of Reporter	23

EXHIBITS

No	DESCRIPTION	ID	EV
	No Exhibits Were Presented During the Hearing		

(34)

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:17 a.m.)

4 THE COURT: I'm real sorry y'all had to wait.
5 And I'll get to you as quick as I can without blowing a
6 gasket. It won't be at y'all.

7 Phillips versus Bridget Quick. Y'all have only been
8 waiting an hour? Yeah, I know. They're going to wait.

9 Yes, sir. Who's the appellant in this?

10 MR. MURPHY: We are, Your Honor.

11 THE COURT: All right. Yes, sir?

12 MR. MURPHY: First, let me go ahead and give
13 you our brief. A copy has already been faxed over to
14 opposing counsel.

15 (WHEREUPON, document was handed up to the Court.)

16 MR. MURPHY: In our appeal, Your Honor, we have
17 set forth five separate grounds. For brevity's sake
18 today, I'm only going to argue a couple of these grounds,
19 but we are not abandoning any part ---

20 THE COURT: Okay.

21 MR. MURPHY: --- of our appeal except number
22 one which regards -- regarding the Family Court
23 jurisdiction versus Probate Court jurisdiction.

24 THE COURT: Okay.

25 MR. MURPHY: All right. Your Honor, we're

1 saying the Probate Court erred in several ways, the major
2 portion of which involves the statute of limitations in
3 this instance. The claim in this case -- the decedent
4 died in January of '03. The estate was opened at that
5 time. The first notice to creditors was February 19,
6 2003. Under Section § 62-3-801 and 803, the time
7 limitation would be eight months from the first day of
8 the notice to creditors. And both of those code sections
9 are attached to the brief, Your Honor.

10 The -- Ms. Quick, the plaintiff in this matter,
11 filed her claim on December 3rd, 2003. Her time was up
12 October 19, 2003. She was barred at that point in time.

13 Now, I don't know how much background you want in
14 connection with this. But when we tried this particular
15 matter in court, the argument on the other side was
16 basically that it was an issue of knew or should have
17 known. Which if it were under the standard statute of
18 limitations, which is I believe § 15-5-530 or 5 -- I
19 don't have that right offhand.

20 THE COURT: Okay.

21 MR. MURPHY: § 15-3-535. That would be correct
22 but this statute, 801 and 803, have to be read together.
23 It is a specific non-claim statute. And the case on
24 that, *Estate of Tollison*, makes that very clear that this
25 is a non-claim statute. If you read the statute, it says

1 specifically you have to have the claim filed within the
2 eight-month time period, period. If you miss the time
3 period, you are forever barred.

4 Now, if you take a look at statute § 15-3-535 which
5 is relied upon or is referred to by both the probate
6 judge and the plaintiff in this matter, they speak --
7 that statute specifically speaks of three years after the
8 person knew or by the exercise of reasonable diligence
9 should have known that he had a cause of action. That
10 wording is not in the probate non-claim statute. If the
11 Legislature had wanted it in there, they could have put
12 it in there. But the fact is they did not. It was --
13 the predecessor statute is § 8993. It was passed in
14 1943. Before that time we did not have a non-claim
15 statute. The Legislature passed it in 1943 and has
16 maintained it ever since.

17 There's an Attorney General's opinion from 1964 that
18 states it's a non-claim statute. There is another case
19 that I would like to give the Court, *Moultis* versus --
20 I'm not sure how to pronounce this, Dagen, (phonic)
21 *Degen*, whatever. This is a 1983 case where it states the
22 statute which provides that all claims and creditors of
23 the estate shall on expiration of five months -- please
24 understand this is under the old law. It has changed to
25 eight months, but everything else was the same. After

1 five months after first publication of notice will be
2 forever barred unless an account has been filed is a non-
3 claim statute barring all claims which are not timely
4 filed against an estate.

5 This particular case specifically overruled a
6 Federal Court interpretation of the old statute that --
7 that code section is § 21-15-640. It refers to the
8 original statute section § 8993 passed in 1943 and the
9 Attorney General's opinion 1964. That case, *Tollison*, is
10 a later case which of course does not specifically refer
11 to that but affirms the same law. It is a non-claim
12 statute. Whether or not you think the claim or the law
13 is harsh is not the issue. The issue is whether or not
14 she filed her claim in a timely fashion. She did not and
15 she is barred period.

16 The argument of a three-year statute of limitations
17 knew or should have known is not an issue here. There's
18 no case law on that dealing with this statute. And in
19 fact, that statute does not apply in this particular case
20 as to a non-claim statute.

21 Can I have just one second?

22 THE COURT: Yeah.

23 MR. MURPHY: The other matter involved which I
24 want to touch on today is with regard to the admission of
25 evidence. In this particular instance -- and the judge

1 even states in his order that his allowance of the
2 admission of the checks regarding the Uniform Gift to
3 Minors Act as alleged by the plaintiff in this action may
4 have violated section § 19-5-510 of the Public Documents
5 and Records Act which specifies that you are required to
6 have a custodian or other qualifying witness testifying
7 as to the identity of the document and the mode of its
8 preparation and if it was made in the regular course of
9 business at or near the time of the act, condition or
10 event, da, da, da, da, da.

11 The point is in this incidence he allowed the
12 admission of two checks purportedly involved -- involving
13 the claim of the plaintiff which were allegedly cashed or
14 deposited by the decedent without having anyone except
15 the plaintiff, Ms. Quick, testify as to the veracity of
16 those checks. There's no evidence whatsoever that those
17 checks had been prepared by the company that had sent
18 them. There was no evidence -- there wasn't even
19 evidence that there was a Uniform Gift to Minors Act
20 account set up. There was absolutely nothing presented
21 as to the force of conduct by the business company. No
22 verification from anybody who had knowledge of what took
23 place in this action regarding any alleged account and
24 the use of the funds or distribution of the funds
25 therefrom. Only her, and that was with regard to solely

1 the use of the admission of those two checks.

2 Specifically, as the judge said, he may have made --
3 it may violate the Act, but he specifies that it comes
4 under a hearsay exception. I think it's 830 section § 15
5 which deals with allowing certain documents to come in
6 dealing with property. That does not apply in this case.
7 The statute clearly says what you have to do, and she did
8 not do it. And she certainly had plenty of opportunity
9 to do so if she had chosen to do so.

10 The fact of the matter is, this case fails for two
11 reasons. One, clearly the claim was violative of the
12 statute and cannot be held. And second, the fact is no
13 claim was presented by way of documentary evidence
14 because the evidence presented was admitted in error and
15 in violation of the law.

16 With that and of course the other exceptions, these
17 are the major ones to argue today for which I've
18 presented law. With all of the exceptions we've
19 presented Your Honor, this case needs -- the judge's
20 order needs to be reversed and the claim denied.

21 THE COURT: All right. Was this heard by the
22 Laurens County Probate Court or Lancaster?

23 MR. MURPHY: This is an Anderson County case.
24 Because of a potential conflict in Laurens County, the
25 Assistant Probate Judge was appointed to handle the case.

1 And we have motion hearings down in Laurens, but trial of
2 everything is up here. We had trial in this courtroom
3 for six days on the issue of the wills contest.

4 THE COURT: Yeah, I just noticed that Donald
5 Hocker who signed the return says it's Lancaster County.
6 I was just trying to figure out ---

7 MR. MURPHY: No. He was specially appointed
8 for this, Your Honor.

9 THE COURT: Okay.
10 Yes, sir?

11 MR. LEWIS: Thank you, Your Honor. Stephen
12 Lewis here on behalf of Ms. Quick.

13 First of all, Your Honor, just so we are all clear
14 about this because I don't do a whole lot of Probate
15 Court work. But as I was doing the research, I want to
16 make sure we're all clear as a standard of review. In
17 order for you, as a circuit court, to overturn Judge
18 Hocker's order, what the *Tollison* case says that Mr.
19 Murphy just referenced for another point, but it also
20 stands for the proposition that in order for you to
21 reverse his order there has to be no evidence to support
22 it. Not a little evidence, not a centill of evidence,
23 but no evidence. So that's the standard review for this
24 Court. And Your Honor, I'll only address the two issues
25 that Mr. Murphy has brought up as well because I do think

1 those are the two relevant issues.

2 The first with regard to the eight-month time period
3 in the limitation statute in the probate code. First of
4 all, let me say this, Your Honor. I had not been
5 involved in a Uniform Gift to Minors Act claim prior to
6 this case. But based on what I now know -- which is
7 probably not much, but it's more than I did before -- the
8 statute -- the Uniform Gift to Minors Act is extremely
9 clear about the type of property that a gift to a minor
10 becomes if the statute is complied with. And all you
11 have to do to comply with the statute is set up an
12 account and put the language on the account, Uniform Gift
13 to Minors Act. You have to have the minor's name and
14 then the donor's name on it. Mr. Barnette did that. If,
15 in fact, Judge Hocker found that he did that, what the
16 statute says under § 20-7-170 as to the effect of the
17 gift, it says, a gift made in a manner prescribed in this
18 sub article is irrevocable and conveys to the minor
19 indefeasible vested legal title to the money.

20 So this is not just a debt. This is property that
21 was owned and vested to my client and was irrevocable.
22 And just so there's no question about it, the word
23 irrevocable means that which cannot be revoked or
24 recalled. The word indefeasible means that which cannot
25 be defeated, revoked or made void.

1 So Your Honor, with regard to the time limitations
2 statute, the first issue is it is inconsistent -- if in
3 fact the Court finds that this claim was not any good
4 because she didn't meet the time period -- I'm going to
5 address that in a second. But if you find that, then
6 your finding is inconsistent with the Uniform Gift to
7 Minors Act language which says that this gift is
8 irrevocable and indefeasible and it is property that is
9 vested in my client.

10 THE COURT: Okay.

11 MR. LEWIS: Now, as far as the time limitation
12 itself, Your Honor, what Judge Hocker found was that
13 basically this statute, as much as Mr. Murphy argued to
14 the contrary, does hinge on notice. In fact, the statute
15 is replete with having to give notice to creditors. And
16 this is a different kind of claim, Your Honor. This
17 isn't a debt or a medical bill or a debt on a funeral
18 bill. Again, this is a -- this is a property that is
19 owned by my client. The only reason she filed the claim
20 -- at least -- I wasn't involved in that part of the
21 case. But the reason she filed the claim there was
22 really nowhere else to go but the estate because what
23 happened in this case was her father essentially took the
24 money out of the account. And that's the evidence I
25 think the Court has to assume is true is he set up the

1 account, and then in 2000 he took the money out. And we
2 have the checks where the checks were endorsed by him and
3 we could not find the money. So essentially he -- and I
4 hate to use this word with a father and daughter, Your
5 Honor. But he essentially defrauded his daughter. He
6 was guilty of conversion, if you will, of a property that
7 was hers. So this is not just a debt that may or may not
8 be owed to a medical provider on estate. It's not money
9 that may or may not be owed and the claim has to be
10 either allowed or disallowed. This is a claim for money
11 that was hers that is in the estate.

12 THE COURT: So he wrote two checks and the only
13 evidence of the -- that there was a gift was the checks
14 say to Bridget Quick, Uniform Gift to Minors Act?

15 MR. LEWIS: That was the only document
16 evidence. Ms. Quick's mother, who was married to Mr.
17 Burnette -- they were divorced at the time that he died.
18 But she testified that the decedent told him that she had
19 set up an account with A.G. Edwards. And then we have
20 the checks. The only reason my client ever found out
21 about it was during discovery in the initial stages of
22 the will contest, she sent a subpoena to A.G. Edwards.
23 She saw some things in his estate that had to do with
24 A.G. Edwards. Sent a subpoena, and these documents were
25 what was produced by A.G. Edwards.

1 THE COURT: He set up -- he wrote these checks
2 then cashed them himself?

3 MR. LEWIS: He set up the account and then
4 cashed them. So yes, sir. His -- and also at the
5 hearing, his signature -- it was testified that his
6 signature was on the back of the check as having endorsed
7 the check. So Your Honor, from that standpoint ---

8 THE COURT: And then he died?

9 MR. LEWIS: He cashed the checks in 2000, died
10 in 2003. She had no knowledge -- Judge Hocker found she
11 had no knowledge that the accounts had been set up until
12 she became personal representative of the estate and
13 started doing the digging and found that they were there.
14 So Your Honor, essentially what Judge Hocker said is she
15 had no notice of this. That most creditors get notice
16 either through publication or the statute provides for
17 actual notice which implies that the personal
18 representative knows who the creditors are and sends
19 notice to them, or that in claims out there from
20 hospitals or medical providers or mortgage companies or
21 whoever they are, they need to look at the newspaper and
22 see if there's -- if they have a claim against the
23 estate. We take the position, Your Honor, that Judge
24 Hocker was right when he said based on the Tulsa case --
25 and he cited it in his order. It's a U.S. Supreme Court

1 case where the Supreme Court also in a non-claim statute
2 ruled and held that notice is important, that it
3 essentially is what triggers the filing of the claim. So
4 Judge Hocker said -- based his opinion based on the fact
5 that she did not receive any notice and she couldn't --
6 and if she didn't receive any notice, how would she know
7 to file the claim within the eight months?

8 In addition to that though, Your Honor, if you look
9 further in the statute -- and it is § 62-3-803. If you
10 look at C, it says nothing in this section -- and of
11 course, A and B have to do with time frames. One of them
12 is if it arises before the decedent's death, and the
13 other if the claim arises after. But C says nothing in
14 this section affects or prevents, in number one, any
15 proceeding to enforce any mortgage, pledge, lien or other
16 security interest upon property of the estate. Well,
17 Your Honor, we would submit that a fair reading of
18 pledge, since it's not defined, is he pledged this money
19 to her through the Uniform Gift to Minors Act. So we
20 think that that has application as well.

21 And then lastly, Your Honor, from a statute of
22 limitations standpoint, a normal statute of limitations
23 standpoint, the reason that we believe that § 15-3-535
24 applies is because if notice is the key to the claim
25 statute, then she clearly didn't have notice and didn't

1 discover it until she found out about his personal
2 representative, and then the statute of limitations would
3 start ticking from that point on.

4 Now, Your Honor, as far as the checks into evidence,
5 what Judge Hocker found was that even though he said it
6 could have been a violation of the Uniform Business
7 Records Act, I don't think it was, Your Honor. In fact,
8 if you look at the Uniform Business Documents Act, what
9 Mr. Murphy read is exactly right. Competent evidence if
10 the custodian or other qualified witness. It does not
11 have to be the custodian of records to give evidence to
12 testify about the authentication of these records.

13 In fact, in the case of -- let's see. In the case
14 of *Twelfth R.M.A. Partners, L.P. versus National Safe*
15 *Corp.*, -- it's a South Carolina Court of Appeals case in
16 1999 -- the Court held that the witness for holder of
17 promissary note and guarantee was not the custodian of
18 the holder's records at or near the time the records were
19 made did not preclude admission of her testimony under
20 the business records exception of the hearsay rule in
21 holder's action against the guarantors to recover the
22 balance due on a note.

23 So the Court has held it doesn't have to be a
24 custodian of records, and in fact the Act says that,
25 Custodian of records or other qualified witness. Well,

1 Ms. Bolding (phonic), the decedent's wife, at the time
2 that this -- well, I don't think it happened at the
3 time. I don't think he took the money when they were
4 married. But she testified he told her that he had set
5 up an account with A.G. Edwards. She testified that was
6 his signature on the copies of the check that we got. So
7 we would submit, Your Honor, that she is a qualified
8 witness.

9 And in addition, Judge Hocker find -- found that
10 there was an exception to the hearsay rule. It was
11 exception 15 to rule 803. And if we read it, Your
12 Honor, I think it's clearly applicable. A statement
13 contained in a document purporting to establish or affect
14 an interest in property. As I've already said, Your
15 Honor, based on the Uniform Gift to Minors Act, this is
16 my client's property, and clearly these checks had an
17 effect or would have an effect on her property. In fact,
18 the checks are prima facie evidence that the Uniform Gift
19 to Minors Act was complied with, and therefore the
20 property is vested in her.

21 THE COURT: Wouldn't that only apply if she got
22 the money?

23 MR. LEWIS: Sir?

24 THE COURT: I mean, he basically wrote the
25 checks, created an account. Isn't the question whether

1 he intended to create a Uniform Gift to Minors under the
2 Act? I mean, you got a check that says that, but he
3 didn't give it to her.

4 MR. LEWIS: Well, actually, Your Honor, under
5 an Am Jur cite -- I'll read the statute to you. I think
6 the statute is clear ---

7 THE COURT: No. I got it. I understand.

8 MR. LEWIS: In the Am Jur cite it says opening
9 an account in those words is prima facia evidence that he
10 intended to gift it to the minor. The statute's really
11 simple. If you use those magic words, if you open an
12 account and use those magic words, it's done, it's over.

13 THE COURT: Okay.

14 MR. LEWIS: It is set up pursuant to the Act.

15 And then lastly, Your Honor -- and I guess just --
16 I'll give you this. Essentially what we're talking about
17 here is does my client get the benefit of estate money or
18 not. And in fact, if you rule against us, then the next
19 step -- or if you overrule Judge Hocker's order, the next
20 step is for me to file another action pursuant to the
21 *Federal Deposit Inc. Corp.* case and the *Debuke* (phonic)
22 case that says despite a creditor's failure to file a
23 claim timely, he or she is still entitled to go after the
24 assets from the people who inherit the assets.

25 So Your Honor, what we'd be doing essentially is now

1 we file another lawsuit under those cases where my client
2 would be entitled to recover those assets from whatever's
3 left in the estate that is distributed to the heirs. And
4 quite frankly, Your Honor, some of the heirs are her
5 children. So she would have to file a lawsuit against
6 her children to recover some of the estate because it is
7 clear in South Carolina that the fact the case that is
8 the seminal case is -- if I can find it, Your Honor.
9 It's the *Debuke* case that says where an insurance company
10 basically was claiming they had a right under an estate
11 to get some money from the estate. And our court -- our
12 South Carolina Court of Appeals -- I'm sorry. The Fourth
13 Circuit says that clearly under South Carolina law, the
14 statutes requiring the representatives of an estate to
15 give notice -- I'm sorry. After the distribution of the
16 estate, a creditor who has failed to file his claim may
17 collect from the heirs of distributees of the estate to
18 the extent that they have received assets therefrom. So
19 I guess, Your Honor, if you rule against us and overturn
20 Judge Hocker's order, we'll have to file another action
21 against her children and against the other heirs of the
22 estate in order to recover what is property of hers and
23 rightly hers under the Uniform Gift to Minors Act.

24 THE COURT: Okay.

25 MR. LEWIS: Thank you, Your Honor.

1 THE COURT: All right. I'll look at it.

2 MR. MURPHY: Could I just briefly respond?

3 THE COURT: Yeah, real brief. I mean, it was
4 only set for fifteen minutes. I've got to get moving.

5 MR. MURPHY: Note -- just note again Moulitis
6 overruled Debuke. That was one of the ones I was
7 pointing out earlier. This part about the statute saying
8 that it's irrevokable and indefeasible, this right, under
9 the Uniform Gift to Minors Act, he wants to read that as
10 something that is not changeable, but he does not read
11 the term forever barred in the non-claim statute as
12 something that cannot be changed. He's wanting you again
13 to simply substitute words that do not exist the
14 Legislature didn't intend.

15 He says there's an exception regarding pledge of
16 property of the estate. To get to that you have to get
17 to the fact that there was a Uniform Gift to Minors Act
18 claim to be made because there was a gift. No evidence
19 was presented except the checks that one was ever set up,
20 set up properly or whatever. This woman was not
21 qualified to testify to that because under the Business
22 Records Act, other witnesses who can testify as to the
23 regular course of dealing with the business, et cetera,
24 et cetera. The statute is very clear on that.

25 And the other part is property of the estate is

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1 determined upon the man's death. This was spent back in
2 2000 and 2002. It would be infeasible if the man was
3 alive. That statute does not apply -- § 20-7-170 does
4 not apply when the man has died. At that point in time
5 the probate code is the only law that applies in this
6 case.

7 THE COURT: Y'all held a six-day hearing on
8 this?

9 MR. LEWIS: Yes, a jury trial, Your Honor.

10 MS. MURPHY: A trial on the will. You know,
11 she may want to file a suit against her children, but
12 that doesn't matter. She had no problem with filing a
13 suit against her children's interest before, so I don't
14 see where that makes any difference here. Now, the
15 standard ---

16 MR. LEWIS: Your Honor, what Your Honor ---

17 MR. MURPHY: Just to make ---

18 THE COURT: Hold on. Hold on just a minute.
19 Hold on to the ---

20 MR. LEWIS: We don't need to get into the
21 merits of the ---

22 THE COURT: Hold on, hold on. Let him finish.

23 MR. MURPHY: --- make it clear the standard of
24 review of the policy ---

25 THE COURT: Yeah. I get the -- I swear I know

1 the standard of review.

2 (Laughter)

3 THE COURT: I know infeasible. I know all of
4 it. Trust me. All right. Let me do this. Here's the
5 problem I got. Judge Hocker didn't send me a -- the
6 tape. He says a tape exists. There's no record of the
7 trial, but a tape exists. And he says it's included, but
8 he didn't. Do y'all have that?

9 MR. LEWIS: No. The six-day trial, Your Honor,
10 was on the will contest. We had just a thirty-minute
11 hearing on this issues.

12 THE COURT: Right. He says there is no
13 transcript, but a tape recording of the hearing April 1st
14 is in existence. But he didn't include it. Y'all
15 haven't had that, have you? I mean, y'all don't have a
16 copy of it?

17 MR. LEWIS: No, sir.

18 MR. MURPHY: No, we don't have a transcript of
19 the trial on this matter, Your Honor. The
20 reconsideration hearing was half an hour or so, the trial
21 itself was probably a couple of hours.

22 THE COURT: Okay. Let me do this. I've got to
23 get that. I've got to listen to it. I'll take it under
24 advisement and then -- I mean, obviously -- and I'm not
25 trying to hurry you. Obviously I'm the one that put us

1 behind. But I've got to get a copy of it. I've got to
2 listen to the tape. So if you -- I may be calling you to
3 try and help me get a copy of it. That's why I asked
4 because Judge Hocker says that he's the judge from
5 Lancaster, but it says Laurens. I was just trying to
6 figure out ---

7 MR. MURPHY: He is from Laurens.

8 MR. LEWIS: He's from Laurens.

9 THE COURT: Yeah.

10 MR. LEWIS: Yes, sir.

11 THE COURT: Okay. I'll let y'all know.

12 MR. LEWIS: Thank you, Your Honor.

13 THE COURT: Didn't mean to be short with you.

14 It's just one of those days.

15 (WHEREUPON, the hearing ended at approximately 11:44

16 a.m.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 Certificate of Reporter

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 17th day of March 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 October 8, 2010

15 Renee H. Tollison
16

17 Circuit Court Reporter

FILED CLERK OF COURT
GREENVILLE, S.C.
CAROLINE W. MATTOX

Melinda - Sadler

*B1C
11-12-82
JFC*

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE FAMILY COURT

Bobby Gene Barnett,
Petitioner,

78-DR-23-2448

- vs -

ORDER

Sandra N. Barnett,
Respondent.



This matter comes before the Court pursuant to the verified Petition of the petitioner, and the Answer of the respondent, wherein both parties seek Court approval of a certain agreement entered into with reference to a modification of the previous Orders of this Court, and specifically those Orders dated September 9, 1978 and January 15, 1980.

Basically, it appears that there has been some question as to the satisfaction of the alimony and property award as set forth in the previous Orders. Furthermore, in relation thereto there was some question as to whether or not the transfer of an automobile to the wife not necessitated by those prior Orders, would constitute final payment upon the property and alimony designations of the previous Orders. Suffice it to say that the parties have now entered into an agreement whereby the petitioner has agreed to pay unto the respondent the sum of Three Thousand Five Hundred (\$3,500.00) Dollars on the date of the signing of this Order in satisfaction of any and all further claims to alimony, property, support or any claim of whatsoever nature arising out of the prior marriage relationship. That is, upon payment of the Three Thousand Five Hundred (\$3,500.00) Dollars, receipt hereof hereby acknowledged, the respondent has agreed to release and forever acquit the petitioner from any claims of any nature whatsoever arising out of the prior marriage relationship and the respondent acknowledges that all of the petitioner's obligations and duties as regard

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alimony, support and transfer of property, as set forth in the previous Orders of this Court with reference thereto have been fully satisfied. As regards the issue of child support and payments into a certain trust account on behalf of the minor child, these payments shall continue to be made in the same manner and amount as set forth in the previous Orders of this Court dated September 9, 1978 and January 15, 1980.

It appears that the parties have had some disagreement over the continued maintenance of the trust account which was established by the petitioner in the name of the minor child of the parties, pursuant to the previous Orders of the Court. Pursuant thereto the petitioner was under an obligation to pay into said trust account an amount representing the sum of Ten (\$10.00) Dollars per week, each and every week on behalf of said child. It appears to the satisfaction of the Court that the petitioner has satisfied this obligation. Nevertheless, the respondent now desires that her name be placed upon the signature card or evidence of deposit on any future payment. It appears that the parties have reached an agreement whereby both of them agree that the petitioner should continue paying the Ten (\$10.00) Dollars per week (or the equivalent thereof) into a trust or certificate of deposit type investment for the benefit of the minor child. The parties have further agreed that both the names of the petitioner and the respondent shall be placed on the signature cards or certificate of deposit, allowing withdrawal of the funds only in the event of both signatures. Previous Orders of this Court are modified to that extent.

Finally, it appears that there was some question as to the visitation provisions of the prior Orders. The prior Orders of this Court set forth visitation of a "reasonable" nature. As some difficulties have now arisen with reference to that method of visitation, the parties have agreed on an

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alternate method. Basically, the parties have agreed that visitation on a weekly basis shall continue to be designated as "reasonable". The designation of visitation to take place as being "reasonable visitation" is necessary due to the work schedule of the petitioner. Nevertheless, visitation on certain holidays and during the Summer shall be specific. It appears that the parties have agreed that in addition to the regular "reasonable" weekly visitation outlined above, the petitioner shall have visitation with the minor child for two weeks during the Summer vacation, so long as he gives the respondent thirty (30) days notice of his intent to visit. In addition thereto the petitioner shall have the child for visitation during one-half of the Easter or Spring recess with the petitioner to have the minor child for the first one-half of the Spring or Easter vacation in the Spring of 1983, and the respondent to have the child for the second one-half of the Spring or Easter break in the Spring of 1983. The respective periods of visitation during this holiday shall alternate such that during the Spring or Easter vacation of 1984, the respondent shall have the child during the first one-half of the Spring or Easter vacation and the petitioner shall have the child during the second one-half. Furthermore, the parties have agreed that the petitioner shall have the minor child during one-half of the Christmas holidays each and every year, so that the petitioner shall have the child from 12:00 noon on Christmas day through the remainder of the Christmas holiday period, such Christmas visitation to commence on Christmas day, 1982. It is specifically recognized by the Court as hereinabove mentioned, that some difficulties do arise as to visitation due to the work schedule of the petitioner. Therefore, both parties are advised that they should utilize their

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best efforts to insure that the petitioner is allowed what amounts to liberal "reasonable visitation".

It appears that the remaining provisions of the previous Orders of this Court shall remain in full force and effect subject only to the modifications as outlined hereinabove.

Having reviewed the terms of this agreement with the petitioner and the respondent, and having inquired of both parties as to their understanding and acquiescence therein, the Court finds the terms and conditions of the agreement to be fair and equitable and that the parties do understand and acquiesce in the terms of said agreement. Having considered these premises,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That upon payment of the Three Thousand Five Hundred (\$3,500.00) Dollars, receipt whereof is hereby acknowledged by the respondent, the respondent releases and forever acquits the petitioner from any and all claims of whatever nature and kind arising out of the prior marriage relationship and the respondent acknowledges that all of the petitioner's obligations and duties as set forth in the previous Orders of this Court with reference to the payment of alimony, transfers of property and support to the respondent, have been fully satisfied.

2. That the petitioner should continue paying Ten (\$10.00) Dollars per week (or the equivalent thereof) into a trust of certificate of deposit type of investment for the benefit of the minor child, and that both the names of the petitioner and the respondent shall be placed on signature cards or certificates of deposit allowing withdrawal of the funds only in the event of both signatures on any future deposits.

3. That the petitioner shall have "reasonable visitation" with the minor child on a weekly basis. Furthermore, the petitioner shall have visitation with the minor child two weeks during the Summer vacation. So long as he gives the respondent thirty (30) days notice of his intent to visit, the petitioner shall also have the child for visitation during one-half of the Spring or Easter vacation in the Spring of 1983. The respective periods of visitation during this holiday shall alternate in accordance with the body of the Order as hereinabove set forth. Furthermore, the petitioner shall have the minor child during one-half of the Christmas holidays each and every year, so that the petitioner shall have the child from 12:00 noon on Christmas day through the remainder of the Christmas holiday period, such Christmas visitation to commence on Christmas day, 1982. Finally, the petitioner shall have reasonable visitation with the minor child at all times not set forth specifically hereinabove.

4. Each and every other provision of the previous Orders of the Court, not hereinabove modified, and especially those provisions as touch and concern the payment by the petitioner for the care and support of the minor child, shall remain in full force and effect without modification.

IT IS SO ORDERED.

W. T. Smith, Jr.

WILLIE T. SMITH, JR.
JUDGE, THE FAMILY COURT

Greenville, South Carolina

10 day of November, 1982

C. L. Math
A Certified Copy
Clerk of Court C. P. & G. S.
Ex-Officio Clerk Family Court
Greenville County, S. C.
Dated 11/18



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

AFFIDAVIT OF PUBLICATION

PERSONALLY appeared before me, Elaine Rider, who being duly sworn,
says that she is editor/co-owner of the *News-Chronicle*, a newspaper published in and of
general circulation in the County of Anderson, South Carolina, that a legal notice in the
form attached at the foot of this affidavit was published in the *News-Chronicle* in its
issue(s) of Wednesday

February 19, 26 and March 5, 2003

Signed: Elaine Rider
Elaine Rider, editor/co-owner

Sworn to before me this 6th
day of March, 2003

Gymn E Ellison

(Seal) **MY COMMISSION EXPIRES
NOVEMBER 9, 2004**

Notary Public for South Carolina

A TRUE AND CORRECT COPY
Martha D. Newton
Notary Public for Anderson County, S.C.

(161)

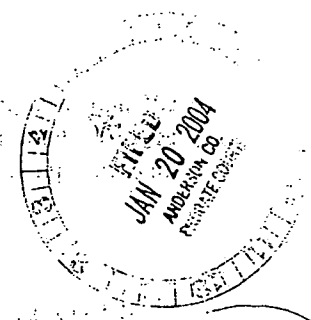
James Leon Neely	Jack R. Neely	Wife B. Lotts	Sylvia Kate Howell L.
Bobby Gene Barr	William Earl Phillips	Bobby Joe Bryson	Betty Marie Davis
Edna B. Evatt	Charles Donald Evatt	Lawrence James Bozeman	Marlene Bozeman
Charles Doyle Clark	Craig S. Scott	Charles M. Lott	Linda McAllister
Louie L. Walters	Beth M. Walters	Thelma C. Jones	Nancy J. Bell
Julia S. Morder	William R. Morder	Marie J. Beatty	Inez Allen
Irene Nix	Frances C. Nix	Gertrude S. Beasley	Jo Ann B. Ransom
Ross C. Wright	Larry L. Wright	Dois F. Strickland	Madeleine Hayes
		Elizabeth David Owen	Patricia Owen Ma

NOTICE TO CREDITORS OF ESTATES
All persons having claims against the following estate
deceased to present or demand claims to the undersigned
personal representative, appointed to administer the
estate, and to file their claims on Form K371PG with
Probate Court of Anderson County, South Carolina,
address of which is 100 South Main St., Anderson, S.C.
29624, on or before the date that is eight months after
date of the first publication of this Notice to Creditors
(unless barred by operation of Section 62-3-803), or
persons shall be forever barred as to their claims. All claims
must be presented in written statements, indicating the
claimant's name and the address of the claimant, the basis
of the claim, the amount claimed, the date when the claim
became due, the nature of any uncertainty as to the amount
claimed, and the date when due, and a description of
security to the claim.

Deceased: Bobby Wood Garner
Administrator(s): William R. Garner, III
Wife B. Lotts: Sylvia Kate Howell L.
Bobby Joe Bryson: Betty Marie Davis
Lawrence James Bozeman: Marlene Bozeman
Charles M. Lott: Linda McAllister
Thelma C. Jones: Nancy J. Bell
Marie J. Beatty: Inez Allen
Gertrude S. Beasley: Jo Ann B. Ransom
Dois F. Strickland: Madeleine Hayes
Elizabeth David Owen: Patricia Owen Ma

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF ANDERSON) In the Matter of Bobby Gene Barnett

Brigitte B. Quick ,)
))
Petitioner,)
))
vs.)
))
William Earl Phillips, Chrystal)
Phillips, Darlene Kuykendall and)
John David Sisk,)
))
Respondents.)



**MOTION FOR PAYMENT OF
\$41,646.27 UNDER THE UNIFORM
GIFTS TO MINOR'S ACT**

2003ES0400174



**TO: WILLIAM EARL PHILLIPS AND HIS ATTORNEY, CAREY B. MURPHY,
CHRYSTAL PHILLIPS, DARLEEN KUYKENDALL AND JOHN SISK, AND
THEIR ATTORNEY, J. MICHAEL TURNER**

COMES NOW, the Petitioner, by and through her counsel, and respectfully moves this Court for the immediate payment of the Statement of Creditor's Claim of Brigitte B. Quick which was filed with this Court on December 8, 2003.

This Motion is made upon the following grounds:

1. The Statement of Creditor's Claim by Brigitte B. Quick which was filed with this Court on December 8, 2003 and the supporting documentation is attached hereto and made a part hereof as Exhibit "A".
2. This claim was made pursuant to the South Carolina Uniform Gifts to Minor's Act. The Act provides that the establishment of an account for a minor under the South Carolina Uniform Gifts to Minor's Act is irrevocable and conveys to the minor an indefeasibly vested legal title to the money.
3. There is no factual dispute that \$41,646.27 is due to Brigitte B. Quick under the South Carolina Uniform Gifts to Minor's Act.
4. Therefore, since there is no factual dispute that the \$41,646.27 is due to Brigitte B. Quick, the Court is in a position to rule as a matter of law regarding the payment of this Claim.
5. Brigitte B. Quick has requested interest on the Claim from October 10, 2000 to the date of payment. However, if the parties to this cause of action do not agree regarding the

amount of interest to be paid on the claim, then Brigitte B. Quick hereby requests that the amount of \$41,646.27, the undisputed amount, be paid immediately and the interest to be determined no later than the merits hearing regarding this case and the interest, if any, be paid thereafter.

WHEREFORE, pursuant to the Uniform Gifts to Minor's Act, the Petitioner hereby respectfully requests that the Motion for the payment of the claim in the amount of \$41,646.27 be paid immediately (within ten (10) days of hearing on January 22, 2004) from the assets of the Estate of the Decedent, Bobby Gene Barnett, with any interest thereon being determined no later than the merits hearing in this case and that the interest, if any, be paid thereafter.

Respectfully submitted,

LEWEY C. HAMMETT, JR., P.A.

BY: Lewey C. Hammett, Jr.

Lewey C. Hammett, Jr.
1821 North Boulevard
Anderson, South Carolina 29621
(864) 226-5006

Attorney for Petitioner, Brigitte B. Quick

This 20th day of January, 2004
Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE FAMILY COURT
Case No. 78 DR 23-2448
SEP 15 8 31 AM '78
FAMILY COURT

Sandra N. Barnett,

Petitioner,

vs.

CONSENT ORDER

Bobby Gene Barnett,

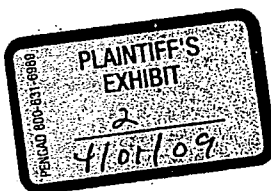
Respondent.

This matter came before me this 12th day of September, 1979, pursuant to a Petition of the Petitioner seeking the relief as set forth within the Petition. The Petitioner is represented by her attorney, Mr. Larry R. Patterson of the Greenville Bar, and the Respondent is represented by his attorney, Mr. Sol E. Abrams of the firm of Abrams, Bowen, Robertson, Tapp and Parham.

The parties through their respective attorneys have informed this Court that a property settlement and agreement has been reached and they wish that this agreement be confirmed by Order of this Court.

I find that the parties separated on or about July 13, 1979; that they have lived separate and apart since that time; and that there is no possibility of a reconciliation.

I find that as a result of this marriage one child was born, namely, Brigitte, age two and one-half years. The parties have agreed, and I so find, that it is in the best interest of the minor child that she remain under the care, custody and control of her mother, the Petitioner, and the Respondent shall have reasonable visitation privileges with the minor child and shall pay support for the minor child. The sum of Seventy-five Dollars (\$75.00) per week is a reasonable amount for the support of the said child, and the Respondent shall pay directly to the Petitioner the sum of \$75.00 per week, beginning Friday, Septem-



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Page Two

Order of this Court.

Further, the Respondent has agreed that he shall pay into an irrevocable trust in the name of the minor child of the parties the sum of Ten Dollars (\$10.00) each and every week simultaneously with the payment of his \$75.00 per week support. The said savings account shall be in the name of the child, for the benefit of the child, and shall remain in trust until the minor child reaches legal age.

In the way of a property settlement the parties hereto have agreed that the husband, Respondent, shall pay to the Wife, Petitioner, the sum of Sixteen Thousand Five Hundred and No/100 (\$16,500.00) Dollars as a cash settlement for any and all property rights, legal or equitable, that the wife may have in the husband's property accumulated during the marriage. In further settlement of this case, the wife hereby relinquishes all right and interest, legal or equitable, that she may have in the residence of the parties located at

The husband hereby agrees that he relinquishes all title, legal or equitable, that he may have in a house owned by the wife in Easley, South Carolina. Further in payment of this sum the Petitioner agrees that he shall have full title to twenty-four (24) automobiles and one (1) mobile home owned by the Respondent and in his name in Greenville, South Carolina. Further, in consideration of this settlement, the Respondent agrees that the Petitioner needs transportation for herself and the minor child. The Respondent agrees that he shall, as soon as possible from this date, obtain an automobile for the Petitioner and the minor child of the parties to use as transportation. This automobile shall be a 1976 model or later and fully acceptable by the wife. In the event that the parties

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 09-CP-04-4335

Brigitte Quick Respondent,

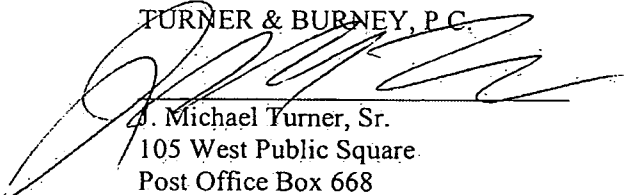
vs.

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and no other material.

TURNER & BURNEY, P.C.



J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

(67)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

vs.

Brigitte Quick Respondent,

FINAL BRIEF OF APPELLANT

J. Michael Turner, Sr.
Turner & Burney, P.C.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT ERR IN FAILING TO CONCLUDE THAT THE ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS AS SET FORTH IN SECTION 62-3-803 OF THE SOUTH CAROLINA CODE OF LAWS?
- II. DID THE COURT ERR BY ALLOWING THE ADMISSION OF COPIES OF CHECKS INTO EVIDENCE TO ESTABLISH RESPONDENT'S CLAIM WHEN THE CHECKS WERE NOT AUTHENTICATED OR VERIFIED?

STATEMENT OF THE CASE

On December 08, 2003, Brigitte Quick ("Respondent") filed a Statement of Creditor's Claim alleging that she was entitled to be paid by the estate from funds set aside by decedent, Bobby Gene Barnett, pursuant to the South Carolina Uniform Gift to Minors Act, Section 20-7-160(1) of the South Carolina Code of Laws. The claims were denied by the Personal Representative of the Estate.

On January 22, 2004, the Respondent filed a Motion for Payment under the Uniform Gift to Minors Act. On November 3, 2008, Respondent filed a Petition for Claim under the Uniform Gift to Minors Act claiming that she was entitled to funds from the estate in the amounts of \$41,646.27 and \$107.29.

On November 5, 2008, the Personal Representative of the estate filed an Answer to the Petition for claim under the Uniform Gift to Minors Act asserting numerous defenses including that the claims of the Petitioner were barred by the statute of limitations and the suit was not timely filed.

A hearing was held on April 1, 2009 before the Honorable Donald B. Hocker, Associate Probate Judge for Laurens County who had been appointed to preside over this case. By Order dated July 13, 2009, Judge Hocker concluded that the Respondent's claims pursuant to the South Carolina Uniform Gift to Minors Act were valid and approved the claims.

A Motion for Reconsideration was filed by the Personal Representative on July 21, 2009 asserting numerous grounds of error in the Order issued July 13, 2009 and received by counsel on July 16, 2009.

By Order dated October 19, 2009, Judge Hocker denied the Motion for Reconsideration.

The Personal Representative filed an appeal to the Circuit Court on October 27, 2009 setting forth numerous grounds of error by the Probate Court.

The appeal was heard before the Honorable J. Cordell Maddox, Jr. on the 17th day of March, 2010. An Order was filed on July 12, 2010 by Judge Maddox simply stating, "The Probate Court's ruling is hereby affirmed."

A Notice of Appeal was filed by Appellant and served on July 27, 2010.

STATEMENT OF FACTS

The Respondent is the daughter of Bobby Gene Barnett who died on January 12, 2003 and whose estate has been administered in the Anderson County Probate Court in case number 2003-ES-04-0174. Respondent was, at one time, the Personal Representative of the estate and brought an action against the estate to set aside the Last Will and Testament of her father. After a jury trial, the Will was upheld. Mrs. Quick was replaced as Personal Representative of the estate. During her time as Personal Representative of the estate, she was found to be in contempt on two occasions by the Probate Court.

On December 8, 2003, Mrs. Quick filed a statement of Creditor's Claim alleging that she was entitled to be paid by the estate for funds set aside by the decedent pursuant to the South Carolina Uniform Gift to Minors Act, Section 20-7-160(1) of the South Carolina Code of Laws. The claims were in the amount of \$41,646.27 and \$107.29. The Respondent alleged that her father, before his death, on October 10, 2000 and again on November 25, 2002 converted these funds for his own use thereby violating the South Carolina Uniform Gift to Minors Act. The only evidence of the establishment of the UGTMA accounts was presented by the Respondent at the hearing in the form of two checks on the A.G. Edwards account: a.) Check number dated October 10, 2000 in the amount of \$41,646.27; and b.) Check number dated November 25,

2002 in the amount of \$107.29 (Probate Court Order, R. p.4). No representative of A.G. Edwards or custodian of these accounts testified at the hearing to verify the authenticity of the checks. Appellant objected to the admission of the checks into evidence as hearsay and in violation of Section 19-5-510 of the South Carolina Code of Laws known as the Uniform Business Records as Evidence Act. (Probate Court Order, R. p. 6). The Court allowed the admission of the checks into the evidence which served as the only evidence establishing the claim of the Respondent.

Appellant also contended that the claims of the Respondent were barred by the statute of limitations set forth in § 62-3-803 of the South Carolina Code of Laws. Appellant contends that the claims of the Respondent were not timely filed since the Creditor's Notice was first run on February 19, 2003 (Defendant's Exhibit 2, R. p.61) and the claims of the Respondent were first filed on December 8, 2003, more than eight (8) months after the date of the first publication of the Creditor's Notice.

ARGUMENT

Standard of Review

Appeals taken from the Probate Court are governed by the provisions of the Probate Code. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254(1993). Pursuant to South Carolina Code Ann. § 62-1-308(a), an Order or Decree of the Probate Court shall be appealed to the Circuit Court. The Circuit Court must hear and determine the appeal "according to the Rules of Law." South Carolina Code Ann. § 62-1-308(d). The phrase, "according to the rules of law" means according to the rules governing appeals. Howard, supra. In the absence of a statute or rule prescribing a different standard of review, the Circuit Court must apply the same standards this Court would on direct appeal. The jurisdiction of both reviewing courts also extends to the correction of errors of law. In the matter of the Estate of Tollison, 320 S.C. 132, 463 S.E.2d 611, 613(S.C. App. 1995).

I. RESPONDENT'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS AS SET FORTH IN SECTION 62-3-801(a) AND SECTION 62-3-803(a) OF THE SOUTH CAROLINA CODE OF LAWS.

Section 62-3-801(a) of the South Carolina Code of Laws provides:

"Unless notice has already been given under this Section, a Personal Representative upon his appointment shall publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claim within eight months after the date of the first publication of the notice or be forever barred."

The Creditor's Notice was published for the first time on February 19, 2003 (Defendant's Exhibit 2; R. p.61). Therefore, the last day for creditors to file a claim against the estate was October 19, 2003 as a matter of law.

Section 62-3-803(a) of the South Carolina Code of Laws provides as follows:

"(a) All claims against the decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the Personal Representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates: (2) Within the time provided by § 62-3-801(b) for creditors who are given actual notice, and within the time provided in § 62-3-801(a) for all creditors barred by publication...."

The limitation therefore is eight months after the date of first publication of the Creditor's Notice.

The Respondent alleges that her father converted the funds on October 10, 2000 and again on November 25, 2002 which means that the claims arose against the estate before the death of her father. Therefore, without question, the last date for the Respondent to file a claim against the estate was October 19, 2003 which was eight months from the date of the first publication of the creditor's notice. Her claims were not filed until December 8, 2003 and therefore, were not timely filed.

The Probate Court incorrectly held that since the Respondent was not aware that she had a claim against the estate, that the "discovery" rule of the statute of limitations applied. The Probate Court, as affirmed by the Court of Common Pleas, therefore held that the claim was not barred by the statute of limitations as a result of the discovery rule of § 15-3-535.

The discovery rule is not applicable to § 62-3-803. As stated In The Matter of Estate of Tollison, 320 S.C. 132, 463 S.E.2d 611, 613, "Section 62-3-803 is a non-claim

statute"... "Thus, unless the statute is complied with, the creditor's claim is barred." Further as stated in Tollison, supra, "The presentation of claims against an estate is governed by the probate code."

Section 15-3-535 and the discovery provisions under those sections do not apply. Section 15-3-535 which the Probate Court held governed in this case provides that, "...all actions initiated under § 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." The statute of limitations as imposed by § 62-3-803 of the Probate Code has no such discovery language. The Court cannot impose additional language upon the statute which has been held to be a "non claim statute" and clearly the Court has held that the presentation of claims against an estate is governed by the Probate Code.

The Probate Court in its Order even recognized this principle by citing an unpublished Delaware Opinion as follows: "In an unpublished Delaware Opinion, the Delaware Court held under a non claim statute of six months that a Personal Representative is a creditor and bound by the same rules. Calvin v. Calvin, 1985 W.L. 22037.

It is therefore respectfully submitted that the Probate Court and the Court of Common Pleas erred in concluding that the claims were properly submitted when in fact the claims were barred by the statute of limitations as set forth in Section 62-3-803 of the South Carolina Code of Laws.

II. THE PROBATE COURT ERRED IN ALLOWING THE ADMISSION INTO EVIDENCE COPIES OF CHECKS TO ESTABLISH RESPONDENT'S CLAIMS WHEN THE SAME WERE NOT AUTHENTICATED OR VERIFIED IN ACCORDANCE WITH THE UNIFORM BUSINESS RECORDS AS EVIDENCE ACT.

The only evidence to establish the claims of the Respondent are copies of two purported checks from A.G. Edwards & Sons, Inc. allegedly made payable to Bobby Gene Barnett and dated October 13, 2000 and November 25, 2002. (Plaintiff's Exhibit 1; R. p.16-17). The Court accepted and allowed the admission into evidence of these checks to establish that the Plaintiff had not received any funds under the Uniform Gift to

Minors Act. There was no authentication or verification of these copies of checks. No witness was called from the bank or A. G. Edwards to verify the copies of the checks.

As stated by the Probate Court, "The Personal Representative also argued that the admission of the checks violated Section 19-5-510 of the South Carolina Code of Laws known as the Uniform Business Records as Evidence Act. This section provides:

"A record of an act, condition, or event shall insofar as relevant be competent evidence if the custodian or other qualified witness testifies as to its identity and the mode of its preparation and if it was made in the regular course of business at or near the time of the act, condition, or event and if in the opinion of the Court, the sources of information, method, and time of preparation was such as to justify its admission." S. C. Code Ann. § 19-5-510

Although the admission of the checks could possibly constitute a violation of the act, Rule 803(15) of the South Carolina Rules of Evidence, provides a hearsay exception for the admission of these checks." (Probate Court Order dated July 13, 2009, R. p.7)

The admission of these checks clearly violated Section 19-5-510 of the South Carolina Code of Laws. The Probate Court even concedes that the admission of the evidence which was the sole supporting evidence of the Respondent's claim was in violation of the Uniform Business Records Act. Clearly, the Business Records Act requires "the custodian or other qualified witness" to testify as to the identity and the mode of preparation and if evidence was made in the regular course of business at or near the time of the act, condition, or event.

The evidence supporting the Respondent's entire claim was based solely on these two unverified and unauthenticated checks which were admittedly objected to by the Appellant. The Probate Court Order even states, "the evidence of the establishment of the account was presented by the Petitioner (Respondent herein) at the hearing in the form of two checks: (a) Check number _____ dated October 10, 2000 in the amount of \$41,646.27; and (b) Check number _____ dated November 25, 2002 in the amount of \$107.29." (Probate Court Order, R. p.4).

A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either Section 19-5-510 or Rule 803(6), SCRE. See State v. Sarvis, 317 S.C. 102, 107, 450 S.E.2d 606, 609(Ct. of

App. 1994); See also Connelly v. Wometco Enterprises, Inc., 314 S.C. 188, 191, 442 S.E.2d 204, 206(Ct. of App. 1994).

The Probate Court, although stating that the admission of the checks could constitute a violation of the Business Records Act, allowed the checks as a hearsay exception under Rule 803(15) of the South Carolina Rules of Evidence. This is clearly erroneous. Rule 803(15) allows an exception for statements and documents affecting an interest in property. These checks were the sole evidence to establish a claim and were not verified or authenticated by anyone. These checks do not constitute a statement in a document establishing an interest in property as required by Rule 803(15).

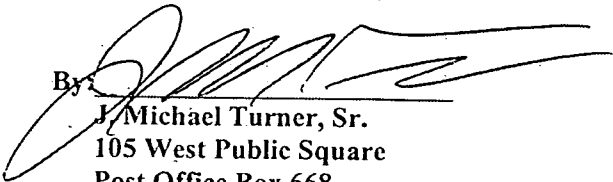
Therefore, claimant did not meet her burden of proof in establishing by the greater weight of the evidence that there was a gift under the South Carolina Uniform Gift to Minors Act. There were no other documents presented to corroborate the claim such as the signature agreement with the bank or A.G. Edwards. The only evidence which was supportive of the claim are the unverified, unsubstantiated checks which were improperly admitted into evidence in violation of the Business Records Act and Rule 803(15) of the South Carolina Rules of Evidence.

CONCLUSION

Therefore, it is respectfully submitted that the claims of the Respondent were barred by Section 62-3-801(a) and by Section 62-3-803 of the South Carolina Code of Laws. It is further submitted that the Court erred in allowing the purported checks to be placed into evidence as the sole evidence of any alleged "Gift to Minor". These checks were improperly admitted into evidence in violation of the Uniform Business Records as Evidence Act and did not constitute an exception to the hearsay rule. Therefore, the decision of the Probate Court and the Court of Common Pleas should be reversed.

Respectfully submitted,

TURNER & BURNEY, P. C.

By: 

J. Michael Turner, Sr.

105 West Public Square

Post Office Box 668

Laurens, South Carolina 29360

(864) 984-6565

January 18, 2011

Carey B. Murphy

Post Office 809

Anderson, South Carolina 29622

(864) 224-1569

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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J. Cordell Maddox, Jr., Circuit Court Judge

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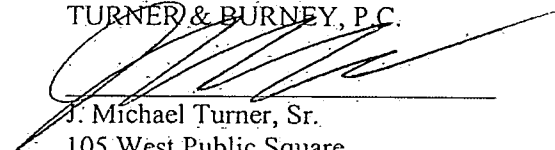
Brigitte Quick Respondent,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

January 18, 2011

TURNER & BURNEY, P.C.



J. Michael Turner, Sr.
.105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
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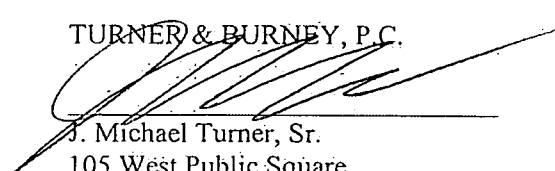
Brigitte Quick Respondent,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

January 10, 2011

TURNER & BURNEY, P.C.



J. Michael Turner, Sr.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
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Estate of Bobby Gene Barnett Appellant,

v.

Brigitte Quick Respondent.

FINAL BRIEF OF RESPONDENT

Stephen R.H. Lewis
Covington, Patrick, Hagins, Stern & Lewis, P.A.
211 Pettigru Street
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. THE COURT DID NOT ERR IN CONCLUDING THAT THE CLAIM WAS NOT BARRED BY THE STATUTE OF LIMITATIONS AS SET FORTH IN SECTION 62-3-803 OF THE SOUTH CAROLINA CODE OF LAWS.
- II. THE COURT DID NOT ERR BY ALLOWING THE ADMISSION OF COPIES OF CHECKS INTO EVIDENCE SINCE COMMERCIAL PAPER IS SELF-AUTHENTICATING.

STATEMENT OF THE CASE

The Respondent is satisfied with the Statement of the Case by the Appellant.

STATEMENT OF FACTS

The Respondent, Brigitte Quick, is the only child of Bobby Gene Barnett, the Decedent, who died on January 12, 2003, after losing his battle with cancer. Mrs. Quick was the former Personal Representative of her father's Estate and, as such, brought an action against the Estate to set aside the Last Will and Testament of her father. The Last Will and Testament which Mrs. Quick sought to set aside was executed on January 9, 2003, several weeks after Mr. Barnett moved into the home of Earl Phillips, the current Personal Representative of the Estate, and only three (3) days prior to Mr. Barnett's death. The Will contest case was tried for six days and the Will was upheld on the issue of testamentary capacity. The findings of contempt on two occasions by the Probate Court against Mrs. Quick related to alleged mismanagement of Estate funds, the subject matter of which amounted to approximately \$900.00.

The Creditor's Notice was published for the first time on February 19, 2003 (Defendant's Exhibit "2"; R. p. 61). After being appointed Personal Representative of

the Estate by the Probate Court and during the initial stages of discovery in the will contest case, Mrs. Quick discovered the existence of an A.G. Edwards account which had been established by her father, pursuant to the *S.C. Uniform Gift to Minor's Act* ("UGTMA"). She also discovered the funds had been removed by her father without her knowledge or consent. Upon discovering these facts, she promptly filed a Statement of Creditor's Claim on December 8, 2003 (approximately 9 ½ months after the Creditor's Notice was published but within 1 year after her father's death). The Statement of Creditor's Claim alleged her father, the Decedent, had converted these funds for his own use in violation of the UGTMA. She alleged her father converted funds in the amount of \$41,646.27 on October 10, 2000, and \$107.29 on November 25, 2002. At the trial of the UGTMA claim, Mrs. Quick presented two checks evidencing the *Uniform Gift to Minor's Act* account established with A.G. Edwards in the above-referenced amounts executed on the above-referenced dates. Both Mrs. Quick and her mother testified that the endorsements on the backs of the checks were, indeed, the signature of Mr. Barnett. The Estate presented no evidence to the contrary.

In addition, Mrs. Quick testified that she had no knowledge and received no notice that the account even existed until it was discovered during the Will contest. Upon discovery of the account, she promptly filed the Statement of Creditor's Claim on December 8, 2003.

Section 20-7-160 of the *S.C. Code of Laws* provides in pertinent part:

- (1) An adult person may, during his lifetime, make a gift of...money...to a person who is a minor on the date of the gift.
- (c) If the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution

for credit to an account in the name of the donor, another adult or trust company followed in substance by the words: "As Custodian for _____ (name of minor) under the Uniform Gift to Minor's Act".

Section 20-7-170 provides for the effect of the gift:

- (1) A gift made in a manner prescribed in this sub-article is irrevocable and conveys to the minor indefeasible vested legal title to the...money...

Pursuant to this section, indefeasible vested legal title to the gift was established in Mrs. Quick.

ARGUMENT

Standard of Review

Where appeal is taken from the Probate Court's decision in an action in the nature of an action at law, the Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. *Howard v. Mutz*, 315 S.C. 356, 434 S.E.2d 254 (1993). "...if there is any evidence which reasonably supports the factual findings of the Probate Court judge, (his) Order must be affirmed". *Howard supra*. The jurisdiction of both reviewing courts also extends to the correction of errors of law. *Id. In the matter of the Estate of Tollison*, 320 S.C. 132, 463 S.E.2d 611, 613 (S.C. App. 1995).

- I. THE COURT DID NOT ERR IN CONCLUDING THAT THE CLAIM WAS NOT BARRED BY THE STATUTE OF LIMITATIONS AS SET FORTH IN SECTION 62-3-803 OF THE SOUTH CAROLINA CODE OF LAWS.

Section 62-3-803 of the *S.C. Probate Code* provides in pertinent part:

- (a) All claims against a decedent's estate which arose before the death of the decedent...whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of

limitations, are barred against the estate, the Personal Representative and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

- 1) One year after the decedent's death; or,
- 2) Within the time provided by §62-3-801(b) for creditors who are given actual notice, and within the time provided in §62-3-801(a) for all creditors barred by publication; provided claims barred by the non-claimed statute at the decedent's domicile before the giving of notice to creditors barred in this State are also barred in this State.

Section 62-3-801(b) provides an eight-month claim period from published notice as provided in §62-3-801(a). Section 62-3-801(a) provides an eight-month claims period after the date of the first publication of the notice.

In addressing the timeliness of Mrs. Quick's claim, the Probate Court discussed the "critical issue" of notice to the Creditor. Clearly, the statute contemplates notice in some form, either actual or by publication, be given to all creditors. Notice is to be provided to all creditors that they "present *their* claims" within the specified period of time. A fair reading of the statutory language indicates the legislature presumes creditors either know or suspect they have a claim against an Estate. The facts of this case present a unique situation in which Mrs. Quick was completely unaware of her claim until after the eight-month claims period had expired. The Decedent's conduct in secretly converting funds in which Mrs. Quick held indefeasibly vested legal title constituted actionable conduct including, but not limited to, a violation of the *Uniform Gift to Minor's Act*, fraud, conversion, and breach of fiduciary duty. Such conduct if discovered during the Decedent's lifetime would give rise to separate and distinct causes of action

under South Carolina law.¹ Presumably, had Mrs. Quick discovered her father's conduct during his lifetime, the applicable statute of limitations for each cause of action would be three years from her discovery thereof. However, Respondent's research has revealed no South Carolina authority addressing whether the eight-month filing period applies to a creditor who has no knowledge of her claim because the conduct which gives rise to the claim prevents her from discovering the claim.

In the instant case, there could be no more harsh application of the non-claims statute eight-month filing requirement than that asserted by the Appellant. The Appellant asks this Court to condone and ratify the Decedent's tortious and unconscionable conduct, the secret nature of which prevented Mrs. Quick from discovering it. The Probate Court refused to do so and applied a more reasonable analysis to this unique set of circumstances. The Probate Court reasoned that since Mrs. Quick had no notice of the conduct of her father during the eight-month claims, the "discovery rule" should apply to any determination regarding the timeliness of her filing. This ruling is consistent with logic and reason.

The Court's ruling is also consistent with South Carolina case law and statutory law which recognizes a tort-claimant's right to proceed against an Estate without complying with the claim filing procedure in the Probate Court. See Culb v. Cook, 284 S.C. 591, 327 S.E.2d 379 (S.C. App. 1985). Culb stands for the proposition that a tort claimant whose potential judgment may be satisfied out of undistributable assets in the Estate need not file an attested account in the probate proceeding. Id. 284 S.C. 601.

¹ Section 62-1-302 of the Probate Court confers exclusive original jurisdiction to the Probate Court over all subject matter related to "protection of minors, including, ... gifts made pursuant to the S.C. *Uniform Gift to Minor's Act*", Section 62-1-302(a)(2). However, Section 62-1-302(d)(6) allows removal of *Uniform Gift to Minor's Act* actions to the Circuit Court.

Although in Culb, liability insurance was the undistributable asset, the “property” at issue in this case should also be considered “undistributable”. Pursuant to the UGTMA, the gift made to Mrs. Quick by her father was “irrevocable” and conveyed to her “indefeasible of vested legal title” to the money. See §20-7-170(1). Essentially, Mrs. Quick’s vested legal title amounts to a property right which cannot be a distributable asset. For example, had Mr. Barnett stolen an automobile from Mrs. Quick and parked it on one of the pieces of real property contained in his Estate, the automobile would not be a distributable asset since legal title to the automobile was in Mrs. Quick. Based on the clear language of the UGTMA, the gift made pursuant to the Act is not a distributable asset, and, therefore, as a tort-claimant, Mrs. Quick had a right to proceed against the Estate without complying with the claim filing procedure.

In addition to the issue of whether the Decedent’s tortious conduct allows non-compliance with the claim filing procedure, the unique set of circumstances in this case raises the issue of whether the Decedent’s conduct created a constructive trust. The S.C. Supreme Court, in discussing the concept of constructive trust, has explained that “constructive trusts have none of the elements of an express trust but arise entirely by operation of law without reference to any actual or supposed intention of creating a trust and are resorted to by equity to vindicate right and justice or frustrate fraud”. All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741, 749 (1942), (citing 65 C.J. 225).

All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741, 749 (1942) (citing 65 C.J. 225)). “In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.” Lollis v. Lollis, 291 S.C. 525, 530 (1987) (internal citations omitted).

However, equity is less than demanding and quite flexible in prescribing the elements essential to a constructive trust. Whitmire v. Adams, 273 S.C. 453, 458 (1979).

"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 (Ct. App. 2002) (quoting Hendrix v. Hendrix, 299 S.C. 233, 235, 383 S.E.2d 468, 469 (Ct. App. 1989)). "Fraud is an essential element, although it need not be actual fraud." Lollis, 291 S.C. at 529-30 (internal citations omitted).

Essentially, a constructive trust can 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." Smith v. S.C. Retirement System, 336 S.C. at 529, 520 S.E.2d at 352 (quoting SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990)).

In the instant case, it is clear that the imposition of a constructive trust is the proper remedy for the actions of the Decedent. First, the Decedent made more than a promise to provide for his daughter when he transferred money to an account pursuant to the Uniform Gift to Minors Act. That Act provides that this money was irrevocable and indefeasibly vested in the Mrs. Quick's name. See § 62-5-530. After the money was vested in her name, the deceased fraudulently used the fiduciary relationship he enjoyed

with his daughter to extract the money. This was accomplished by extracting the money as agent of Mrs. Quick, when she gave no such directive or had any knowledge. The Decedent then used the proceeds for his own benefit.

Thus, a constructive trust would remedy this fraud and abuse of fiduciary relationship. The deceased is in possession of property that does not equitably belong to him and in good conscience he should not be allowed to keep.

II. THE COURT DID NOT ERR BY ALLOWING THE ADMISSION OF COPIES OF CHECKS INTO EVIDENCE SINCE COMMERCIAL PAPER IS SELF-AUTHENTICATING.

Appellant argues the admission of checks into evidence was a violation of the *Uniform Business Records as Evidence Act* because the checks were not "authenticated or verified". The Appellant's argument is without merit for three reasons:

1. Under the *S.C. Rules of Evidence*, checks are self-authenticating. Rule 902 of the *S.C. Rules of Evidence* provides, in pertinent part:

Extrinsic evidence of authenticity of evidence as a condition precedent to admissibility is not required with respect to the following:

(9) **Commercial Paper and Related Documents.**

Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law:

S.C. Rules of Evidence 902(9).

The term "commercial paper" in the *Uniform Commercial Code*, Title 10.3 S.C. Code, 1962 (as amended), generally includes within its scope drafts, checks, certificates of deposit and notes. 1976 WL 30523 (S.C.A.G.); See also, *Campbell v. Noble Trotter Rice Milling Co.*, 188 S.C. 212 (1938). The checks entered into evidence are self-authenticating pursuant to the *S.C. Rules of Evidence* and, therefore, no other type of authentication or verification is required.

2. The *Uniform Business Records as Evidence Act* is not applicable when the evidence is self-authenticating. This section (§19-5-510) gives the trial court control to exclude or require additional proof if the authenticity or trustworthiness of the business record is suspect.

State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007). Citing Kershaw County Dept. of Social Services v. McCaskill, 276 S.C. 360, 278 S.E.2d 771 (1981).

Since the checks were self-authenticating, the probate court need not require additional proof of authenticity.

3. As stated by the probate court, if the *Uniform Business Records as Evidence Act* applies, Rule 803(15) of the *S.C. Rules of Evidence* provides a hearsay exception for the admission of the checks. Exception #15 provides, in pertinent part:

(15) Statements and Documents Affecting an Interest in Property

A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document...

S.C. Rules of Evidence 803(15).

Appellant argues this ruling was in error by simply stating the checks do not constitute a statement in a document establishing an interest in property. However, under the *Uniform Gift to Minor's Act*, the check is a gift made as prescribed in the Act and conveys "indefeasibly vested legal title to the account". Clearly, the checks affect an interest in Mrs. Quick's property rights and, therefore, fits within the hearsay exception.

The Appellant argues the Probate Court conceded that the admission of the evidence was in violation of the *Uniform Business Records Act* when it stated in its

Order, "Although the admission of the checks could possibly constitute a violation of the Act, Rule 803(15) of the *S.C. Rules of Evidence* provides a hearsay exception for the admission of the checks". (Probate Court Order dated July 13, 2009, R. p. 7). However, even if the Court was in error with regard to the application of Rule 803(15), any error would not be prejudicial because the checks were clearly admissible under Rule 902 of the *S.C. Rules of Evidence*. "The principal is well settled that error is not reversible unless prejudice to the complaining party may have resulted therefrom". *Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974) (overruled on other grounds). An error not shown to be prejudicial does not constitute grounds for reversal. *Darden, Id.* 209 S.E.2d 47.

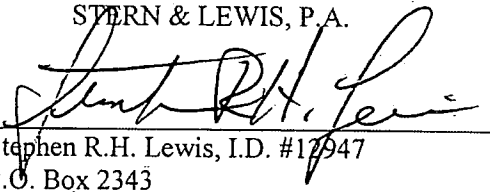
CONCLUSION

Respondent respectfully submits that Mrs. Quick's claim was not barred by the statute of limitations set forth in §62-3-803 since the conduct of her father prevented her from knowing she had a claim, and, therefore, application of the discovery rule under these circumstances is a fair and equitable result. In addition, the Decedent's conduct created a constructive trust which would provide a remedy in the context of fraud and breach of fiduciary duty. It is further respectfully submitted the admission of the checks into evidence by the Probate Court was proper and not an error of law. Nevertheless, if it was an error, the error was not prejudicial to the Appellant and does not constitute

grounds for reversal. Therefore, the Order of the Probate Court and the affirmation of the Order by the Court of Common Pleas should be affirmed.

Respectfully submitted,

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.


Stephen R.H. Lewis, I.D. #17947
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

February 15th, 2011

Greenville, South Carolina

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2009-CP-04-4335

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett Appellant,

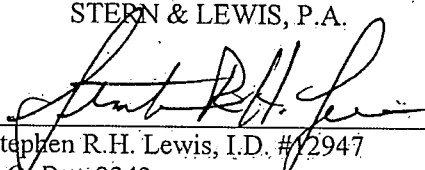
v.

Brigitte Quick Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with
Rule 211(b), SCAR.

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.


Stephen R.H. Lewis, I.D. #12947
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

February 15th, 2011
Greenville, South Carolina

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 09-CP-04-4335

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett.....Appellant.

vs.

Brigitte Quick Respondent,

FINAL REPLY BRIEF OF APPELLANT

J. Michael Turner, Sr.
Turner & Burney, P.C.
105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

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I. RESPONDENT'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS AS SET FORTH IN SECTION 62-3-801(a) AND SECTION 62-3-803(a) OF THE SOUTH CAROLINA CODE OF LAWS.

Contrary to the assertions of the Respondent, the Trial Court clearly erred in concluding that the Respondent's claims were not barred by the statute of limitations. As conceded by Respondent in her Brief, claims were filed a considerable time after the eighth month claims period had expired. The claims were therefore barred by § 62-3-801(a) and § 62-3-803(a) of the South Carolina Code of Laws.

Section 62-3-803 is a non-claim statute. See A. McCoy's, Inc. v. Garner, 281 S.C. 378, 315 S.E.2d 812(Ct. App. 1984) declaring former § 21-15-640 a non-claim statute. "Thus, unless the statute is complied with, the creditor's claim is barred." In the matter of the Estate of Tollison, 320 S.C. 132, 463 S.E.2d 611, 613(S.C. App. 1995).

In A. McCoy's, Inc. v. Garner, supra, it is stated, "McCoy's contends that § 21-15-640 merely protects executors and administrators of decedent's estate but does not protect the devisees of the real estate of a decedent from the just claim of a creditor who did not properly file an attested account. We reject this argument and hold that § 21-15-640 is a non-claim statute which bars all claims which are not timely filed against an estate. This includes assets distributed to the beneficiaries of the estate." Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554(1983).

It was stated in Carolina Eastern Grain Cooperation v. Houck, 284 S.C. 224, 325 S.E.2d 75(S.C. App. 1985), "The sole question presented on appeal is whether Code § 21-15-640 operates to bar Carolina Eastern's claim. It is now established that § 21-15-640 is a "non-claim statute." Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554(1983). That is, a creditor who fails to file a verified claim against the estate within five (5) months of publication of the Notice of Creditors is forever barred from asserting his claim."

The Respondent can cite no cases supporting the position that the discovery rule should apply to any determination regarding the timeliness of Respondent's filing. That is because the discovery rule is not applicable to a non-claim statute. The statute of

limitations as is imposed by § 62-3-803 of the Probate Code has no such discovery language. As the Court stated in the matter of the Estate of Tollison, supra, "the presentation of claims against an estate is governed by the Probate Code."

Respondent also attempts to analogize this case to Kolb v. Cook, 284 S.C. 598, 327 S.E.2d 379 dealing with a claim for liability insurance. Liability insurance obviously was defined to be an undistributable asset of the estate in Kolb and the Respondent argues that the property at issue in this case should also be considered "undistributable". It is clearly an erroneous argument. The claim of the Respondent, if allowed, is required to be paid from the distributable assets in the hands of the Personal Representative. The Respondent is clearly looking to have any claim satisfied from distributable assets of the estate. As the Court said, "Moultis held only that tort claimants who looked to the distributable assets of an estate for satisfaction of their potential judgment must file a duly attested account in the Probate Court or with the executor within the period of limitation or have their claims barred." 279 S.C. @ 5, 301 S.E.2d 554. Kolb, supra, therefore does not support the Respondent's argument.

Respondent also argues for the imposition of a constructive trust apparently as a means of avoiding the statute of limitations. This issue was not presented to the Court below. This issue was not plead. This argument cannot be presented for the first time on appeal. Murphy v. Hagan, 275 S.C. 334, 271 S.E.2d 311. This issue was not presented to the trial Judge and it cannot be for the first time raised on appeal. American Hardware Supply Company, Inc. v. Whitmire, 278 S.C. 607, 300 S.E.2d 289(1983).

II. THE PROBATE COURT ERRED IN ALLOWING THE ADMISSION INTO EVIDENCE COPIES OF CHECKS TO ESTABLISH RESPONDENT'S CLAIMS WHEN THE SAME WERE NOT AUTHENTICATED OR VERIFIED IN ACCORDANCE WITH THE UNIFORM BUSINESS RECORDS AS EVIDENCE ACT.

Respondent argues that the admission of the checks into evidence was not prejudicial to the Appellant. Without these checks, the Respondent had no claim. The checks were the sole evidence of any claim asserted by the Respondent. Without the

admission of the checks, the Respondent would have no claim. It is, therefore, apparent that the admission of these checks was extremely prejudicial to the Appellant.

The check for \$41,646.27 was issued more than two (2) years before the death of Mr. Barnett. The Respondent is placed in the untenable position of having no way to know where these funds went, what they were used for, or whether or not they were given to the Appellant. As the Order states, there was testimony that the decedent paid for the Respondent's college and other expenses. There is no evidence that these funds were not used for Respondent's expenses or college. The Respondent argues that she did not get this money and here is a check so therefore the estate owes her this money. Mr. Barnett is deceased, he cannot defend himself from his daughter's claims of fraud and conversion.

As the trial Judge, himself indicated, the admission of the checks did constitute a violation of the Business Records Acts. In fact, the admission of the checks is clearly in violation of the South Carolina Business Records Act.

The Business Records exception to the hearsay rule is now found in both S.C. Code Ann. § 19-5-510 and Rule 803(6), S.C.R.E. Both exceptions require that the evidence be given by a custodian or other qualified witness. Twelfth RMA Partners, LP v. National Safe Corp., 335 S.C. 635, 518 S.E.2d 44.

Even under Rule 803(6), S.C.R.E. (Business Records exception) a proper foundation must be laid for admittance of the evidence and this includes a chain of custody. Stephens v. Allen, 336, S.C. 439, 520 S.E.2d 625.

Rule 803(15) of the South Carolina Rules of Evidence does not provide a hearsay exception for the admission of these checks. The exception cited by the trial court deals with a statement contained in a document purporting to establish or affect an interest in property. These checks are not traceable to any property of the estate and have no effect on any property of the estate. The checks are used to establish a claim or debt against the estate. The checks do not establish any interest in real estate and the words in question on the check were not placed there by the decedent.

The Respondent now argues that the checks were self authenticating under Rule 902 of the Rules of Evidence. The Appellant disagrees that the checks in issue in this proceeding qualify as self authenticating. Further, however, this was not considered by

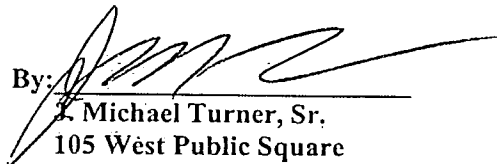
the trial Court nor ruled upon by the trial Court and cannot be presented for the first time during this appeal.

CONCLUSION

Therefore, it is respectfully submitted that the decision of the Probate Court and Court of Common Pleas should be reversed.

Respectfully submitted,

TURNER & BURNEY, P. C.

By: 

J. Michael Turner, Sr.

105 West Public Square

Post Office Box 668

Laurens, South Carolina 29360

(864) 984-6565

January 18, 2011

Carey B. Murphy

Post Office 809

Anderson, South Carolina 29622

(864) 224-1569

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 09-CP-04-4335

Earl Phillips as Personal Representative of the
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vs.

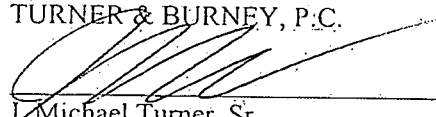
Brigitte Quick Respondent,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b),
SCACR.

January 18, 2011

TURNER & BURNEY, P.C.



Michael Turner, Sr.

105 West Public Square
Post Office Box 668
Laurens, South Carolina 29360
(864) 984-6565

Carey B. Murphy
Post Office 809
Anderson, South Carolina 29622
(864) 224-1569

Attorneys for Appellant

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

Earl Phillips as Personal Representative of the Estate of
Bobby Gene Barnett, Appellant,

v.

Brigitte Quick, Respondent.

Appellate Case No. 2010-168488

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5003
Heard January 11, 2012 – Filed July 18, 2012

REVERSED

John Michael Turner, Sr., of Turner & Burney, PC, of
Laurens, and Carey Bruce Murphy, of Anderson, for
Appellant.

Stephen R.H. Lewis, of Covington, Patrick, Hagins,
Stern, & Lewis, P.A., of Greenville, for Respondent.

HUFF, J.: Earl Phillips, as the personal representative of the Estate of Bobby Gene Barnett, appeals the order of the circuit court affirming the probate court's

order approving Brigitte Quick's claims pursuant to the South Carolina Uniform Gift to Minors Act (UMGA).¹ We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Bobby Gene Barnett passed away January 12, 2003. The notice to creditors of the estate ran in the Anderson News-Chronicle on February 19 and 26, 2003, and March 5, 2003. On December 8, 2003, Barnett's daughter, Quick, filed two statements of creditor's claim with the probate court. In the statements, she asserted Barnett took funds belonging to Quick under the UGMA without notifying her and failed to provide her with the funds that were being held on her behalf. She submitted copies of two cancelled checks from a UGMA account with A.G. Edwards & Sons. The checks were in the amounts of \$107.29 and \$41,646.27. Quick subsequently filed a petition for claim under the UGMA with the probate court. She claimed Barnett made a gift to her under the UGMA and then converted the money for his own use on two occasions. In his answer to the petition, Phillips, who was the successive personal representative of Barnett's estate, asserted, among other defenses, Quick's claim was not timely filed and was time barred.

The probate court rejected Phillips's contention that Quick's claims were barred because she failed to file her claim within the eight-month period prescribed by sections 62-3-801 and 62-3-803 of the South Carolina Probate Code (2009). The probate court noted Quick testified she had no notice or knowledge of the UGMA account until she became personal representative of Barnett's estate and learned of the account during discovery for litigation contesting Barnett's will in December, 2003. Her mother testified she had never told Quick about the account that Barnett set up pursuant to their divorce decree. The probate court applied the discovery rule and found that because Quick had no notice or knowledge of the claim prior to discovering it in December 2003, her claim was not barred by section 62-3-803. The court approved Quick's UGMA claim, but denied her request for interest. Phillips filed a motion to alter or amend, which the probate court denied. He then appealed to the circuit court, which affirmed the probate court. This appeal followed.

¹ S.C. Code Ann. §§ 63-5-500 to -600 (2010).

STANDARD OF REVIEW

"An issue regarding statutory interpretation is a question of law." *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005). "Questions of law . . . may be decided with no particular deference to the lower court." *Neely v. Thomasson*, 365 S.C. 345, 350, 618 S.E.2d 884, 886 (2005).

LAW/ ANALYSIS

Phillips argues Quick's claims are barred by the time limitation set forth in sections 62-3-801(a) and 62-3-803(a) of the South Carolina Probate Code (2009) because section 62-3-803 is a nonclaim statute.² We agree.

Section 62-3-803(a) provides:

All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

- (1) one year after the decedent's death; or
- (2) within the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication

Section 62-3-801(a) mandates that creditors who are not given actual notice must present their claims within eight months after the date of the first publication of the notice or be forever barred.

² At oral argument, both parties acknowledged this issue had been raised to the probate court. Despite the paucity of the record, we will review the issue on the merits.

This court held Section 62-3-803 is a nonclaim statute. *In re Estate of Tollison*, 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995). Thus, unless the statute is complied with, the creditor's claim is barred. *Id.* The Indiana Supreme Court explained the difference between a nonclaim statute and a statute of limitations:

[A] nonclaim statute . . . grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.

While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1138-39 (Ind. 1997) (quoting *Donnella v. Crady*, 185 N.E.2d 623, 624-25 (Ind. App. 1962)).

"While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions." *Estate of Decker*, 684 N.E.2d at 1139; *see also* 51 Am. Jur. 2d *Limitation of Actions* § 3 (2011) ("The time element is a built-in condition of a nonclaim statute and is of the essence of the right of action, and unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.").

In the present case, the probate court relied on the discovery rule found in section 15-3-535 of the South Carolina Code (2005), which provides:

Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

This rule, however, does not apply to all causes of actions. *Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 484, 517 S.E.2d 235, 238-39 (Ct. App. 1999); *Matthews v. City of Greenwood*, 305 S.C. 267, 269 n.1, 407 S.E.2d 668, 669 n.1 (Ct. App. 1991).

The Washington Supreme Court declined to apply the discovery rule to a probate nonclaim statute that was silent regarding the discovery rule. *Ruth v. Dight*, 453 P.2d 631, 636 (Wash. 1969) (superseded by statute as stated in *Teeter v. Lawson*, 610 P.2d 925, 925 (Wash. Ct. App. 1980)). The court held: "The nonclaim statute is mandatory and not subject to enlargement by interpretation; and it cannot be waived." *Id.* at 637.

The Kansas Court of Appeals likewise rejected a claimant's argument the discovery rule should apply to the Kansas statute similar to our section 62-3-803, K.S.A. 59-2239. *In re Estate of Watson*, 896 P.2d 401, 404 (Kan. Ct. App. 1995). It explained:

Because the Kansas Legislature specifically created a statutory discovery rule under the provisions of K.S.A. 60-513, the doctrine of *expressio unius est exclusio alterius* (the inclusion of one thing implies the exclusion of another) suggests that the legislature did not intend for the same discovery rule to be applicable to probate cases.

Id.

Our section 62-3-803 makes no mention of the discovery rule and no other statute specifies the rule applies to the nonclaim statute. Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803.³

³ In her Respondent's brief, Quick relies on this court's opinion in *Kolb v. Cook*, 284 S.C. 598, 602, 327 S.E.2d 379, 382 (Ct. App. 1985), in which we held a tort

Quick filed her statements of claim more than nine months after the first publication of notice. Thus, the lower courts erred in holding Quick's claims were not barred by section 62-3-803. Accordingly, the order of the circuit court affirming the probate court is

REVERSED.⁴

PIEPER and LOCKEMY, JJ., concur.

claimant seeking to recover damages from sources other than the distributable or distributed assets of the probate estate does not need to file a verified claim or account with the personal representative of the deceased tortfeasor. Quick asserts the funds from the UGMA account were not a distributable asset of the probate estate because she has a vested title in the proceeds from account and she is entitled to a constructive trust. While we find this argument intriguing, we decline to consider it on appeal. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420 n. 9, 526 S.E.2d 716, 723 n. 9 (2000) (holding when reversing a lower court's decision it is within an appellate court's discretion as to whether to address any additional sustaining grounds).

⁴ In light of our disposition herein, we decline to address Phillips's remaining argument on the admissibility of copies of checks admitted into evidence. *See Futeh v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

AUG 02 2012

Case No. 2009-CP-04-4335

SC Court of Appeals

Earl Phillips as Personal Representative of the
Estate of Bobby Gene Barnett Appellant,

v.

Brigitte Quick Respondent.

Appellate Case No. 2010-168488 ----- Opinion No. 5003

PETITION FOR REHEARING

Stephen R.H. Lewis
Covington, Patrick, Hagins, Stern & Lewis, P.A.
211 Pettigru Street, P.O. Box 2343
Greenville, SC 29602
(864) 242-9000
Attorney for Respondent

Other Counsel of Record:

J. Michael Turner, Sr.
Turner & Burney, P.C.
P.O. Box 668
Laurens, SC 29360
(864) 984-6565
Attorney for Appellant

Carey B. Murphy
P.O. Box 809
Anderson, SC 29622
(864) 224-1569
Attorney for Appellant

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QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the Respondent's claim was time barred despite the U.S. Supreme Court's holding in Tulsa Professional Collections Services, Inc. v. Pope?
2. Did the Court of Appeals err in failing to hold that a constructive trust was created?

STATEMENT OF FACTS

Respondent incorporates its Statement of Facts contained in its final brief with the following additions:

The Appellant, Earl Phillips, was the original Personal Representative of Mr. Barnett's Estate. In fact, Mr. Phillips published the Creditor's Notice at issue in this case on February 19, 2003 (Defendant's Exhibit "2", R. p. 61). Appellant was appointed by the Anderson County Probate Court as Personal Representative of Mr. Barnett's Estate on February 11, 2003. Respondent objected to the appointment of Appellant and sought appointment as Personal Representative of her father's Estate, and, by Order dated May 5, 2003, Appellant was removed as Personal Representative of the Estate and Respondent was appointed as successor Personal Representative of the Estate. After her appointment, the Appellate turned over Estate documents to Ms. Quick (R. p. 45), and in those

documents, she discovered the existence of a divorce decree from her parents' divorce (Plaintiff's Exhibit "1", R. Pp. 64-66) which referenced an account to be set up by her father for her benefit. This led to her discovery of an A.G. Edwards (R. P. 18-19) account which had been established by her father pursuant to the *S.C. Uniform Gift to Minor's Act* ("UGTMA"). She also discovered the funds had been removed by her father without her knowledge or consent. Upon discovering these facts, she promptly filed a Statement of Creditor's Claim on December 8, 2003 (approximately 9 ½ months after the Creditor's Notice was published but within one year after her father's death).

This Court reversed the judgment of the Circuit Court. Earl Phillips as Personal Representative of the Estate of Bobby Gene Barnett, Appellant v. Brigitte Quick, Respondent, Appellant Case No. 2010-168488, Opinion No. 5003, filed July 18, 2012. Respondent seeks a rehearing to review this Court's decision.

ARGUMENTS

1. THE COURT OF APPEALS SHOULD HAVE HELD THAT THE RESPONDENT'S CLAIM IS NOT TIME BARRED CONSISTENT WITH THE UNITED STATES SUPREME COURT HOLDING IN Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed. 2d, 565 (1988).

This Court should review its reversal of the Circuit Court's decision because it is inconsistent with the U.S. Supreme Court's holding in Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed. 2d, 565 (1988). Tulsa involved the non-claim provision of Oklahoma's probate code in which creditor's claims against an estate are generally barred unless they are presented to the Executor or Executrix within two months of the publication of notice of the commencement of probate proceedings. In Tulsa, the Appellee Executrix published the required notice and

compliance with the terms of the non-claim statute, but the Appellant, the assignee of a hospital's claim for expenses connected with the decedent's final illness failed to file a timely claim. The probate court denied appellant's application for payment and both the Oklahoma State Court of Appeals and Oklahoma Supreme Court affirmed, rejecting appellant's contention that, in failing to require more than publication notice, the non-claims statute violated due process. The Appellant's contention was based upon Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950), which held that state action that adversely affects property interests must be accompanied by such notice as is reasonable under the particular circumstances balancing the State's interest in the due process interests of individuals, and Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983), which generally requires actual notice to an affected party whose name and address are "reasonably ascertainable". The Supreme Court held that if the appellant's identity as a creditor was known or "reasonably ascertainable" by the appellee, the Due Process Clause of the Fourteenth Amendment as interpreted by Mullane and Mennonite requires that the appellant be given notice by mail or such other means to insure actual notice. The Court reasoned that the Appellant's claim was properly considered a property interest protected by the Due Process Clause, and that the non-claim statute is not simply a self-executing statute of limitations. Rather, the probate court's intimate involvement throughout the probate proceedings---particularly the Court's activation of the statute's time bar by the appointment of an Executor or Executrix is so pervasive and substantial that it must be considered state action. The Court also held there could be no doubt that the statute would "adversely affect" protected property interests since untimely claims

such as the Appellant's would be completely extinguished. Therefore, satisfying creditors' substantial, practical need for actual notice in the probate setting is not so cumbersome or impractical as to unduly burden the state's undeniably legitimate interest in the expeditious resolution of the proceedings since mail service is inexpensive, efficient, and reasonably calculated to provide actual notice and since publication notice will suffice for creditors whose identities are not ascertainable by reasonably diligent efforts or whose claims are merely conjectural. *Tulsa, id.*, 478 U.S. 485-491.

In the instant case, Appellant was the duly appointed Personal Representative of the Estate from February 12 – May 5, 2003. During this period of time, Respondent was a reasonably ascertainable creditor as is demonstrated by the fact that within seven months after being appointed Personal Representative of the Estate, Respondent determined she was a creditor.

Clearly, Respondent was a "reasonably ascertainable" creditor who, pursuant to the Due Process Clause of the Fourteenth Amendment, should have been given actual notice. Presumably, had the Appellant performed due diligence as the Personal Representative, he would have discovered the Respondent's claim and insured actual notice thereof.¹

2. THE COURT OF APPEALS SHOULD HAVE HELD THAT A CONSTRUCTIVE TRUST WAS CREATED

In its opinion, this Court apparently disregarded Respondent's argument in which she relied on the opinion in *Kolb v. Cook*, 284 S.C. 598, 602, 327 S.E.2d 379, 382 (Ct.App. 1985). This Court failed to address whether, pursuant to *Kolb*, the funds from the UGTTA account were a distributable asset of the probated estate because the

¹ Once Appellant was appointed as Personal Representative of the Estate, she was able to determine within seven months thereof (within the claim statute time period) the fact that she had a claim as a creditor.

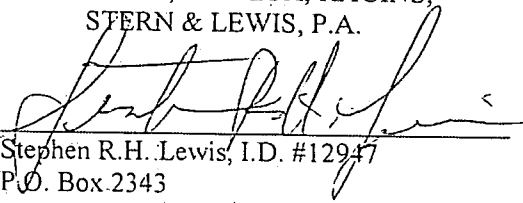
Respondent had a vested title in the proceeds from the account, and she is, therefore, entitled to a constructive trust. Considering the extraordinary circumstances in this case, i.e. Respondent's own father defrauding her out of approximately \$41,000, this Court should have considered this argument on appeal.

CONCLUSION

For the reasons stated, Petitioner asks this Court to rehear and reconsider its reversal of the circuit court's decision.

Respectfully submitted,

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.



Stephen R.H. Lewis, I.D. #12947
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

August 1, 2012

Attorney for Respondent

Greenville, South Carolina

The South Carolina Court of Appeals

Earl Phillips as Personal Representative of the Estate of
Bobby Gene Barnett, Appellant,

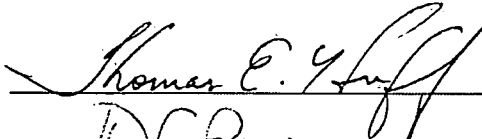
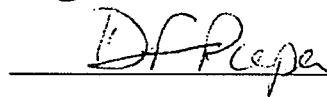
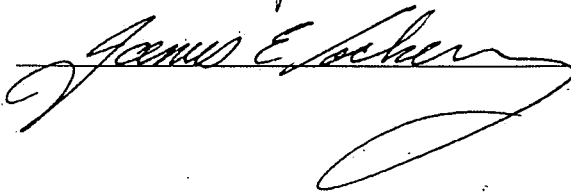
v.

Brigitte Quick, Respondent.

Appellate Case No. 2010-168488

ORDER DENYING PETITION FOR REHEARING

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

Stephen R.H. Lewis

John Michael Turner, Sr.

Carey Bruce Murphy

FILED
August 27, 2012