RECEIVED
Jun 05 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

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

v.

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

SECOND SUPPLEMENTAL RECORD ON APPEAL

---

s/ William R. McKibbon, III
William R. McKibbon III
S.C. Bar No.: 68454
601 E. McBee Ave, Ste. 104
Greenville, SC 29601
864.235.0071, 864.235.0072 (f)
will@legalcarolina.com
Attorney for Appellant

s/ Jenna Hendricks Mcleod
Jenna Hendricks Mcleod
S.C. Bar No.: 101236
s/ Tyler Mcleod
Tyler Mcleod
S.C. Bar No.: 103309
s/ R. David Massey
R. David Massey
S.C. Bar No.: 003681
jennamcleod@bmemhlaw.com
tmcleod@bmemhlaw.com
davidmassey@bmemhlaw.com
PO Box 2464
Greenville, SC 29601
864.271.7424
Attorney for Respondents

INDEX

Transcripts

Transcript from Judge Horlbeck's hearing on October 21, 2019.....407

Transcript from Judge Jennings hearing on April 07, 2021.....447

Transcript from Judge Jennings hearing on April 07, 2021.....479

Transcript from Judge Jennings hearing on November 10, 2021.....483

Transcript from Judge Jennings hearing on April 07, 2021.....523

Deposition of James Marhsall Shoemaker on July 24, 2020.....555

Deposition of Lesley R. Moore on November 24, 2020.....731

Deposition of Edward Sloan Shoemaker on December 10, 2020.....792

APPEARANCES:

MARSHALL SHOEMAKER, Pro Se
Flocking Behavior
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
marshall@flockingbehavior.com
Petitioner,

ANNE R. CULBREATH, Esquire
Willson Jones Carter & Baxley, P.A.
872 South Pleasantburg Drive
Greenville, South Carolina 29607
arculbreath@wjlaw.net
Attorney for Respondent Debora Wine,

KNOX L. HAYNSWORTH, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Post Office Box 2464
Greenville, South Carolina 29602
knoxhaynsworth@bmemhlaw.com
Attorney for Respondents Mary Hunter Sloan-Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore.

INDEX

Colloquy Between Court and Counsel..... 4
Certificate of Reporter..... 40

EXHIBITS:

None Introduced

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

We're here today in the matter of James Marshall Shoemaker, Jr. This is case number 2018ES2301729. And just by way of background I do have a Death Certificate for Mr. Shoemaker, Jr. indicating the date of death was July the 14th, 2018. I have a Will that was filed on July the 18th, 2018. He was testate. I have a application for Informal Probate of a Will and appointment of a Personal Representative that was filed July the 18th, 2018. I have the inventory and appraisement. And also Affidavit of Publication indicating the Creditor's Notice was published on July the 27th, August the 3rd, and August the 10th, 2018. And the inventory and appraisement indicates a gross value of probate Estate in the amount of $46,540. I have a waiver of statutory requirements and receipt and release signed by Edward Sloan Shoemaker. I have one and the same document signed by Mary S. Shoemaker as co-trustee. And I have the same document signed by Lesley Moore as co-trustee. And I have the same document signed by Mary S. Shoemaker, individually. And I have a waiver of statutory filing requirements signed by Ms. Moore and dated the 25th of April 2019 and filed the same date with The Court. I understand that a Petition for Formal Hearing in the Estate of

James Shoemaker, Jr. was filed on June the 27th, 2019. And in response we have Debora Wine's Motion to Dismiss pursuant to 12(b)(6) and due to a lack of proper service. The Petitioner has filed a response to this on August 12th, 2019. And the Respondents Mary Hunter Sloan-Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, and Lesley Moore have also filed a Notice to Dismiss Or In The Alternative Motion For A More Definite Statement. Those are in pursuant to rules 10(b), 12(b)(1), 12(b)(6), 12(b), and 12(f). And we are here to deal with those today. I believe this matter was scheduled earlier this year and the Petitioner requested a continuance, and it was granted. All right. So let me see who we have here today. So our Petitioner is James Marshall Shoemaker, III; is that correct?

MR. SHOEMAKER:

Correct.

THE COURT:

You're here today then, sir?

MR. SHOEMAKER:

Yes.

THE COURT:

Are you representing yourself?

MR. SHOEMAKER:

I am.

THE COURT:

All right. Have you had the opportunity to consult with an attorney?

MR. SHOEMAKER:

About a hundred of them looking for them to take the case on contingency, 'cause I can't afford to hire one.

THE COURT:

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

MR. SHOEMAKER:

Correct.

THE COURT:

And do you understand that an attorney has graduated from law school, taken the Bar, passed the Bar, likely understands things about the rules of evidence, the rules of court, and is familiar with probate law and can probably assist you with this matter?

MR. SHOEMAKER:

Yes, ma'am.

THE COURT:

Okay.

MR. SHOEMAKER:

I -- I know I would be advantaged by having an attorney. I'm hoping to get some traction on my own there if somebody will take it on a contingency basis.

THE COURT:

All right. Do you understand that if you represent yourself today you'll be expected to follow the rules of court, present your case as an attorney would, question witnesses and cross-examine witnesses as an attorney would? Do you understand all of that?

MR. SHOEMAKER:

I -- I understand what you're saying. I don't know what that means practically speaking.

THE COURT:

Well, there's a certain way that you have to present your case and make arguments, things like that. We likely won't have witnesses today, so that won't be an issue. But if there are any objections, if you want to make any objections, all of those things would have to be done in accordance with the rules of evidence and the rules of court. And I can't help you with those things, and the other attorneys can't help you either. Do you understand that?

MR. SHOEMAKER:

Yes, ma'am.

THE COURT:

Okay. And knowing all of those things and knowing that you're going forward without the assistance of counsel do you still want to go forward today representing

yourself?

MR. SHOEMAKER:

Absolutely.

THE COURT:

All right. And we also have Ms. Wine who is represented by Ms. Culbreath; is that correct?

MS. CULBREATH:

Yes, Your Honor.

THE COURT:

All right. And is she present today?

MS. CULBREATH:

She is not, Your Honor.

THE COURT:

All right. And the remainder of the Respondents are represented by Mr. Haynsworth; is that correct?

MR. HAYNSWORTH:

Yes, Your Honor --

THE COURT:

All right.

MR. HAYNSWORTH:

-- except for the John and Jane Doe Respondents.

THE COURT:

All right. Okay. So everybody except John and Jane Doe. All right. Well, I see that Ms. Wine filed her Motion first. We can start with her. It really is up

to you-all who we start with.

MS. CULBREATH:

That's fine, Your Honor, I'm happy to go. Again, Anne Culbreath here for Ms. Wine. Your Honor, we also filed a rule 12(b)(6) Motion in our Motion with our discussion of --

THE COURT:

Yes, ma'am.

MS. CULBREATH:

-- service of process. And today the real crux of it is that 12(b)(6) Motion, Your Honor.

THE COURT:

All right.

MS. CULBREATH:

Because when looking at the Complaint -- or Petition filed by Mr. Shoemaker there is zero valid claim for relief against Ms. Wine. Ms. Wine is the housekeeper. She is the maid for Mr. and Mrs. Shoemaker. And in reading the Complaint it appears that the Complaint attempts to set forth two Causes of Action so to speak. One asserting an issue for testamentary capacity of Mr. Shoemaker where Mr. Shoemaker attempts to request The Court to set aside Will and Trust that had written him out of taking under the Estate. And it looks like a second Cause of Action which does not comply with 62-5-

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

THE COURT:

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

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

MR. SHOEMAKER:

I'm --

THE COURT:

-- to everything?

MR. SHOEMAKER:

-- taking that on right now.

THE COURT:

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

MR. SHOEMAKER:

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

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

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

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

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

THE COURT:

All right. Ms. Culbreath, any response?

MS. CULBREATH:

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

THE COURT:

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

MR. HAYNSWORTH:

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

THE COURT:

That's fine.

MR. HAYNSWORTH:

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

THE COURT:

All right. Thank you for that.

MR. HAYNSWORTH:

Well, I'll --

THE COURT:

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

MR. SHOEMAKER:

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

THE COURT:

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

MR. SHOEMAKER:

I -- I respect that. I apologize.

THE COURT:

Thank you. That's all right.

MR. SHOEMAKER:

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

THE COURT:

All right. Thank you.

MR. SHOEMAKER:

That's all I've got.

THE COURT:

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

MR. HAYNSWORTH:

No. No, ma'am.

THE COURT:

-- move on to you. Yes, sir?

MR. HAYNSWORTH:

Your Honor, may it please The Court.

THE COURT:

Yes, sir.

MR. HAYNSWORTH:

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

Moore out as PR and co-trustee of the various Trusts, you know, all of that is fine. If he wants to fight that fight, okay, just do it the proper way. Chapter three of the Probate Code deals with the administration of Wills. That's what he's fighting about. If he wants to go through chapter five and try to get a Conservator appointed for his mother, again, there's a mechanism to do that. So the Motion to Dismiss is not let's dismiss the whole thing and throw him out of court without getting into the merits. Obviously I think it would be stupid to take that position. What I want dismissed is the stuff that's not properly in this proceeding. I don't think he's pled it properly under the Statute, and so that's what we wanted to get dismissed. On the part of my Respondents' Motion for a -- to Dismiss Or In The Alternative To Strike, or for a Motion for A More Definite and Certain Pleading, he is endeavored to clean up his Pleadings in his response to my Motion. I understand that Marshall is Pro Se. I understand that he would not plead it as a lawyer would. And frankly, Your Honor, with his clarifications there's probably enough to respond with a Petition. But my overall request is to clean it up where we're dealing with "My dad cut me out because my mom and my brothers convinced him to. He was under

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

THE COURT:

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

MS. CULBREATH:

No, ma'am.

THE COURT:

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

MR. SHOEMAKER:

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

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

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

THE COURT:

Yes, sir, your response?

MR. HAYNSWORTH:

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

THE COURT:

All right. Mr. Shoemaker, let me ask you a couple of questions. Help me understand how your mother's capacity -- and I don't know anything about your mother. I don't know how she's doing, or whether she needs a Guardian, or a Conservator, or whether she -- she might come in here and make perfect sense and bring

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

MR. SHOEMAKER:

Well, I give you an example. Shortly after I filed my Petition I received from Respondents' attorneys this Motion to Dismiss. And I believe that the -- the chronology was such that I then received Interrogatories and a Request for Production that were very aggressive and broad. I took those Interrogatories from Mr. Haynsworth, switched the names around and sent them back to him for my mother, and two brothers, and Ms. Moore to answer. I responded to the Interrogatories and Request for Production within the 30 day limitation. I just now received information about the financial -- the size of my father's Estate in the last few weeks -- weeks. There was a long delay in getting the -- Mr. -- the Respondents' attorneys response to my Request for Interrogatories and Production. My claim about my father is based on his medical condition. In the response to the Interrogatories and Production I was not given any

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

THE COURT:

Well, I'm still wondering how the two are related. I

don't --

MR. SHOEMAKER:

How the two are related?

THE COURT:

You've included a lot --

MR. SHOEMAKER:

Because I -- I'm sorry.

THE COURT:

-- in your Petition about your mother's capacity, and it's a bit confusing, you had indicated you wanted a Guardian ad Litem appointed. And you wanted the Guardian ad Litem to take over your brothers' -- over the Healthcare Powers of Attorney. Or you wanted the Guardian ad Litem to become the agent pursuant to the Healthcare Power of Attorney and I think a Durable Power of Attorney, and treat your mother's Valium dependency from a Guardian ad Litem. So that's confusing just in and of itself. It may just be that you're not quite using the right term, which is that's what I suspect is going on. But tell me how that's related to your father's Estate and the allegations of your father's testamentary incapacity. How are those two related such that it would be in everybody's best interest just to come on in for I don't know a couple of days and just put up your witnesses, and everybody

have their say on everything. Not just your dad's testamentary incapacity, but your mom's capacity as well.

MR. SHOEMAKER:

Well, there --

THE COURT:

How are those two related? I'm not seeing it.

MR. SHOEMAKER:

Well, the -- the -- the primary relationship other than my brothers is the attorney who is the Personal Representative of the Estate and who now is at least according to the communications I had before I initiated the lawsuit with her very intimately involved with running my mother's life. I -- that's Ms. Moore. I -- I asked of her "Well, who are the Medical Powers of Attorney? Who are the Financial Powers of Attorney?" She communicated that to my mother and then communicated back to me. And if you'll let me go over the history of the Estate -- the 20 year history prior to this change three weeks prior to my father's death, I can show you how the personalities are related. How the sequence of events is related.

THE COURT:

So you're saying you think your mom's capacity came into question three weeks prior to your father's death?

MR. SHOEMAKER:

I think my brothers' ability to have to -- to convince my mother to exclude her oldest son from my father's funeral, yes, is definitely related to her capacity. And I think the bigger picture of untreated alcohol -- untreated alcoholism and drug addition is all over this experience. And if I -- do you mind if I give you sort of my -- the -- the facts as I see them on the Estate issue and how it might be related to this?

THE COURT:

Well, let's kind of -- let's stick with what we have in front of us.

MR. SHOEMAKER:

Okay.

THE COURT:

How long was hospice interacting with your father --

MR. SHOEMAKER:

I'm -- I'm interested in that --

THE COURT:

-- to your knowledge?

MR. SHOEMAKER:

Oh. I -- I think three months. I've gotten no response to the Respondents' counsel on Discovery in that area.

THE COURT:

And you think those records are going to include interactions between your parents?

MR. SHOEMAKER:

Oh, they're definitely going to include the fact that people were talking about giving my father injections, which I assume are pain killers, 'cause he was suffocating to death from his disease.

THE COURT:

Uh-huh.

MR. SHOEMAKER:

And when -- when I saw him briefly when I visited that final time shortly before his death he seemed un -- sort of "whacked out" basically to use a casual term.

THE COURT:

All right. And to Ms. Wine -- as to Ms. Wine, you indicated she would -- is she a beneficiary under the Trust --

MR. SHOEMAKER:

In one of these documents --

THE COURT:

-- is that what you're saying?

MR. SHOEMAKER:

-- and I'm sure these lawyers know better. But in one of the documents it says she's going to get $50,000 based on certain contingencies.

THE COURT:

And wasn't one of the contingencies that she continued to work for your mother?

MR. SHOEMAKER:

I'm not positive about that.

THE COURT:

Okay.

MR. SHOEMAKER:

Oh, okay. It's been suggested to me that was only if my father survived my mother and she continued in his care that she would get the $50,000.

THE COURT:

All right. I have not read them all. I've looked at some of them, but she may not even be a player in all of this then. Is that --

MR. SHOEMAKER:

A play -- well --

THE COURT:

She may not be a party to any of this. If she doesn't receive anything, she's not a beneficiary. If she's not a devisee what's your --

MR. SHOEMAKER:

Well --

THE COURT:

What do you have to say about that?

MR. SHOEMAKER:

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

unprofessional. There was no videotape taken. There was no medical person involved. I'm not even clear on whether the witnesses were in the room with them. Plus one of the witnesses, Amos Workman, he notarized his own signature on the document. And that final document does not have my father's signature on all four of -- on all the pages like the four previous versions of his Estate. So basically there's a 20 year history of four different documents and one Revocable Will that treat his three sons in an equal manner and their children. And three weeks before when I believe he was heavily medicated, which I can't find out unless I get cooperation from opposing counsel, he changes his Will and froze me out.

THE COURT:

Okay. And tell me how Ms. Wine is related to any of that in your father's testamentary capacity. Tell me --

MR. SHOEMAKER:

My -- my father looked -- he -- he -- he referred on more than one occasion as Ms. Wine was like a daughter. So perhaps it's been suggested that maybe she ought to be a witness that I depose and subpoena information from. I didn't really understand that distinction when I wrote this Pleading.

THE COURT:

Other than her being just like a daughter to your parents, tell me is there anything else regarding Ms. Wine.

MR. SHOEMAKER:

Well, she was probably there the last -- on a daily basis involved with his healthcare for the last three months. And as I indicated earlier in my story she was posing as somewhat of a barrier to me interacting directly with my parents. And she never called me up when this elder fraud happened. Success elder fraud and said "Marshall, your parents are thinking about sending money to the Dominican Republic. Is your son in the Dominican Republic?" I mean potentially there could be a claim there for, I don't know, a lack of care as a housekeeper. I don't know what they -- I haven't decided to pursue that really.

THE COURT:

Well, that's not before us today.

MR. SHOEMAKER:

Okay.

THE COURT:

All right. Anything else you would like to say?

MR. SHOEMAKER:

Me?

THE COURT:

Yes.

MR. SHOEMAKER:

Oh, thank you. No, thank you.

THE COURT:

I'll give you-all -- anything else you-all need to say?

MS. CULBREATH:

Very briefly, Your Honor. If you look at the Will that is attached to the Petitioner's Complaint dated June 24, 2018 on page seven you will see the provision that discusses Ms. Wine, and it is a situation where if Polly survives Marshall the bequest lapses.

THE COURT:

Okay.

MS. CULBREATH:

She is not a taker under this Will, Your Honor. She has zero to do with any of this.

THE COURT:

Okay. Mr. Haynsworth, anything further?

MR. HAYNSWORTH:

Briefly, Your Honor.

THE COURT:

Yes, sir.

MR. HAYNSWORTH:

Just a response to something Mr. Shoemaker said, Judge. And we're getting into a lot more --

THE COURT:

I know.

MR. HAYNSWORTH:

-- behind the scene's history, but --

THE COURT:

I understand.

MR. HAYNSWORTH:

-- he felt compelled to clarify a statement, and so let me clarify as well. It should become apparent to The Court already that there is family dysfunction.

THE COURT:

Uh-huh.

MR. HAYNSWORTH:

Marshall's been estranged from his mom and dad, and his brother, Sloan, and younger brother, Jonathan, for years. This Email to which he refers was an Email he sent saying he was going to kill his brother. That was the proverbial straw that broke the camel's back as far as dad is concerned. And when we get into the merits you'll see that Marshall was in and out of his father's Estate Plan numerous times over the decades. He has talked to a hundred lawyers by his own admission about taking this case.

THE COURT:

Uh-huh.

MR. HAYNSWORTH:

If he wants to take a shot at everyone in the family over everything, that is certainly his right. And quite frankly, Your Honor, to drag his mother through the claims he's making in his dad's Will Contest is going to create a whole other can of worms in the family. And if he wants to have that fight, I think it's important that he fight it correctly. That he file the proper Petition. If he wants to try and force his mom to come in here and force The Court to appoint doctors to examine her and create the additional problems in the family that existed before, that is his right, but he's got to do it correctly. So I would simply request that the part of his case that isn't properly pled be kicked. Bring it back if he wants. But let's just narrow down our fight to daddy's Will and his Trust.

THE COURT:

Okay. All right, then. Yes, sir?

MR. SHOEMAKER:

Thank you. So this notion of me being, I don't know, bad son and estranged is completely blown out of context. The first I learned of my father's Estate

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

permanent animus is not true and it's false.

THE COURT:

Okay. All right. Anything else that I --

MS. CULBREATH:

(Shakes head.)

THE COURT:

Okay. I just want to make sure I've looked at everything I need to look at. I'm going to take this under advisement. I'm going to have my ruling out to you-all by the end of the week. And, Mr. Shoemaker, does Ms. Campos-Ivey have your contact information? I will likely Email my ruling to the attorneys --

MR. SHOEMAKER:

Yes, ma'am.

THE COURT:

-- and I will include you in that, because I don't want to talk to them without you.

MR. SHOEMAKER:

Thank you.

THE COURT:

All right. She has your contact information?

MR. SHOEMAKER:

Yes, we're in Email contact. All of this.

THE COURT:

Okay.

MR. SHOEMAKER:

Yes.

THE COURT:

All right, then. Okay. And that's what I'm going to do. I just want to make sure I've looked at the Will and everything I need to look at. And I will have my ruling out to you by the end of the week. Thank you-all. We'll be adjourned.

(THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT 3:07 P.M.)

CERTIFICATE OF REPORTER

I, TREASA HIX, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 39 pages represents a true and accurate transcript of the hearing in the Matter of James Marshall Shoemaker, Jr., which was taken by me on the 21st day of October, 2019.

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

_____

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

APPEARANCES:

JOHN BLINCOW, JR., Esquire
Blincow Griffin Attorneys At Law
126 Meeting Street
Charleston, South Carolina 29401
jblincow@blincowgriffin.com,
Attorney for Petitioner,

KNOX L. HAYNSWORTH, III, Esquire
Brown, Massey, Evans, McLeod, & Haynsworth, LLC
106 Williams Street
Post Office Box 2464
Greenville, South Carolina 29602
knoxhaynsworth@@bmemhlaw.com
Attorney for Respondent.

INDEX

Colloquy Between The Court and Counsel..... 4

Certificate of Reporter..... 35

EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

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

MR. BLINCOW:

That's correct.

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

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

MR. HAYNSWORTH:

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

Affidavit and a Memo opposing my Motion, I guess, yesterday. I wasn't sure whether The Court had that or not. I have some thoughts as to whether that Affidavit is proper and can be considered.

THE COURT:

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

MR. HAYNSWORTH:

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

worth on that issue, obviously. But the important opinion is yours, but I wanted to get that out to the extent the Affidavit is -- has been filed or --

THE COURT:

All right. I'll let Mr. Blincow respond to that after you have already proceeded with your arguments.

MR. HAYNSWORTH:

Okay.

THE COURT:

You may proceed.

MR. HAYNSWORTH:

Okay. All right, Judge. Would it be possible --

THE COURT:

It's okay with me if everyone else is okay with removal of Mr. Haynsworth's mask.

MR. BLINCOW:

It's okay with me.

MR. HAYNSWORTH:

I figure you're the one in the line of fire and you've got the plexiglass --

THE COURT:

And I've had --

MR. HAYNSWORTH:

-- and the distance.

THE COURT:

-- one shot, and I've got a plexiglass shield. And so I'm about 12 feet from you, so I'm protected.

MR. HAYNSWORTH:

I'll try not to project any further than --

THE COURT:

All right.

MR. HAYNSWORTH:

-- six feet. Your Honor, I don't know if you've had a chance to read our Memo or the Affidavits filed with the Motion, but essentially Marshall Shoemaker, one of three children, has challenged his father's Estate and Trust and brought a lawsuit contending that the Will and Trust should not be considered proper because they're the product of undue influence and lack of testamentary capacity. I have submitted, Your Honor, you know, ten give or take Affidavits, including from Mr. Shoemaker's physician, Danny Grover out at IMA, who saw Mr. Shoemaker I believe eight days before the testamentary documents that bring us here today. And to a man and a woman, as the case may be, all of the Affidavits I submitted specifically address testamentary capacity, and specifically address those people's firsthand knowledge of Jim Shoemaker's competency. And, Judge, probably the most significant fact for you to consider in this overall case is the

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

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

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

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

THE COURT:

Take your time.

MR. HAYNSWORTH:

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

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

THE COURT:

Not yet.

MR. HAYNSWORTH:

Okay.

THE COURT:

Mr. Blincow.

MR. BLINCOW:

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

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

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

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

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

of the evidence. And that is something that should be done at a full trial on the merits and not at Summary Judgment.

THE COURT:

Let me ask you: what evidence do you have of undue influence? I mean all you've cited so far is this purported Affidavit of an expert which really relates to mental capacity. And in addition that Affidavit only opines that there was quote "some level of cognitive impairment."

MR. BLINCOW:

I think -- I don't have it right -

THE COURT:

So let me go back to my question. What evidence do you have of any undue influence?

MR. BLINCOW:

I'm not going to answer the question. I meant to mention earlier that that heightened burden of proof applies to an undue influence claim, and not to a testamentary capacity claim.

THE COURT:

All right.

MR. BLINCOW:

But there is evidence that Mr. Shoemaker had a meeting with the other two sons and the stockbroker, and there

was discussion of "This is my plan." And I think both of the brothers said that was the first time they really understood what sort of Estate was -- had been built up over the years. This son was excluded from that meeting. There are --

THE COURT:

What does that have to do with undue influence?

MR. BLINCOW:

Well --

THE COURT:

Or specifically bearing upon the testator's testamentary act of signing a Will or an Estate for -- I mean a Trust Agreement for Estate planning purposes?

MR. BLINCOW:

Yeah, I get your question, and it doesn't. You're correct. And I've told my client that maybe from a lawyer's perspective anytime you've got that clear and convincing standard, that's a tough road. And we understand that that claim is not as good for us as the testamentary capacity claim. I would also acknowledge that what we've put forth in our response to the Motion and in the Affidavit all deals with testamentary capacity and not undue influence.

THE COURT:

Do you wish to dismiss the claim for undue influence or

--

MR. BLINCOW:

I would rather not dismiss it --

THE COURT:

Okay.

MR. BLINCOW:

-- but I acknowledge that the response is what it is, and the burden of proof is what it is.

THE COURT:

Okay. Can you tell me why attorney Moore is still a defendant in this Action?

MR. BLINCOW:

Well, only that she is the Trustee of the Estate.

THE COURT:

Well, I don't think she's named as a Trustee. She's named individually.

MR. BLINCOW:

I don't have it in front of me. I think that when I entered an appearance -- if I -- I've tried to make it clear that I was appearing for the Petitioner. There's no question no one has any claim against Ms. Moore. I don't think we've ever said that. She's a Trustee of the Estate is at issue.

THE COURT:

Okay. So for clarity are you informing The Court that

there's no claim against attorney Moore for professional liability or malpractice?

MR. BLINCOW:

Never has been, and never have we alleged that.

THE COURT:

Okay. So her involvement in the case according to the Petitioner relates solely to her role or capacity as a Trustee of the Trust or Personal Representative of the Estate?

MR. BLINCOW:

Correct.

THE COURT:

Okay. Tell me what evidence you have related to the lack of mental capacity of Mr. Shoemaker, the decedent. Is it all --

MR. BLINCOW:

It's --

THE COURT:

-- found in the Affidavit of your expert?

MR. BLINCOW:

Well, I think the Affidavit of the expert points to the evidence which exists. You know as a practical matter Ms. Shoemaker lives in Atlanta and the two brothers lived in New York and Colorado, and nobody was really involved day-to-day with either parent. So what we are

pointing to is the good bit of records -- as I mentioned there's I want to say daily assessment by a nurse beginning in May until he passes away in July. And in there is evidence of the disease talking. Idiopathic pulmonary fibrosis is this terrible, aggressive lung disease, and it -- there's no treatment. And it was a -- the day he had it I think it was -- you know his prognosis was he was going to die from this disease. But what the doctor can talk about and what the nurses could talk about is evidence in those records that supports here is a guy -- well, I should have said this earlier. You know you've got to have oxygen to the brain for it to function normally. And, you know, if you get blue in the lips and short of breath, taking off your pajamas in the morning, that is evidence that you've got impaired oxygen to the brain --

THE COURT:

Is that a symptom of hypoxemia?

MR. BLINCOW:

Yes.

THE COURT:

And what's the difference between that and anoxia, or a lack of oxygen?

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

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

THE COURT:

Is the standard for execution of a Trust the same as for execution of a Will? Or is the Trust Agreement contractual in nature and requiring a higher level of mental capacity?

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

scale, and on the other there is evidence of impaired cognition of diminished brain power. And that is going to have to be weighed, and that's not proper at Summary Judgment.

THE COURT:

And --

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

Okay. All right. Mr. Haynsworth.

MR. HAYNSWORTH:

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

opinion on the circumstances surrounding the execution of the Will. In this case, Judge, just like in the Russell case, even if you overlook the other problems with the Affidavit, that doctor never laid eyes on Jim Shoemaker. Jim Shoemaker's doctor, who gave you an Affidavit that he had capacity, is his long-term family doctor. No one knows Jim Shoemaker better than Jim Shoemaker's long time family doctor. This guy was hired to create an Affidavit to try and gum up this Summary Judgment Motion. His Affidavit, even if you consider it, is not a weight of an evidence issue. It is no evidence, and it's certainly not sufficient evidence given the plaintiff's heightened burden to overcome the evidence before The Court entitling us to Summary Judgment.

THE COURT:

And let me ask you what I asked Mr. Blincow, and that is: do you know what the mental capacity -- what mental capacity is required for execution of a Trust Agreement versus a Last Will and Testament? Is there a difference because the Trust is contractual in nature, or is it the same?

MR. HAYNSWORTH:

Your Honor, I will parrot Mr. Blincow's --

MR. BLINCOW:

(Talking over each other.)

MR. HAYNSWORTH:

Yeah, you got us both there.

THE COURT:

You might want to ask the person beside you.

MR. HAYNSWORTH:

(Confers with Lesley Moore.)

THE COURT:

And I should know the answer to that but I don't know --

MR. HAYNSWORTH:

We believe after consultation, Your Honor, it is the same standard.

THE COURT:

All right.

MR. BLINCOW:

Well, then I was right and didn't even know it.

MR. HAYNSWORTH:

So -- yeah. So the two blind hogs have now confirmed that we have --

THE COURT:

Okay.

MR. HAYNSWORTH:

-- had the right the law.

THE COURT:

Okay. Well, Mr. Blincow, any response?

MR. BLINCOW:

Yeah. Please. My memory wasn't good but it is what I recall. After I appeared -- and if you look at the caption that I used when we filed this filing yesterday, Lesley R. Moore, Esquire, the defendant, is sued as Personal Representative as -- and Trustee. So --

THE COURT:

Well, this is a Brief filed. I mean it doesn't --

MR. BLINCOW:

I'm just --

THE COURT:

Changing that in the caption doesn't really change the substance of the original Petition --

MR. BLINCOW:

Fair --

THE COURT:

-- or Complaint.

MR. BLINCOW:

Fair enough. But when I stepped in there was never any question that this -- she was a party by virtue of the fact she was the Trustee.

THE COURT:

Okay. Was your client alleging any wrong doing as

Trustee or Personal Representative?

MR. BLINCOW:

No.

THE COURT:

All right. All right.

MR. BLINCOW:

Well, he was, but -- he was. Whatever, his Petition says what it says, but I'm saying that now our position is that she's a party simply by virtue of the fact she's the Trustee.

THE COURT:

All right. And is there any evidence of any wrong doing by Ms. Moore as Personal Representative or Trustee?

MR. BLINCOW:

No, sir.

THE COURT:

All right.

MR. BLINCOW:

And I --

THE COURT:

I just wanted to clarify.

MR. BLINCOW:

Yeah, I do. I really do think this Russell case is an undue influence case. And so to the extent they

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

THE COURT:

All right.

MR. BLINCOW:

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

THE COURT:

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

sufficient to withstand Summary Judgment on a cause of action for undue influence. But I'm going to have to do my homework and give everything proper consideration before reaching any decision on this matter. I appreciate both sides informing The Court of all of the relevant facts, and circumstances, and supplementing the Motion with appropriate Affidavits. And so you've both done an excellent job, and I appreciate that. And I'm going to weigh through these materials and have a decision hopefully within the next week or so.

MR. HAYNSWORTH:

Thank you. I appreciate it.

MR. BLINCOW:

Thank you.

THE COURT:

Thank you very much. We're adjourned.

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

CERTIFICATE OF REPORTER

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

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

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

_____

Treasa Hix, Reporter

Notary Public for S.C.

Commission Expires: 6/13/29

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

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

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

was retained as counsel, and I ain't heard mention one of any expert until out of the blue this guy's Affidavit comes in. And finally, Judge, if I could turn your attention back to the Russell v. Wachovia case that I referenced earlier -- in fact if you'll let me approach enough to hand it to you --

THE COURT:

Sure thing.

MR. HAYNSWORTH:

-- I can give you a copy. I have highlighted identically on your copy, Mr. Blincow's copy, and my copy what I thought was important, Judge. For purposes of my argument right now if you'll flip over to page five of eight, and I've highlighted a provision that says "Appellants argue that two expert witnesses, both medical doctors, testified the testator was subject to undue influence, and that this testimony is enough to withstand Summary Judgment." We disagree. Neither of the experts examined the Testator. Both experts testified the Testator was competent to execute a Will. Absent examination of the Testator by the expert on opinion that the Testator was mentally incompetent, and therefore more susceptible to undue influence, we fail to see how expert medical testimony can be provided as to undue influence. Further neither expert based his

APPEARANCES:

JOHN BLINCOW, JR., Esquire
Blincow Griffin Attorneys At Law
126 Meeting Street
Charleston, South Carolina 29401
jblincow@blincowgriffin.com
Attorney for Petitioner,

KNOX L. HAYNSWORTH, III, Esquire
Brown, Massey, Evans, McLeod, & Haynsworth, LLC
106 Williams Street
Post Office Box 2464
Greenville, South Carolina 29602
knoxhaynsworth@bmemhlaw.com
Attorney for Respondent.

INDEX

Colloquy Between The Court and Counsel..... 4
Certificate of Reporter..... 41

EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

All right. Good afternoon. We are here in the matter of James Marshall Shoemaker, Jr, case number 2018ES2301729. And we are here today on Petitioner's Motion and Motion to Recuse and Vacate seeking the recusal of yours truly and seeking an Order vacating the prior Order of the The Court granting Summary Judgment to the Respondents. It appears that the interested parties are present. Mr. John Blincow represents the Petitioner, and he is present. And Mr. Knox Haynsworth, III is present on behalf of the Respondents. So, Mr. Blincow, I'll let you tell me about your Motion.

MR. BLINCOW:

Yes, sir. May it please The Court and good afternoon. My name is John Blincow and I represent the Petitioner Marshall Shoemaker, III. As you know we have filed a Motion in this court asking you to recuse yourself from hearing this case and in a related case involving the same parties and the Estate of Mrs. Polly Shoemaker. The basis of our Motion is as you set out to us in an email in September where you described being in a co-counsel relationship with a lawyer name Stanley McLeod. Mr. McLeod and Mr. Haynsworth are law partners. And on that basis we filed our Motion and implicated Canon 2

of the Code of Profession -- of the model rules which is codified and made part of our South Carolina Appellate Court rules. And Canon 2 is the rule that says, Judge, that a Judge shall act at all times in a manner that promotes public confidence and the integrity and impartiality of the judiciary. This requires a Judge to avoid impropriety and the appearance of impropriety. So that is the basis of our Motion. The test for appearance of impropriety is -- the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the Judge violated this code or engaged in other conduct that reflects adversely on the Judge's honesty, impartiality, temperament, or fitness to serve as a Judge. So that's the test. And, you know, the facts are can a Judge hear a case involving a law firm while simultaneously working with that law firm on other cases in a different court? That's the crux of it. The first thing that occurred to me, and I guess it was because I was in law school with -- it was a Family Court Judge named Judge Segars-Andrews and she had a husband who was a lawyer in Mount Pleasant and she heard a Family Court case -- a divorce case, and it turns out that her husband had been co-counsel with the lawyer for the wife in that Family Court case. And it

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

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

personal, professional, and financial aspects of the relationship." In other words it's not just a financial relationship. You could have a personal relationship with Mr. McLeod. You could think he's a good lawyer. You could appreciate working with him, and that gives an appearance of an impropriety or the perception that you might be partial to one side or the other. So again it's not just the fact that there's a financial relationship. There's that and potential conflicts abound because there's a personal and professional relationship.

THE COURT:

And tell me again where is that? You mentioned on the last page you pointed out?

MR. BLINCOW:

Yeah, the last page, the second paragraph and page --

THE COURT:

And there were multiple items you handed up. The first one --

MR. BLINCOW:

Yeah, yeah. Okay. So the first --

THE COURT:

-- is the Supreme Court of Ohio.

MR. BLINCOW:

Right. If you go to page three --

THE COURT:

Page three.

MR. BLINCOW:

-- of that --

THE COURT:

So the second to last page?

MR. BLINCOW:

Second to last page. Excuse me. The second paragraph, six -- five -- five lines down is where it says "Potential conflact -- conflicts abound because of the personal, professional, and financial aspects of the relationship." That is a co-counsel relation -- a part-time Judge being in a co-counsel relationship with a lawyer while also hearing a case when that lawyer's firm represents one side or the other.

THE COURT:

And in this case it was a case where --

MR. BLINCOW:

It doesn't say.

THE COURT:

Well, it says "When attorneys co-counsel on cases and divide fees even though they are not partners or associates in a firm there's a professional relationship which could give an appearance of impartiality."

MR. BLINCOW:

That's right.

THE COURT:

Okay.

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

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

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

THE COURT:

All right. Thank you. Mr. Haynsworth?

MR. HAYNSWORTH:

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

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

million dollars to the Judge's election campaign to get a particular Judge elected who ruled in his favor when the Appeals Court heard an adverse decision against Massey Coal. And this opinion from the U.S. Supreme Court goes on to talk about what an extraordinary case it was, and that due process clause incorporated in the common law rule that a Judge must recuse himself when he has a direct personal substantial pecuniary interest in the case. It's apples and oranges, Judge. It's not South Carolina law. It's not a South Carolina Judge, and to the extent it stands for anything. It has nothing to do with the situation before you. The Judge Segars-Andrews case, Judge, let me make a couple of comments on that. I pulled and read the complete report of Canon's qualifications that Mr. Blincow cited from. A couple of things I think it's important to consider. When she denied the Motion to recuse herself, that was appealed. South Carolina Court of Appeals concluded that Judge Segars-Andrews was correct in her interpretation of the law concerning the merits of the case and her recusal. So I don't want this court to think that Judge Andrews did anything wrong and a higher court said she should have recused herself. That's not at all what happened, and that wasn't The Court's opinion. She got mired in the

politics of how Judges get dealt with down in Columbia, and the fact that her husband got a huge fee. And I think this is correct. I think the difference there, Judge, is her husband -- excuse me. She had ruled on an issue that was adverse to the very litigate or his relative. I may have that wrong. Maybe his son. In this situation there is nothing. There is no other case that Stanley McLeod, or you, or I have involving Marshall Shoemaker. There is no extra judicial dealings that you are having that have any bearing on this. And so other than to try and leverage the fact that you are a practicing attorney as well as a Judge, and you obviously are in practice with other attorneys, there is not an issue here involving recusal. You have dealt impartially with the parties. Your obligation obviously is to continue to do that. And I think you do both sides a disservice if you were to exercise your discretion and recuse yourself, because both of us now have to start over again on a lot of what we've been through. And that's not fair to the litigants. It's not efficient for the judicial system, and there's no reason to go there. So for those reasons, Your Honor, I would respectfully request you deny Mr. Blincow's Motion.

THE COURT:

All right. Thank you. And let me ask some questions first of Mr. Blincow.

MR. BLINCOW:

All right.

THE COURT:

Case law in South Carolina says that "The party seeking disqualification must do more than merely allege bias on the Judge's behalf. The party must present some evidence of judicial prejudice or bias."

MR. BLINCOW:

Yeah.

THE COURT:

"When an appellant offers no evidence to support his claim of partiality the trial Judge is correct to deny a Motion for recusal." Where is the evidence? You haven't alleged any evidence of judicial prejudice or bias, so I'm going to give you the opportunity now to --

MR. BLINCOW:

Yeah.

THE COURT:

-- demonstrate it.

MR. BLINCOW:

Here's the difference. The case that you're quoting from was an Ex Parte communication case. It was a

Canon 3, not a Canon 2 appearance of impropriety case, and here's the difference. If I called you this afternoon and said "Judge, I've got a flat tire on the interstate I'm going to be 30 minutes late" --

THE COURT:

Well, this is Segars-Andrews' case I just quoted. This is Simpson v. Simpson 377S.C.519 Court of Appeals South Carolina --

MR. BLINCOW:

Right.

THE COURT:

-- 2008.

MR. BLINCOW:

So then my answer would be after The Court of Appeals came the Judicial Merit Selection Committee that found unanimously that she should have recused herself based on the relationship her husband had with lawyers for the wife. And after that she appealed to the Supreme Court -- let me get this right. And the Supreme Court denied her request and did not give her any relief. I've got it right here.

THE COURT:

But, again, I'll ask what is the evidence of judicial prejudice or bias in this case?

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

Does that answer the question?

THE COURT:

Well, I'm not sure that --

MR. BLINCOW:

Let me --

THE COURT:

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

MR. BLINCOW:

Under the appearance of impropriety test it was well-established and understood that proof of actual

misconduct is not required.

THE COURT:

Okay. What are you citing?

MR. BLINCOW:

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

THE COURT:

Well, I'll let you --

MR. BLINCOW:

I can --

THE COURT:

-- submit that to The Court following the hearing, if you would?

MR. BLINCOW:

Sure.

THE COURT:

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

MR. BLINCOW:

Fitness, maybe.

THE COURT:

-- Fitness can find in one case that conduct may disqualify a Judge, and our Court of Appeals may find that the same conduct does not disqualify a Judge. Whose opinion controls here?

MR. BLINCOW:

Well, the fact that our Supreme Court let stand the Judicial Fitness Committee's decision would mean that the decision that recusal was proper, they -- the Supreme Court let that stand.

THE COURT:

Well, refused to hear the case; right?

MR. BLINCOW:

Correct.

THE COURT:

So the Supreme Court issued no finding, no decision, no opinion on the matter?

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

Well, I'm telling you I --

MR. BLINCOW:

If you were working pro bono --

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

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

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

MR. BLINCOW:

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

THE COURT:

All right.

MR. BLINCOW:

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

THE COURT:

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

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

MR. BLINCOW:

I've got --

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

Which rule are you relying on?

MR. BLINCOW:

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

THE COURT:

Canon 2?

MR. BLINCOW:

Canon 2, but it goes further. I just need to find -- excuse me. I'm sorry. Yeah. We are relying on the general standard of disqualification in Canon 3C(1) that a Judge or referee should disqualify himself in which his or her impartiality might reasonably be questioned. Four specific instances in which a Judge or referee's impartiality might be questioned are 3C(1) A through D. I think that the A through D requires proof of specific bias as you were asking, and the general one does not.

THE COURT:

All right. And Simpson v. Simpson I'm quoting the opinion I cited earlier. It says that "Husband argues Judge Segars-Andrews' own statements about the need to disclose a previous working relationship between her husband's law partner and wife's counsel might reasonably question her impartiality. Husband fails however to provide any evidence of how the former relationship actually resulted in some prejudice or bias in Judge Segars-Andrews' ruling. Thus Judge Segars-Andrews is correct to deny husband's request for recusal." Isn't that a holding which reflects that you have to not only -- if you're arguing the appearance of impartiality that you also have to show evidence of how

the improper relationship or the relationship of counsel resulted in some prejudice or bias?

MR. BLINCOW:

Well, we know how Judge Segars-Andrews' case came out.

THE COURT:

I have the case. We --

MR. BLINCOW:

Right.

THE COURT:

-- know what the committee said.

MR. BLINCOW:

Right.

THE COURT:

But what matters more again, the committee or our Appellant Courts?

MR. BLINCOW:

Well, Judge Andrews --

THE COURT:

What controls?

MR. BLINCOW:

The latter or the more -- the Judicial Merit Committee that decided that she clearly should have recused herself, and the failure to do so meant that she was ethically unfit trumps over the Court of Appeals. Especially when you consider that Judge Segars-Andrews

said "Gosh, that's a terrible ruling. We need to take it to the Supreme Court." And the Supreme Court let it stand.

THE COURT:

Well, they didn't even consider it. They just refused to hear the case; isn't that right?

MR. BLINCOW:

She asked them to hear it. And they read her papers and said for one reason or another we will let the decision stand and she's no longer a Judge.

THE COURT:

All right. Mr. Haynsworth, I'm going to let you follow-up with -- you've heard these questions, and any comments or arguments you would like to make I would like to hear.

MR. HAYNSWORTH:

Briefly, Your Honor, I just would like to make it clear, Judge, the failure to reelect Judge Segars-Andrews if you read through this is a lot more than just what we're talking about. But specifically what we're talking about she said on the record. Judge Segars-Andrews vehemently insisted that she could not sit the situation right for Mr. Simpson, and that her only alternative was to let him have a new trial. When she failed to provide him that with that alternative

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

was the recusal, and that's been decided as Your Honor has already addressed with us. And finally, Your Honor, just to swing it back to South Carolina law Zurich tried to get justice told and it disqualified herself in asbestos -- a bunch of asbestos cases down in Richland County. And I happened to stumble across her Order denying their Motion and just wanted to cite a couple of the relevant provisions from our law. Oh, Lord, bear with me, Your Honor. Just a couple of relevant citations from that case, Your Honor. And I'm quoting "It is not enough for a party seeking disqualification to simply allege" -- this is exactly what you said. "To simply allege bias. The party must show some evidence of that bias or prejudice." And the site of that is Roache v. Young Brothers 322S.C.75504S.E.2nd311. It's a 1998 Supreme Court opinion. Another relevant provision from a case, Judge, I think is this: and that is "The standard for establishing prejudice is high." That's a citation from Graham v. State. All I have is the Westlaw site for it, which is 9844641. It's a Court of Appeals 2008 case.

THE COURT:

Mr. Blincow's saying if there's an appearance of impropriety that the rule is that there's no need to

show actual prejudice or bias.

MR. HAYNSWORTH:

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

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

THE COURT:

And, Mr. Blincow, you're aware that when disqualification is not required the South Carolina Code of Judicial Conduct holds that "A Judge shall hear and decide matters assigned to the Judge." And that is quoting the Canon 3D(1).

MR. BLINCOW:

Yeah, that's right if there's no issue that creates an appearance of impropriety then yes.

THE COURT:

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

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

MR. BLINCOW:

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

THE COURT:

It was not before The Court heard the Motion. The Court ruled on the Motion two months later.

MR. BLINCOW:

Okay.

THE COURT:

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

been paid or billed anything. All right.

MR. BLINCOW:

Yes.

THE COURT:

Is it possible that -- I don't know. Can you provide to The Court, Mr. Blincow, case law or other controlling Canons, or regulations, or anything of the sort that would demonstrate to The Court that a co-counsel relationship creates the appearance of impropriety even if there's no payment being made or no financial advantage or gain for the Judge? And that not only is that in and of itself creating the appearance of propriety, but that you do not -- based on the mere appearance of impropriety there needs to be no actual demonstration of prejudice or bias by that Judge?

MR. BLINCOW:

I've done a poor job of -- there is a distinction between the showing of actual prejudice --

THE COURT:

How long would you need to be able to submit case law on that --

MR. BLINCOW:

Sometime next week --

THE COURT:

-- issue?

MR. BLINCOW:

Yeah, either next week sometime.

THE COURT:

Why not this week?

MR. BLINCOW:

Tomorrow's Thursday.

THE COURT:

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

MR. BLINCOW:

I have.

THE COURT:

So is there any reason you couldn't submit that later this week?

MR. BLINCOW:

No.

THE COURT:

Okay. And Mr. Haynsworth I give you the opportunity to research the same, and I hate to drag this out but I'm going to need to take this matter under advisement. I want to make sure that I do the right thing. I don't think on the one hand that I need to participate in this case if there is an actual appearance of impropriety, and that I must recuse myself even if there's no actual allegation or demonstration of actual

prejudice or bias. And, of course, I don't want to proceed in that matter. At the same time when we consider the amount of time and effort spent by the parties in this Action and everything that went into the Motion for Summary Judgment and these other Motions, which have not yet been ruled upon as Mr. Haynsworth pointed out, my recusal could also have a very harmful effect on the litigants in this matter. So it's a difficult issue. And so if you can clarify it for me with some -- what I've just requested --

MR. BLINCOW:

Yes, sir.

THE COURT:

-- I would be most appreciative. Anything else? Mr. Haynsworth wants to speak.

MR. HAYNSWORTH:

Well, I just want to make sure I understand, Your Honor, you're -- so as I understand it you're expecting from Mr. Blincow, if it's out there and he can find it, case law that it's just the appearance, not the --

THE COURT:

That the --

MR. HAYNSWORTH:

-- evidence of --

THE COURT:

That if there's an appearance of propriety the Petitioner seeking recusal does not then have to show as these other cases have required that there is actual -- there has been actual prejudice or bias by the Judge.

MR. HAYNSWORTH:

All you've got to do is suggest it in there for what it is versus we've got to have --

THE COURT:

Well, I guess, he's -- if I understand it right he's saying that serving as co-counsel with another member of an attorney's firm is maybe prima facie or per say demonstration of the appearance of impropriety.

MR. HAYNSWORTH:

But to fit your facts which is no -- we've got what he's already relied on about money. That's factually different. So what we're looking for is --

THE COURT:

I guess even if the Judge has not been compensated.

MR. HAYNSWORTH:

Yes, sir.

THE COURT:

But even if he wants to -- or if any of you can show a case where there has been compensation but -- whether there's been compensation or not, I would love to see

the case.

MR. BLINCOW:

All right. And that clearly would be right on point, but and I'm -- and I know we're done, but you wouldn't want it to turn on the fact that I haven't been compensated and then next month you send out a bill, and then next month you hear --

THE COURT:

But that could affect --

MR. BLINCOW:

-- a Motion.

THE COURT:

-- your Motion to Vacate the prior Order.

MR. BLINCOW:

Yep.

THE COURT:

So it could be that maybe you're arguing I shouldn't -- maybe there's some basis and I'm just -- this is for the sake of argument --

MR. BLINCOW:

Yeah. Right.

THE COURT:

-- that there's some basis for me to recuse myself for any further proceedings in any of these cases. But since I haven't been paid a dime, or billed any time,

or appeared in court, or done anything in the two cases I referenced as having a co-counsel relationship with Mr. Haynsworth's firm on, that maybe the prior Order which you're challenging should remain in full force and effect and not be vacated.

MR. BLINCOW:

Yeah.

THE COURT:

So, you know, that issue may be relevant. The issue of compensation may be relevant to your Motion to Vacate.

MR. HAYNSWORTH:

Do you want, Your Honor, mine by Friday and his by Friday? Is that where we're at?

THE COURT:

Well, let's do it this. How about by next Tuesday?

MR. HAYNSWORTH:

Okay.

THE COURT:

If you could submit it to Ms. Campos-Ivey. And I believe you've got my direct email here at The Court you can submit it. It doesn't have to be a formal Brief, but any use --

MR. BLINCOW:

Some authority if we can find it?

THE COURT:

Yes. If you can find it that would be very helpful. Okay?

MR. BLINCOW:

Yes, sir.

THE COURT:

All right. Thank you, gentlemen.

MR. HAYNSWORTH:

Thank you, Your Honor.

(THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED AT 3:05 P.M.)

CERTIFICATE OF REPORTER

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

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

_____

Treasa Hix, Reporter

Notary Public for S.C.

Commission Expires: 6/13/29

APPEARANCES:

JOHN BLINCOW, JR., Esquire
Blincow Griffin Attorneys At Law
126 Meeting Street
Charleston, South Carolina 29401
jblincow@blincowgriffin.com
Attorney for Petitioner,

KNOX L. HAYNSWORTH, III, Esquire
Brown, Massey, Evans, McLeod, & Haynsworth, LLC
106 Williams Street
Post Office Box 2464
Greenville, South Carolina 29602
knoxhaynsworth@@bmemhlaw.com
Attorney for Respondent.

INDEX

Colloquy Between The Court and Counsel..... 4

Certificate of Reporter..... 35

EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

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

MR. BLINCOW:

That's correct.

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

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

MR. HAYNSWORTH:

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

Affidavit and a Memo opposing my Motion, I guess, yesterday. I wasn't sure whether The Court had that or not. I have some thoughts as to whether that Affidavit is proper and can be considered.

THE COURT:

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

MR. HAYNSWORTH:

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

worth on that issue, obviously. But the important opinion is yours, but I wanted to get that out to the extent the Affidavit is -- has been filed or --

THE COURT:

All right. I'll let Mr. Blincow respond to that after you have already proceeded with your arguments.

MR. HAYNSWORTH:

Okay.

THE COURT:

You may proceed.

MR. HAYNSWORTH:

Okay. All right, Judge. Would it be possible --

THE COURT:

It's okay with me if everyone else is okay with removal of Mr. Haynsworth's mask.

MR. BLINCOW:

It's okay with me.

MR. HAYNSWORTH:

I figure you're the one in the line of fire and you've got the plexiglass --

THE COURT:

And I've had --

MR. HAYNSWORTH:

-- and the distance.

THE COURT:

-- one shot, and I've got a plexiglass shield. And so I'm about 12 feet from you, so I'm protected.

MR. HAYNSWORTH:

I'll try not to project any further than --

THE COURT:

All right.

MR. HAYNSWORTH:

-- six feet. Your Honor, I don't know if you've had a chance to read our Memo or the Affidavits filed with the Motion, but essentially Marshall Shoemaker, one of three children, has challenged his father's Estate and Trust and brought a lawsuit contending that the Will and Trust should not be considered proper because they're the product of undue influence and lack of testamentary capacity. I have submitted, Your Honor, you know, ten give or take Affidavits, including from Mr. Shoemaker's physician, Danny Grover out at IMA, who saw Mr. Shoemaker I believe eight days before the testamentary documents that bring us here today. And to a man and a woman, as the case may be, all of the Affidavits I submitted specifically address testamentary capacity, and specifically address those people's firsthand knowledge of Jim Shoemaker's competency. And, Judge, probably the most significant fact for you to consider in this overall case is the

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

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

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

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

THE COURT:

Take your time.

MR. HAYNSWORTH:

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

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

THE COURT:

Not yet.

MR. HAYNSWORTH:

Okay.

THE COURT:

Mr. Blincow.

MR. BLINCOW:

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

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

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

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

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

of the evidence. And that is something that should be done at a full trial on the merits and not at Summary Judgment.

THE COURT:

Let me ask you: what evidence do you have of undue influence? I mean all you've cited so far is this purported Affidavit of an expert which really relates to mental capacity. And in addition that Affidavit only opines that there was quote "some level of cognitive impairment."

MR. BLINCOW:

I think -- I don't have it right -

THE COURT:

So let me go back to my question. What evidence do you have of any undue influence?

MR. BLINCOW:

I'm not going to answer the question. I meant to mention earlier that that heightened burden of proof applies to an undue influence claim, and not to a testamentary capacity claim.

THE COURT:

All right.

MR. BLINCOW:

But there is evidence that Mr. Shoemaker had a meeting with the other two sons and the stockbroker, and there

was discussion of "This is my plan." And I think both of the brothers said that was the first time they really understood what sort of Estate was -- had been built up over the years. This son was excluded from that meeting. There are --

THE COURT:

What does that have to do with undue influence?

MR. BLINCOW:

Well --

THE COURT:

Or specifically bearing upon the testator's testamentary act of signing a Will or an Estate for -- I mean a Trust Agreement for Estate planning purposes?

MR. BLINCOW:

Yeah, I get your question, and it doesn't. You're correct. And I've told my client that maybe from a lawyer's perspective anytime you've got that clear and convincing standard, that's a tough road. And we understand that that claim is not as good for us as the testamentary capacity claim. I would also acknowledge that what we've put forth in our response to the Motion and in the Affidavit all deals with testamentary capacity and not undue influence.

THE COURT:

Do you wish to dismiss the claim for undue influence or

--

MR. BLINCOW:

I would rather not dismiss it --

THE COURT:

Okay.

MR. BLINCOW:

-- but I acknowledge that the response is what it is, and the burden of proof is what it is.

THE COURT:

Okay. Can you tell me why attorney Moore is still a defendant in this Action?

MR. BLINCOW:

Well, only that she is the Trustee of the Estate.

THE COURT:

Well, I don't think she's named as a Trustee. She's named individually.

MR. BLINCOW:

I don't have it in front of me. I think that when I entered an appearance -- if I -- I've tried to make it clear that I was appearing for the Petitioner. There's no question no one has any claim against Ms. Moore. I don't think we've ever said that. She's a Trustee of the Estate is at issue.

THE COURT:

Okay. So for clarity are you informing The Court that

there's no claim against attorney Moore for professional liability or malpractice?

MR. BLINCOW:

Never has been, and never have we alleged that.

THE COURT:

Okay. So her involvement in the case according to the Petitioner relates solely to her role or capacity as a Trustee of the Trust or Personal Representative of the Estate?

MR. BLINCOW:

Correct.

THE COURT:

Okay. Tell me what evidence you have related to the lack of mental capacity of Mr. Shoemaker, the decedent. Is it all --

MR. BLINCOW:

It's --

THE COURT:

-- found in the Affidavit of your expert?

MR. BLINCOW:

Well, I think the Affidavit of the expert points to the evidence which exists. You know as a practical matter Ms. Shoemaker lives in Atlanta and the two brothers lived in New York and Colorado, and nobody was really involved day-to-day with either parent. So what we are

pointing to is the good bit of records -- as I mentioned there's I want to say daily assessment by a nurse beginning in May until he passes away in July. And in there is evidence of the disease talking. Idiopathic pulmonary fibrosis is this terrible, aggressive lung disease, and it -- there's no treatment. And it was a -- the day he had it I think it was -- you know his prognosis was he was going to die from this disease. But what the doctor can talk about and what the nurses could talk about is evidence in those records that supports here is a guy -- well, I should have said this earlier. You know you've got to have oxygen to the brain for it to function normally. And, you know, if you get blue in the lips and short of breath, taking off your pajamas in the morning, that is evidence that you've got impaired oxygen to the brain --

THE COURT:

Is that a symptom of hypoxemia?

MR. BLINCOW:

Yes.

THE COURT:

And what's the difference between that and anoxia, or a lack of oxygen?

MR. BLINCOW:

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

THE COURT:

Okay.

MR. BLINCOW:

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

THE COURT:

Is the standard for execution of a Trust the same as for execution of a Will? Or is the Trust Agreement contractual in nature and requiring a higher level of mental capacity?

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

scale, and on the other there is evidence of impaired cognition of diminished brain power. And that is going to have to be weighed, and that's not proper at Summary Judgment.

THE COURT:

And --

MR. BLINCOW:

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

THE COURT:

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

MR. BLINCOW:

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

THE COURT:

Okay. All right. Mr. Haynsworth.

MR. HAYNSWORTH:

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

opinion on the circumstances surrounding the execution of the Will. In this case, Judge, just like in the Russell case, even if you overlook the other problems with the Affidavit, that doctor never laid eyes on Jim Shoemaker. Jim Shoemaker's doctor, who gave you an Affidavit that he had capacity, is his long-term family doctor. No one knows Jim Shoemaker better than Jim Shoemaker's long time family doctor. This guy was hired to create an Affidavit to try and gum up this Summary Judgment Motion. His Affidavit, even if you consider it, is not a weight of an evidence issue. It is no evidence, and it's certainly not sufficient evidence given the plaintiff's heightened burden to overcome the evidence before The Court entitling us to Summary Judgment.

THE COURT:

And let me ask you what I asked Mr. Blincow, and that is: do you know what the mental capacity -- what mental capacity is required for execution of a Trust Agreement versus a Last Will and Testament? Is there a difference because the Trust is contractual in nature, or is it the same?

MR. HAYNSWORTH:

Your Honor, I will parrot Mr. Blincow's --

MR. BLINCOW:

(Talking over each other.)

MR. HAYNSWORTH:

Yeah, you got us both there.

THE COURT:

You might want to ask the person beside you.

MR. HAYNSWORTH:

(Confers with Lesley Moore.)

THE COURT:

And I should know the answer to that but I don't know --

MR. HAYNSWORTH:

We believe after consultation, Your Honor, it is the same standard.

THE COURT:

All right.

MR. BLINCOW:

Well, then I was right and didn't even know it.

MR. HAYNSWORTH:

So -- yeah. So the two blind hogs have now confirmed that we have --

THE COURT:

Okay.

MR. HAYNSWORTH:

-- had the right the law.

THE COURT:

Okay. Well, Mr. Blincow, any response?

MR. BLINCOW:

Yeah. Please. My memory wasn't good but it is what I recall. After I appeared -- and if you look at the caption that I used when we filed this filing yesterday, Lesley R. Moore, Esquire, the defendant, is sued as Personal Representative as -- and Trustee. So --

THE COURT:

Well, this is a Brief filed. I mean it doesn't --

MR. BLINCOW:

I'm just --

THE COURT:

Changing that in the caption doesn't really change the substance of the original Petition --

MR. BLINCOW:

Fair --

THE COURT:

-- or Complaint.

MR. BLINCOW:

Fair enough. But when I stepped in there was never any question that this -- she was a party by virtue of the fact she was the Trustee.

THE COURT:

Okay. Was your client alleging any wrong doing as

Trustee or Personal Representative?

MR. BLINCOW:

No.

THE COURT:

All right. All right.

MR. BLINCOW:

Well, he was, but -- he was. Whatever, his Petition says what it says, but I'm saying that now our position is that she's a party simply by virtue of the fact she's the Trustee.

THE COURT:

All right. And is there any evidence of any wrong doing by Ms. Moore as Personal Representative or Trustee?

MR. BLINCOW:

No, sir.

THE COURT:

All right.

MR. BLINCOW:

And I --

THE COURT:

I just wanted to clarify.

MR. BLINCOW:

Yeah, I do. I really do think this Russell case is an undue influence case. And so to the extent they

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

THE COURT:

All right.

MR. BLINCOW:

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

THE COURT:

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

sufficient to withstand Summary Judgment on a cause of action for undue influence. But I'm going to have to do my homework and give everything proper consideration before reaching any decision on this matter. I appreciate both sides informing The Court of all of the relevant facts, and circumstances, and supplementing the Motion with appropriate Affidavits. And so you've both done an excellent job, and I appreciate that. And I'm going to weigh through these materials and have a decision hopefully within the next week or so.

MR. HAYNSWORTH:

Thank you. I appreciate it.

MR. BLINCOW:

Thank you.

THE COURT:

Thank you very much. We're adjourned.

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

CERTIFICATE OF REPORTER

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

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

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

_____

Treasa Hix, Reporter

Notary Public for S.C.

Commission Expires: 6/13/29

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

James Marshall Shoemaker, III,	)	
	:	
Petitioner,	)	
	:	
-vs-	)	Case No: 2018-ES-23-01729
	:	
Mary Hunter Sloan Shoemaker,	)	
Edward Sloan Shoemaker,	:	
Jonathan Evans Shoemaker,	)	
Debora Wine, Lesley Moore, and	:	
John and Jane Doe,	)	
	:	
Respondents.	)	

DEPOSITION OF JAMES MARSHALL SHOEMAKER, III

PURSUANT to Notice and/or agreement between the parties, the deposition of James Marshall Shoemaker, III, called by the Respondents, was taken commencing at the hour of 10:10 a.m. on Friday, July 24, 2020, in the offices of Brown, Massey, Evans, McLeod & Haynsworth, LLC, Attorneys at Law, 106 Williams Street, Greenville, South Carolina.

IRVETA J. SHOUSE, Reporter

APPEARANCES:

BLINCOW GRIFFIN LAW
126 Meeting Street
Charleston, SC 29401
BY John K. Blincow, Jr., Esquire

.....On behalf of the Petitioner

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC
106 Williams Street
Post Office Box 2464
Greenville, SC 29602
BY Knox L. Haynsworth, III, Esquire

.....On behalf of the Respondents

Also Present:

Leslie R. Moore
Edward Sloan Shoemaker (By telephone)
Jonathan Evans Shoemaker (By telephone)

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

See Index, Page 3.

INDEX OF EXHIBITS

Respondents' No.	Description	Entered at Page
1	Petition for Formal Hearing filed by the Petitioner, with exhibits	
2	Amended Petition	
3	Petitioner's Answers to Respondents' First Set of Interrogatories	
3a	Petitioner's Production of Documents	
4	E-mail from Marshall to Sloan May 7, 2018	
5	E-mails between Marshall and Sloan dated April 26, 2018, Re: Do Not Come	
6	E-mail from Jim Shoemaker to Marshall Shoemaker dated July 03, 2018, "In light of our years of discord..."	
7	Will of Mary Hunter Sloan Shoemaker dated June 24, 2018	
8	Memorandum Regarding Personal Property signed by Marh S. Shoemaker, July 8, 2018	
9	First Codicil to the Last Will and Testament of James M. Shoemaker, Jr. dated July 20, 1994	
10	First Codicil to the Last Will and Testament of Mary S. Shoemaker dated May 10, 1996	
11	Transcript of Probate Hearing held October 21, 2019	
12	Affidavit of Martha Louise Ramage Lewis	141
13	E-mail from James M. Shoemaker, Jr. to Marshall Shoemaker dated June 17, 2014	156

EXHIBITS 1-11 MARKED PRIOR TO THE BEGINNING OF DEPOSITION

JAMES MARSHALL SHOEMAKER, III, having first been duly sworn to tell the truth, testified on his oath as follows:

EXAMINATION

By Mr. Haynsworth:

Q. Marshall, have you ever had your deposition taken before?

A. No.

Q. All right. Well, let me give you some legal ground rules and some practical ground rules. Our Rules of Civil Procedure in South Carolina provide that, if you have any questions about my questions, if you don't understand my question, you don't get to ask your lawyer, you've got to ask me. And I want you to understand my question so your answer will be responsive. So if I ask a goofy question ---and I may well--- or if you don't understand it or it seems confusing at all, please stop me, tell me you don't understand my question, and I'll try to ask you a better question.

Irveta Shouse, the lady seated to your right, is our court reporter. She is preparing a transcript of everything we say in here today that's on the record. It's very difficult for her to pick up uh-huhs and huh-uhs and head nods.

Q. She's doing a written transcript?

Q. She knows how to take shorthand.

A. Okay.

Q. So all those little chicken-scratch lines, believe

it or not, she can read into real words. A lost art these days. But, yes, she will prepare a transcript, just like the transcript we had of the hearing we had in Probate Court, where it has everything that's been said. That's what will result from this deposition today, is a typed transcript of your testimony, our questions, our objections, and any of the exhibits to your deposition.

A. Is this being recorded?

Q. Yes.

A. How is it being recorded?

REPORTER: (Indicating tape recorder) Digitally. That's for my transcription purposes.

THE WITNESS: Okay.

Q. So, to the extent you can, try to give a verbal response. If I say something like, "Was that a yes?" "Was that a no?", I'm not trying to be rude, it's just that I didn't understand what your verbal response was.

Like we said before we got started, if you need to take a break, you know, if I'm rambling on, and I go more than an hour and you need to go to the bathroom, tell me to stop, you need a break, and I'll stop. I will tell you, during breaks you are still under oath. You and your lawyer can certainly talk about sport, the weather, anything you wanna talk about other than your testimony here today. And if you do talk about that, I have the right to ask you about your

conversations with your lawyer, which typically someone cannot do. So it's an easy rule to follow, just don't talk with John, during a break, about the case and what we've been talking about in here.

With me so far?

A. Correct. Yes.

Q. Okay. Let me get --- I obviously know where you went to high school and I know you went to Princeton, but I don't know exactly your educational background. So you graduate CCES in what year?

A. '78.

Q. All right.

THE WITNESS: (To Mr. Blincow) So what about the objection about the discovery process?

MR. BLINCOW: Marshall just wanted me to put on the record that he's sitting for his deposition but prior to seeing all the medical records which may exist.

MR. HAYNSWORTH: Okay.

MR. BLINCOW: And pharmacy records and so forth.

A. And e-mails from my brother and my father and between each other.

Q. Okay. Well, as you know, Marshall, since you've been representing yourself for most of the lawsuit, there's a

mechanism. If you think you've not been given relevant information or documents, you can file a motion with the court to compel the documents you feel like you're entitled to that I haven't given you. Now that you have John involved, obviously he is very familiar with that process. So I understand you feel like you've not gotten some stuff you want. Your lawyer and I, and/or the court, will work through all that.

Oh, let me ask you. As you sit here today, are you under the influence of any medications that would affect your ability to answer my questions?

A. No.

Q. Okay. So you graduate in '78. Start college the next year?

A. '79.

Q. All right. Princeton?

A. Princeton.

Q. When did you graduate Princeton?

A. Oh, I finished my coursework in '83; I finished my thesis in '85, so that's when I graduated.

Q. Were there any breaks during your time at Princeton or were you ---

A. I took a year off to study in Detroit --- I mean, excuse me, to be a community organizer in Detroit.

Q. All right. So graduate Princeton, ultimately, with a degree in what?

A. History. Latin American Studies.

Q. Any postgraduate work?

A. Yes.

Q. What was that?

A. I spent a year at the Pacific School of Religion studying theology. That got me a Certificate of Theological Studies. I spent two years at University of California-Davis, in which I earned an MBA. I also spent a year at Georgia Tech in quantitative finance, a year out of the two-year-degree program.

Q. All right. What did you do after you finished your one year of the two-year degree?

A. What, at Georgia Tech?

Q. Yeah. What was that ---

A. Well, that was about eight years ago. So I've had a career in high tech since college.

Q. Okay. Okay. So the Georgia Tech was after you had finished your education for a period of time and gotten out in the working world.

A. Correct.

Q. And your current business is Flocking Behaviors? Is that correct?

A. That's a Georgia LLC that I sometimes use for billing clients for my software development project management business. I'm current employed by a staffing firm and I'm

working for Norfolk Southern

Q. And when you say you're employed by a staffing firm, you mean a staffing firm is using you as a consultant to do something for that staffing firm?

A. No.

Q. Okay, when you say you're employed by a staffing firm, what do you mean?

A. The majority of people who work in large corporations in IT departments work through staffing firms. And because they're on contract, they're not employees of the enterprise. I work for Norfolk Southern; however, I'm paid on a W-2 through the staffing from who takes a margin on the hourly rate that Norfolk Southern pays the staffing firm.

Q. Gotcha. All right. And how long have you had the Norfolk Southern assignment?

A. November of last year.

Q. All right. And I apologize, but when I was going through my preliminary spiel about making sure you understood my questions and that sort of thing, I forgot to give you some of the practical stuff. And this is a flaw of Knox, all right? I'm a touch ADD. So I tend to bounce around, topically and chronologically. It's not a lawyer trick, just a confused brain. And because I do that, often times it confuses people. So, again, if I lose you and I'm talking about some document and you don't understand, please stop me. Because I can

assure you, I will ask confusing questions. And I also wanna apologize ahead of time...I try to take notes as to what your answers are and I try to remember it. But at times I might ask you a question that I've already asked you earlier, I simply forgot that I asked. I'll try not to replow old ground, that's waste of everyone's time and money. But that may happen, so I'm gonna apologize to you ahead of time.

Let me get you to take a look, in the first instance, at Exhibit 3. I'll represent to you I believe that to be the interrogatory answers you served on me. But you look at them and satisfy yourself that that's what they are.

A. (Reviewing Exhibit 3) These were my answers to your questions; correct?

Q. Yes. That is what I believe them to be. I wanted to make sure from you that that's what they were.

A. This looks to be what I produced.

Q. Okay. Let me go through some of them with you. Take a look on Page 2 at Interrogatory No. 4, which asks for you to list the name and address of any expert witness who you propose to use as a witness in this case. And as of the time you served me with these interrogatory answers on September 5th of 2019, your answer was, "No expert witnesses have been determined as of today." Is that still the answer to that interrogatory today, July 24th of 2020?

A. Yes.

Q. Okay. Have you talked to any --- other than your lawyer, have you talked to anybody about any of the medical records that you have been provided with in this lawsuit?

A. No. Well, I've talked to many lawyers, friends and potential counsels, but I have not --- yes, that's the answer.

Q. So no physician has looked at those records and given you any opinions one way or another about them or about whether they support or don't support your claims in this lawsuit.

A. Not me, no.

Q. Not you, no. Okay. Have they talked to somebody else?

A. I don't know why you're asking me that question.

Q. Well, one of the great advantages now, Marshall, that you have a lawyer is, John can explain to you the rules that we're playing by here today. And those rules are essentially that, any question I ask you that is relevant to your claims, or might lead to the discovery of relevant evidence about your claims, is fair game for me to ask. We have gone to court twice now over what I perceive to be your flaunting of the Rules of Civil Procedure.

A. You know what?

MR. BLINCOW: Stop. Everyone take ---

A. Is that a question?

Q. It's an explanation as to what's gonna happen if you

don't answer my question.

A. No, it's a hostile accusation.

Q. Marshall.

A. Knox.

Q. You're gonna answer my questions today. I'm not trying to be hostile. I'm trying to explain to you the rules that ---

A. No, you were disrespectful and unprofessional in what you said about flaunting. And I know in depositions there's rules against harassment and obstruction. And, if necessary, we can get a Special Master to make this thing more amenable.

Q. No, I'm not ---

MR. BLINCOW: We're not gonna need to do that. Just listen --- if you know the answer, you answer it. That's all.

Q. So, as I was saying, Marshall, the last two times we've had to have court hearings, the court has...what is the phrase?...appeared to me to be frustrated with your participation in accordance with the Rules of Civil Procedure. And so the reason I bring that up is, if you don't answer my questions ---now, if John tells you not to answer, that's fine, John and I and the court will work that out---- but if you're gonna independently decide not to answer my questions, I just want to let you know that I'm going to adjourn our deposition

and I'm gonna file a motion with the court and try and get you sanctioned. We can get through it, you can answer my questions, or we can get in arguments over whether the questions are hostile or answers are hostile. I think the former is a much smoother way to go through it. You know, I've got nowhere to go today. I've got all day, into the night, and I'm being paid to sit here. So it doesn't matter if it takes a long time to me.

A. My understanding is the format here is you ask me a question and I answer. What you have been doing is pontificating and misrepresenting reality. But if you have a question for me, I'm glad to answer. So why don't you ask me a question and I'll answer it.

Q. Okay, Marshall. I think the question on the table was: Who has talked to a doctor about the medical records ---

A. I believe that my lawyer has talked to doctors.

Q. Okay. You've talked to none.

A. Correct.

Q. Have you talked to anybody else other than your lawyer about the medical records? Your girlfriend? Your Uncle Ned? Neighbors? Anybody?

A. I have talked to friends who are doctors and lawyers about the circumstances of this case in great detail.

Q. Okay. What friends who are doctors have you talked to about this case? What are their names?

A. I don't even know their names. They're people I know in a social context.

Q. How did you communicate with them?

A. Verbally.

Q. Okay. What is the social context in which you were communicating with them verbally?

A. Gatherings in which we both participate.

Q. Gatherings where?

A. In Atlanta.

Q. When?

A. On a regular basis. I get together with men and talk about all sorts of things. Social gatherings.

Q. Don't need to know anything you talked about other than the doctor friends who you've talked to about this case.

A. I do not have their names for you.

Q. Okay. Do you know when you talked to them at these social gatherings?

A. I've been talking to them since six months before my father died. So starting at the beginning of 2018.

Q. Well, let's start there. The beginning of 2018, before your father died, what prompted you to talk to doctor friends at these social settings in Atlanta about your father's medical condition?

A. I did not understand the disease of pulmonary fibrosis. I did not understand why he didn't pursue a lung

transplant. I did not understand the severity of its impact on his life. I did not understand the prognosis for his life. I was asking questions about that.

Q. Did you ever call your dad and ask him those questions?

A. I did.

Q. And did he tell you?

A. He did.

Q. Okay. When did you call your dad and ask him about his condition?

A. Over the last five years of his life we had many interactions about that.

Q. My question's much more limited. When was the last time you called your dad on the telephone and talked to ---

A. I visited him about a week before he died.

REPORTER: Excuse me just a second, Marshall. I'm sorry. If you'll let him finish the question. Because I can't write with both of you talking at the same time.

THE WITNESS: Oh, I'm sorry. Okay.

Q. When's the last time you talked to your father?

A. I don't have the date in front of me. I think it was two weeks before he died. My girlfriend and I visited him.

Q. Okay, yeah. And you went into great detail, and we'll cover that.

All right. Walk me back to the prior time that you talked to your dad. Before you and Julie went and your mom shushed you out and wouldn't let you go in and see him. Before that, when's the last time you talked to him?

A. We exchanged --- I spoke to him sometime in the spring. Probably in March. I wrote him letters, and he wrote me a letter in the spring.

Q. When's the last time you would have talked to your father on the telephone?

A. As I just said, in March before he died.

Q. I'm sorry, I thought y'all were exchanging letters during that time.

A. Also exchanging letters.

Q. Okay. So you had phone conversations with your dad in March of '18.

A. Yes, I believe that's true.

Q. And amongst those conversations, one of the topics was you asking him about his condition, and about lung transplant as an option, and the sort of things that you asked your doctor friends?

A. No. I did not ask about the lung transplants. I asked about how he was doing, and he got very upset and talked about it being a fatal disease. And we had a conversation about his looking at his death.

Q. Okay. When you had that conversation with him in

March of 2018, did he seem of sound mind, to the extent you could tell?

A. He was distraught. And I'm not sure what sound mind means.

Q. Do you feel that the time that you talked to him he was under any undue influence from your mother or your brothers? In March of '18 when you were talking to him.

A. He was difficult to reach on the phone. Phone calls would not get returned that I left on the message machine at the house.

Q. Do you know why --- and these are phone calls to your dad?

A. Yes. And to my mother.

Q. And you would leave these messages for both your mother and father ---

A. Yes.

Q. --- and they would not return your calls?

A. Yes.

Q. Do you know why that might be?

A. My mother was not technical. She never worked a computer in her life. I don't know whether she had problems picking them up. I think the help, Debbie Wine, probably picked up messages. I'm not sure if they got the messages. That's why I wrote letters more than I called. Because then I could be sure they got the communication. The last time I

wrote my father, 'I sent a separate letter to my mother and my father. Because the communication channels between my parents and myself and my brothers were very poor in general.

Q. Why was that?

A. My mother was not of sound mind the last five years of her life. She had dementia. She could not be relied on to be rational of thought or able to recall facts, or even make commitments about whether a fact is true or false.

My father went through a lot of mood swings over the years. And sometimes he would get mad about something and react, or he would not communicate, or withdraw. And there tended to be a cycle of positive communication and somebody's upset about something.

My brothers over the years kept me out of the loop of family events. Like my mother going to the hospital, my father going into the hospital. I had to communicate with my Uncle Ned in order to find out about a lot of these events.

Q. During this period of time you've just relayed to me, did you consider yourself estranged from your parents and your brothers?

A. No. I talked to them. I visited them. I saw my parents in December of 2017 when I came up for the Christ Church football reunion. We were all gonna go out to lunch. However, my father fell and crushed a table and didn't feel like he could get up and go to the event. And then my mother

was upset because she had been sent to get a new table. And so we had a visit at the house.

I always --- I --- I --- my children --- well, never mind. I'm volunteering information.

Q. Well, the drawback to starting to volunteer is that I would have asked what you were gonna volunteer. So you started to say something about your children. What were you gonna say?

A. Unlike my brothers, I moved back to South Carolina in 2000 and I frequently took my children to visit my parents. And they visited us in Atlanta. So my children had a much closer relationship with my parents than either of my brothers' children did, and I encouraged and supported that.

Q. So you moved back to South Carolina in the year 2000, you said?

A. Correct.

Q. Was that in connection with a job change? Or what brought you back to Greenville?

A. The number one motivation is I wanted to be closer to my parents, specifically my father. And someone had suggested to me that what worked for them was to go out to lunch on a weekly basis. So my ex-wife and I decided to move back to the East Coast where her parents lived, up in New York and Middlebury, Vermont. And we thought about moving to Greenville, but it just felt like it was too much of a

pressure-cooker, so we moved to Charleston.

Q. And you said that someone had suggested that if you could go out to lunch on a routine basis with your father...?

A. It would help us to become closer.

Q. Were y'all not close prior to the year 2000?

A. It's kind of a black and white question, and I don't know how to answer it.

Q. Okay. Well, give me some shades of gray if you need to. Were you and your father close? You've told me you moved back to Greenville and wanted to go have --- or, excuse me, you moved back to South Carolina and wanted to have lunch with your dad, because someone told you that would be a good thing to help bring y'all closer. Is that generally what you're telling me you ---

A. I lived in California for sixteen years. I went to California after college. There's a three-thousand-mile distance. It's very expensive to fly a family back to the East Coast on a regular basis. Living on the East Close would have put me physically closer, and opportunities for more interaction. The same way it put my wife ---ex-wife--- physically closer and more opportunities for interaction with her parents, actually, who were in Vermont.

Living in California is three hours away in time zone and you're basically like living in a different country. And the three hours makes a huge impact on personal

relationships.

Q. Okay. So you moved back to Charleston, you and Amelie. Am I pronouncing ---

A. Correct.

Q. --- it correctly? Did you have some lunches with your dad, once you ---

A. Yes.

Q. --- came up in 2000?

A. We frequently went up to Greenville. We went up to Lake Toxaway. For a while, we were having family vacations including Sloan and Jonathan at Litchfield Beach. There were many more opportunities to get together by living on the East Coast.

Q. Okay.

A. They came to Charleston.

Q. All right. Let me get you to look at Interrogatory No. 13, if you would.

A. Yeah.

Q. In your Petition you listed a John and Jane Doe, and I asked you, essentially, who that was. And you said, "(They) are as yet unidentified family friends, medical hospice providers..."

I don't quite understand what it is you're saying, so I'll just try to ask you to explain it. Who are the unidentified family friends that are John and Jane Doe in the

case caption?

A. I'm not a lawyer. I tried to get information from other documents that I found --- legal documents. And it seemed to me to put John and Jane Doe in there kept open the possibility for new information coming to light of individuals to be identified. That's why I stuck it in there.

Q. Okay. So you were not intending to assert a legal cause of action against John and Jane Doe, or the people who were gonna represent the anonymous. Typically, the respondents are people you've made a claim against, not witnesses who know information. And you had listed them in the caption as respondents. So that's why I was trying to figure out, who are John and Jane Doe that you might have a claim against? And it sounds like that wasn't your intention. John and Jane Doe are just some witnesses you might want to add later on. Is that correct?

A. Correct.

Q. Okay. Okay. And when you say "unidentified family friends," you're not telling me you don't want to identify them, you just don't know who the family friends are. Was that your intention by saying "unidentified"?

A. I'm finding somebody's phone to be very distracting. Is it possible for everybody to turn off their phones?

Q. Well, I cannot turn off my phone because I've gotta communicate with your brothers, who are listening in to the

deposition. But to my knowledge, my phone ---if not, I will make sure--- is on silent.

A. So you're texting with my brothers during the deposition.

Q. I may well be, yes. And during breaks, I'll be talking to them about your testimony. Because they are listening in on the telephone to us here today.

So, Interrogatory No. 13 ---

A. Well, I have another question. So the lady here is taking down everything that's said here while ---

Q. Hey, Marshall?

A. --- we're on the record?

Q. Marshall?

A. What?

Q. If you need to question me because you don't understand one of my questions, I'm happy to try and explain my question. I'm not gonna explain the logistics of the rules here today. Your brothers are parties. They have a right to be sitting in here. Just like Leslie Moore is sitting in here live. Because you've sued all these people.

A. It's my understanding that no one has the right to talk in here except for you and me. That's a form of communication that's going on as if Leslie were talking to you right now.

Q. So ---

A. And I don't appreciate your tone, and you better get more respectful. You're get more cooperation that way.

Q. Marshall, I am sure ---

A. And my question was, if the lady here was writing down everything that's said right now.

Q. I'm not answering your question, Marshall.

A. Huh! (Laughing)

MR. BLINCOW: Let's get back on track.

A. You're being ridiculous.

MR. BLINCOW: Let's get back on track.

Q. So, where were we, Marshall? We were talking about Interrogatory No. 13 and these unidentified family friends and medical and hospice providers. You don't know the identify of any of those people. That was just your way to give yourself the opportunity to tell me there may be family friends of medical or hospice providers; is that correct?

A. Yes.

Q. Okay. I had asked you in the next interrogatories to give me the name, address and phone number of your girlfriend. You objected. I would like to know, as we sit here today, the name, address and phone of your girlfriend.

A. (Laughing) Well, you just met her outside. Her name is Julie Callahan and her address is the same as mine.

Q. And phone same as yours?

A. No, her phone number is different. I can get you

that.

Q. Okay.

A. (Looking at phone) (404) 953-8311.

Q. Interrogatory No. 15, you go into some elaboration on something we touched on a while ago. Which was when you and Julie came up to see your dad on June 25th of 2018.

Take a second. Read your answer to Interrogatory No. 15. And let me know if anything is different since you originally did it back in September.

A. (Reviewing document) It's exactly the way I recall it.

Q. Okay. When you mother came and told you that your dad did not want to see you, did you believe your mother?

A. I did not know whether to believe her or not.

Q. Did you think your mother would lie to you ---

A. Yes.

Q. --- about your father's wishes in seeing you?

A. My mother --- yes.

Q. Okay. Do you know why she would lie to you about whether ---

A. Yes.

Q. --- or not your dad wanted to see you? Why is that?

A. My mother was a very passive and dependent person and avoided confrontation at all cost. Therefcre, if a topic was unpleasant or confrontational, she would say or do anything

to avoid dealing with it.

Q. Okay. And then this sarcastic comment, "Boy that must really have hurt." Do you know why she would thrown that out? That seems kinda confrontational.

A. No, it was a passive/aggressive cruel remark and it was within character.

Q. Okay. The next interrogatories references Page 6 of your Petition. And it references the portion of your Petition that says your dad was incapacitated at the time of the alleged revisions to his Will.

Were you with your father on the day that he executed the most current testamentary documents?

A. No.

Q. Do you know who was with him when he executed those documents?

A. The documents imply that there were two lawyers from my father's law firm, as I recall. I do not have them in front of me.

Q. Okay. And you've not had occasion to talk to either of the two lawyers you show up on the documents, to ask them about your dad's condition or capacity ---

A. No.

Q. --- on the date that he executed the documents?

A. No.

Q. Okay. In the Interrogatory Answer...the question

was when his incapacity began. Or part of the question was. And in your answer, it doesn't appear to me that you've answered when the incapacity began.

A. Let me re-read this, please.

Q. Okay. Yeah.

MR. BLINCOW: I'm sorry, what...?

MR. HAYNSWORTH: 16.

MR. BLINCOW: Thank you.

A. (Reading Interrogatory 16) Okay, could you please repeat your question?

Q. Yeah. When did your dad's incapacity begin?

A. I believe that my father was a practicing alcoholic. I believe that my mother was a practicing drug addict. They were doing that up until the end of their lives. As alcoholics age, their mental capacities diminish over time. I witnessed that in my father. If you're talking about his incapacity under his disease, I understand he was in hospice for the last three months of his life where he was basically suffocating to death and was on a lot of tranquilizing drugs to deal with his panic attacks, one of which ended the hospice and got him back into the hospital. And I also believe that he was under the influence of a great deal of anger because my brother showed private communication to him. So I'd say all those led to his incapacity.

Q. Okay. And ---

A. And he was on oxygen constantly.

Q. Okay. Bad question on my part.

His incapacity --- you have alleged that he didn't have the mental capacity to properly execute his Will and Trust.

A. Correct.

Q. When did that incapacity begin? When did he become so incapacitated of his mind and his free will that he was no longer able to execute testamentary documents based on what he wanted?

A. Once again, I'll repeat: I believe towards the end of his life ---and there are many events I can point to--- he was losing the ability to think rationally about emotionally-charged topics. In a more compressed time framework, he was suffocating to death and was on medication to avoid the anxiety. I don't think a person who's suffocating to death and on tranquilizers has the capacity to make decisions in his best interest. Given the twenty-year history of him treating his sons equally and the three weeks before his death making this drastic change, I'd say the facts speak for themselves.

Q. You reference that your dad might've been angry, that that might've been some of the motivation for what he did in his last executed testamentary documents. Something about your brothers had shown private communications to your dad and it made him mad. Tell me about that.

A. It's been revealed by e-mails that you've copied me on, and you have his secretary's statement. I think it's common knowledge that my brother showing some e-mail communications to him really pissed him off and he took this action.

Q. He got mad as hell at you for threatening to kill Sloan, and then he wrote you an e-mail that he didn't wanna communicate with you anymore and he cut you out of the Will.

A. Is that a question?

Q. Do you agree that that's a fair representation of factually what happened?

A. No, it's not.

Q. Okay. How do you know your father was angry when he was shown the e-mails which you and Sloan exchanged?

A. Well, when I visited him, I was not aware of him being shown the e-mails. I was also not aware that he had written me out of his Will. I didn't find that out until six months after his death when I started to seek the information from Attorney Moore. It's only in hindsight that I found out about this.

Q. So you didn't know he was angry with you in close proximity to when Sloan sent the e-mail. You only found out your dad was mad because, looking back in time, he cut you out of the Will, and then you found out he was shown the e-mail. And now, in hindsight, you're telling me you figured he was

mad. Is that correct? Or did you know he was mad at you about the e-mails?

A. I didn't know about the e-mails being shown to my parents until my brothers pulled the same trick after my father's death and got my mother and poisoned my relationship with my mother, at which time she said, "Don't come to the funeral." That's when I knew the e-mails were being used as a weapon against me.

Q. Okay. All right. Well, before you dad was shown the e-mail, you and your dad were on good terms?

A. Yes.

Q. Okay. And looking in hindsight after he was shown the e-mail, you perceived he got angry with you.

A. Well, he wrote me a very cold e-mail, saying "Don't contact me" after I visited him.

Q. And do you believe that that hostile e-mail he sent you after you visited him was prompted by him seeing the e-mail? Or if not that e-mail, do you know why your dad sent you that hostile e-mail?

A. You know, he did not tell me personally, face to face, "Do not talk to me." I was shooed out of the room by my mother. I do not know what his wishes were at the end. His e-mail account was accessible by his secretary, obviously. And, apparently, Sloan and Jonathan had a lot of access to it, too. Although, you have not produced communications between

that e-mail account and my brothers. I only know secondhand what his feelings were through these e-mails that supposedly he wrote. I tried to contact him regularly after I visited and was told my by mother he wouldn't see me. I hoped to see him to say goodbye before he died, and I was prevented from doing so. I don't know if those were his wishes or not. He never said anything directly to me.

Q. When your father sent you e-mails, do you have any doubt that it was him sending the e-mail?

A. (No response)

Q. It sounded like you might be suspicious that an e-mail from his account might not be an e-mail from Jim Shoemaker.

A. My father had a computer in his home where he accessed the Wyche e-mail server.

Q. Okay.

A. He used that prolifically up until this conflict started up, and then he started asking his secretary to print off e-mails in his office. If she could print them off, she could access them. So I do not know who wrote the e-mail. Yet he copied my brother Jonathan on that e-mail where he says, "Don't contact me." I don't know if Jonathan was visiting my father and wrote the e-mail, or if Sloan was visiting my father and wrote the e-mail.

Q. As we sit here today, though, you have some question

in your mind as to whether or not the e-mail you got, reportedly from your father, about, "In light of our years of discord," ---I'm paraphrasing--- "I no longer wish to contact you in writing..." You know. I'm paraphrasing. You believe that that e-mail might not have been actually prepared by your father, that those were not his words.

A. Correct.

Q. Okay.

A. My brothers have both benefitted to the point of 1.7 million dollars each by me being written out of the Will. You and Attorney Moore are making money off of this conflict. Everybody's making money off of it except for me. That e-mail was part of this whole constellation of absurdity. And it went in the face of twenty years prior, factual experience, including letters I have where my father expresses his affection for me that is contrary to his last actions, supposed.

Q. Take a look at Interrogatory 20. And I should say your Answer to Interrogatory 20.

A. (Witness complies) I stand by everything in that answer.

Q. Including that your brothers killed a pedestrian at Litchfield Beach?

A. Yes. As reported to me by Sloan.

Q. Okay. The first part of your answer you make

reference to your mother's Sundowner's syndrome, and that's based on conversations with your uncle. That would be Uncle Ned Sloan?

A. Correct.

Q. What did you and Ned talk about, vis-a-vis your mom's Sundowner's syndrome?

A. Over the years, when my mother and father would go into the hospital ---usually from some accident, like my mother would trip, or my father would fall--- I would get the best source of information from my uncle, who cared a lot about his sister. And he also cares about me. So he would be open with the communication flow. Something that was not true among other family members. He explained that, in the afternoon, she would tend to lose reality and behave like someone who was either in Alzheimer's or dementia.

Q. And when are you and Ned having these conversations where he is relaying the information that you just imparted to me?

A. I don't know. The last three or four years of their life, my parents' lives. Over the telephone.

Q. And were your parents not keeping you appraised directly of their condition during the last four or five years of their lives? It sounds like you were having to get information from Uncle Ned because no one in your immediate family, your brothers or your parents, was keeping you up to

date and what was going on with them.

A. My father was not free with information. One time my mother fell on her face and in the hospital. He wrote an e-mail to everybody: "Mother's in the hospital. Do not contact me by phone, I've got too much to do." Well, I respected his wishes. A week later I called to find out about my mother's condition. Had to call my uncle to find out and he said my two brothers were visiting. So either I was too passive about respecting my father's wishes about staying away, or...I don't know. But I wasn't getting the information.

Q. Okay. Last paragraph, last full paragraph of your Answer to Interrogatory No. 20 that begins, "I grew up in a family dominated by affluence..."?

A. Yeah.

Q. It goes on to say, "...by affluence, alcoholism and drug addiction. This fact explains not only father's lack of capacity at the end of his life..." That's what I wanna focus on. So is it your contention that at the end of your dad's life, due to alcoholism and drug addiction, he lacked testamentary capacity?

A. I don't really know what testamentary capacity means.

Q. Okay. Glad you told me. And I'll define it for you. So then we'll be on the same page, as it were.

Testamentary capacity is the legal capacity by which

a person has to do a Will. Leave their possessions to who they want to leave them to. The legal capacity to be able to do a valid Will that would be upheld in a court of law is testamentary capacity. Got enough mental acuity and not under the influence, undue influence, of someone else. I got enough going on to validly leave a Will. When I say testamentary capacity, that's what I'm talking about.

So is it your contention that alcoholism and drug addiction caused your father to not have testamentary capacity?

A. The drug addiction refers to my mother, not my father.

Q. Okay. Strike drug addiction from my question.

A. Yes. His actions three weeks before his death are so contrary to his actions twenty years previous. And, since he was a lawyer, he was fully aware of the kind of damage for multiple generations this action would take on me and my children and my side of the family and the relationship with the other side of the family. And since he acted in a loving way many years previously towards me and my children, and seemed very aware of family dynamics, and in general acted towards keeping a unified family, it was totally against his character. And that is explained to me by being on narcotics, suffocating to death, the long-term effects of alcoholism.

Q. Do you remember approximately the first time you voiced to either of your parents your opinion that they were

alcoholics and/or drug addicts?

A. I think the same weekend in which Sloan and Jonathan ran down the pedestrian, I had said something that my mother and my father overheard, that I thought Dad was an alcoholic. So that was probably...oh, god, I guess I was in my thirties or something. So that was twenty-five years ago.

Q. Okay.

A. I had told my mother that I thought she was a drug addict probably ten years ago.

Q. Well, the twenty-five years ago, was that Dad's an alcoholic and Mom's a drug addict was only ten years ago? I mean, two different dates?

A. Yeah. I wasn't sure about my mother until I did research and I recorded some of her conversations and played them to professionals and they said that she's under benzodiazeipine intoxication.

Q. All right. Well, let me ask you about that. So you recorded some phone conversations with your mom?

A. Yeah. I was getting a lot of crazy phone calls.

Q. How did you record these calls with your mom?

A. I guess I used my telephone. I'm not exactly sure how I --- and they might've been messages on a message machine. They were probably messages on my voicemail.

Q. Okay. And you shared those messages, did you say, with some doctors?

A. With a therapist.

Q. With a therapist. Okay. And how did you...how did the therapist listen to the recording? Was it voicemail on a cell phone?

A. I played it on my phone, yeah.

Q. And what was this therapist's name that you played the recordings of your mom for?

A. I don't know. I can get it for you. I don't remember her name.

Q. When did you record your mom's calls?

A. Probably ten years ago.

Q. So that would be 2010?

A. Probably, yeah.

Q. Okay.

A. You know, I'm just pulling this out of my memory.

Q. All right. Well, do you still have the recordings?

A. No, I do not.

Q. What happened to them?

A. I erased them. I don't keep voice messages.

Q. So did you give a copy to the therapist? Or you just let the therapist ---

A. No, she just listened to it.

Q. Okay.

A. It was distressing me. My --- I frequently had conversations with my mother that distressed me because they

were so nuts. I didn't know how to deal with it.

Q. And you say you'll provide the name of the therapist later?

A. I guess I can track it down. I don't know how I --- yes, I think I can track it down.

Q. Okay. And what did the therapist say to you when you played these recordings from your mom?

A. She said, "That's not the way a drunk person talks, but it is the way a person talks who's on too many Valiums." And Valium is often referred to as alcohol in pill form. And it's highly addictive. And she frequently just sort of departed from reality and talked...sort of like a drunk person but not slurring words.

Q. All right. I'm reading further in that same paragraph we were on in your Answer to Interrogatory No. 20.

"This fact explains not only father's lack of capacity at the end of his life, but the ongoing pain and perversity in the relationships between my brothers and mother, and myself." What do you mean by the perversity in the relationship between your brothers, your mother and yourself?

A. Children and spouses who are raised in an alcoholic home pretty much go crazy as a result of being around an alcoholic. The domination, the inconsiderateness, the self-centeredness, the rules about not telling the neighbors, the lack of affirmation, the tendency towards control as opposed to

love. That's what I'm talking about.

Q. And when you say tendency towards control and not love, are you talking about your dad and your relationship, that he tended to be controlling over you and not express love to you?

A. He expressed both at different times on multiple occasions.

Q. Is it a fair characterization to say that over the years at various times you and your dad were estranged?

A. No. Estranged has a long-term permanent characteristic. That's not accurate. We had conflicts.

Q. Okay.

A. But all family members have conflicts.

Q. Did you have more conflicts, in your opinion, with your dad than your brothers did?

A. Depends on what time period you're talking about.

Q. Well, let's talk about from year 2000 to year 2010.

A. Well, it depends on if you wanna go on opinion or fact. The fact is, in 2010 my dad wrote me a very loving letter explaining why he set up an irrevocable trust and why he divided the money between me and my children according to my -- - because I'd gone through a divorce --- I was in a divorce at the time. It was a very loving letter. In 2017 he wrote another letter that was very loving and interested in me and my children, and talking about his positive regard for my brothers

and their children.

Q. Okay.

A. Six months before he died, he reaffirmed a Will that treated all three children and grandchildren equally. So those are the facts. There are other times, though, such as when my daughter graduated from Georgia Tech and I asked my parents, in the presence of my brother and my girlfriend, to please drop divorce from family conversations. Again, my mother liked to bring up things like this. And I said, "Please stop that." And he and my mother left the table and he then, three days later, asked me to return a hundred thousand dollars he'd given to each of his three sons, because he so pissed off that I would ask him not to talk about divorce at the family events on a regular basis. I sent him back the hundred grand. so there were times when there was love being exchanged and there was time when there was conflict.

As to your original question: I'm the oldest son. I also don't back down. And so, in general, I would tend to set boundaries with my father that my two brothers did not do. If you wanna look back to our childhoods, my brother Sloan and I got the same physical treatment that my brother Jonathan escaped. So I'm not sure how to parse the difficulty in the relationship.

Q. Okay. Interrogatory No. 21. I had again referenced part of your Petition, and there was a reference in the

Petition about a distant family friend reaching out to you. My interrogatory was: "Who was the friend? How did they reach out to you?" and "Identify any documents..." And you chose to not identify that person. So now that we're sitting here together, I would like you to tell me who the distant family friend was that you reference in your Petition.

A. Dottie Schipper.

Q. All right. Walk me through that. Dottie call you? You call her? Tell me about it.

A. So, Knox, you have asked me about this before and you --- the term you used with me before about Dottie was, "I put her into play." I have nothing but affection and respect for Dottie and a deep sense of gratitude. Because she gave me the opportunity to visit my father before he died, whereas, my brothers and mother were not gonna give me that opportunity. So I would appreciate you not embroiling her in something when she did a very simple thing: she tracked me down on Facebook and said, "Marshall, I really need to talk to you, could you please give me a call?" I gave her a call. And she said, "Marshall, people are saying goodbye to your father." I said, "Dottie, thank you very much, I didn't know that." A few days later, I got in the car and went to visit my father.

Q. And when you thanked her, "I didn't know that," was that via Facebook? Did you respond ---

A. No, I called her up on the phone.

Q. Okay. So first contact was, she found you on Facebook and reached out on Facebook?

A. And said, "Would you please call me?"

Q. And said "Please call me."

A. Yes.

Q. You called her, she told you, "Hey, people are --- your dad's close, people are going and paying their last wishes."

A. Yes.

Q. You thanked her for advising you, and that was the extent of your conversation with Dottie Schipper about your dad?

A. Yes.

Q. Okay. I'm not on Facebook, so I may say an improper term of art. When she reached out to you on Facebook, is your Facebook page open so anyone who goes on Facebook can contact you? Or was she a friend, if I'm using the right term of art?

A. I don't use Facebook. I have a Facebook page so that occasionally my children can share photos with me. I have removed all my friends on Facebook. I don't like the medium or the platform. I don't really wanna have anything to do with it. I do have a page, though, so somebody who wants to track me down can track me down.

Q. Okay. And is that how Dottie tracked you down, is ---

A. Yeah.

Q. --- posted something on your page?

A. No, no. She sent me a note or something.

Q. Okay. The next interrogatory again references part of your Petition. It's the portion where you contend your brothers have been edging you out of the family for years in a cold and calculated manner. And in your answer, you tell me, "During the last five years of my father's life, my brothers hid from me..."

During the last five years of your dad's life ---

A. Can you let me read this again?

Q. Yeah. I'm sorry. Sure, go ahead.

(Witness Reviewing Answer to Interrogatory No. 22)

A. Okay, I've read it.

Q. Okay. Second sentence: "Over the last 10 years of our parents' lives - during which both our parents suffered multiple accidents, illnesses and hospitalizations - I was directly, on multiple occasions, excluded from notice of the event until days and weeks afterwards, thus prevented from any opportunity to be of assistance or support to either James M. Shoemaker, Jr. or Mary Hunter Sloan Shoemaker."

Were you not in routine contact with your mom and dad over the last ten years of their lives so you would know directly from them that they had suffered multiple accidents or illnesses or hospitalizations?

A. I was in regular contact with them.

Q. Okay. Well, ---

A. Visits. Telephone calls. However, the dynamic about accidents, illnesses: my mother face-planted on several occasions, and I think it had to do with this Valium intoxication. My father fell over quite frequently. I think it had to do with him being impaired, too. So, obviously, if there's one member of the family who doesn't drink, and who thinks not drinking is very important and that drinking is very deleterious to the health of family members, and that drug-taking is very deleterious, if they go into a medical situation they don't want me there saying, "Well, I think Dad should stop drinking and Mom should stop taking drugs."

Q. So do you believe your parents --- because of your thoughts on what you perceived to be their addictions, do you believe your parents were intentionally not communicating with you and injuries and accidents they were having?

A. Correct. I do.

Q. And do you believe that was well thought out on their part? That they intentionally didn't communicate with you because they didn't want you to know, for fear you may offer your opinions as to why they were falling out?

A. Yes. Well, I'm not --- I'm sorry. Do I think it's well thought out? I don't know if it's well thought out. I think it's instinctual. A lot of this behavior is described in

the literature about alcoholism, and family systems theory, and scapegoating. And heros. And isolating and blaming. It's --- I mean, it's...

Q. Okay. Over on the next page there's a paragraph that begins, "My brothers refused to cooperate with planning family vacations, so we stopped having family vacations over the last 5 years of my father's life."

Did your mom and dad go on any family vacations with their other two sons during the last five years of their life?

A. I'm not aware of any vacations where the brothers and their kids were invited and I was not. They did visit, in Colorado and New York, my other brothers.

Q. So do you know whether or not there was a family vacation during the last five years of your dad's life, where Jonathan and Sloan and/or their kids did a vacation with your mom and dad where you were excluded?

A. No, I'm not aware of it. No, but I do know that this annual trip to the beach got sabotaged because Sloan and Jonathan refused to cooperate on the planning. So, basically, I put together a conference call with my two brothers and my parents, and I said, "Hey, the important thing is, let's get together. You wanna go to Litchfield? You wanna go to Lake Toxaway? Where do you wanna go?" Sloan says, "Oh, let's go to the Catskills." And Jonathan says, "Oh, that doesn't fit with my work schedule." So they both made it impossible for us to

get together as a group.

Q. A group, including you and your family.

A. Yeah. I mean, you sound like you're aware of vacations to which I wasn't invited. If that's important, why don't you tell me about it.

Q. Well, again, as we said earlier, Marshall, the way this works is that I get to ask you the questions and not vice versa.

A. (Laughing) Okay.

Q. The e-mails that you have referenced about being for their eyes only...? I think one was the e-mail that Sloan sent to your dad about you when you and Sloan got in a dust-up over him wanting to come to Peter's graduation. That was an e-mail that was sent to your dad that you felt like shouldn't have been shared; right?

A. Correct.

Q. And then there was the e-mail that you sent to Detective Drew Palmer that you copied Cary Hall and others on, about Debbie Wine driving them around to withdraw $15,000 to send to New York because they were scammed on the Dominican Republic thing. That was the e-mail --- when you talk about showing to your mom and causing great distress for her, is that the e-mail that you believe, or that you contend, that they showed to your mom? The e-mail about being duped? That Peter was in the Dominican Republic and needed money and Debbie wine

drove 'em around. You remember, you e-mailed Drew Palmer, the detective?

A. Correct. I remember.

Q. And that e-mail to Drew Palmer, which we'll get to, went into a lot of stuff about this event where your parents were duped into sending money.

A. Correct. Right.

Q. Is that the e-mail that you believe Sloan or Jonathan showed to your mom after your dad had died that upset your mom?

A. At the time my mother called me, just before the funeral, I thought he'd shown the e-mail where I had talked about their alcoholism and saying, "Sloan, we've gotta do something about it." I did not consider that it would've been the e-mail about the cops.

Q. And I'm not suggesting it was. I'm just trying to figure out from you, and, you know, you've got "Their sharing with my father communication from me (for their eyes only) was in part the stimulant to my father's last irrational act of rejection." So that's an e-mail that they showed your dad.

What e-mail are you talking about in the sentence "Their sharing with my father communication from me (for their eyes only) was in part the stimulant to my father's last irrational act of rejection." What e-mail are you talking about?

A. The e-mail exchange with Sloan around his behavior around my invitation to stay in my house and my making it clear to him that I thought that he was playing a nasty game in my parents' life.

Q. All right. And then the next sentence: "After my father died, they leaned very heavily on my mother and convinced a grief stricken old lady to exclude her oldest son from his own father's funeral, pleading their 'fear that I would harm them'..." Tell me about that. The pleading their fear that you would harm them. Did your mother share with you that there'd been some conversation with Sloan or Jonathan that they were afraid if you came to the funeral you would harm them?

A. Uh...a few days before the funeral, my mom and I were talking about me and my kids coming up. And we had a very good --- there was a very positive and loving tone to the conversation. The next day, maybe three days before the funeral, she called up and said, "Well, I see, if you feel so negatively about our family, you should not come to the funeral and you're not welcome," and hung --- "Sloan is showing me this e-mail," and hung up the phone.

When I communicated with my mother for the year and a half after my father died, at some point I said, "Mother, how could you try and exclude me from my own father's funeral?" And she said something to the effect, "Oh, your brothers were

afraid of you." That's where I got that conclusion.

Q. Okay. Okay. So after your dad has been buried, you have a subsequent conversation about, "Mom, why would you exclude me from the funeral?" And that's when she told you that your brothers expressed they were fearful of you if you had come.

A. Right. And I interpret that to be a socially acceptable presentation for the real underlying thing, that she was horrified that I would openly talk about alcoholism and drug addiction in the family. And that she was grief-stricken and my brothers found a way for her to vent her spleen on me. Which had been part of a pattern. And which I understand from other lawyers I've talked to in Georgia, that when parents are aging, siblings tend to become very entitled about assets of their parents and behave in ways in order to gather more of those assets. And that's what I see in my brothers' behavior.

Q. Okay. Still reading in the same paragraph after the quote "fear that I will harm them," and you've got, in parenthetical, "a totally fabricated idea cooked up in their obviously guilty consciences."

What would Sloan and Jonathan have --- are you talking about they would have guilty consciences?

A. Yeah.

Q. About what?

A. Sloan's passing on e-mail, which would obviously

distress my parents, to my parents, which were not addressed to my parents, directly resulted in my father writing me out of his Will. And I would think --- in my mind, I've never thought to try and exclude my brothers out of my parents' estate. I've never tried to exclude them from the family, really. I didn't want Sloan coming to the graduation because he was so disrespectful. But I would think, on some level, my brothers would think, "You know, this situation sucks, we had a part in it, and I don't feel good about my part in it."

Q. Okay. Did your mother ever share with you that either of your brothers had talked to her or your dad about trying to get him to exclude you?

A. Could you repeat that?

Q. Yeah. You told me you talked to some lawyers in Georgia and they explained to you that siblings, at times, when parents get older, become very entitled to the assets of those parents.

A. Correct.

Q. And if I'm understanding you correctly, Sloan and Jonathan should feel guilty, or you think should feel guilty, because they were part of the mechanism that caused your dad to cut you out.

A. Correct.

Q. Okay. And I didn't tell you this when we started. Sometimes ---it's not ADD, it's stupidity--- sometimes my mouth

overruns my brain, and I've just forgot the point that I was trying to make, or the question that I really want to ask. So I will move on to a different question, rather than waste our time trying to remember where I was.

Let's see. Next sentence: "You will see in an e-mail exchange from Jonathan and my father that he knew in the final weeks of my father's life that I had been excluded from the estate." And we'll get to that e-mail in a little while, but it's the one where your dad, or on your dad's e-mail account, an e-mail was sent, "Marshall, I no longer wish to have any contact with you." And then Jonathan e-mailed your dad something along the lines of ---and, again, I'm paraphrasing--- "You know, Dad, I know that was hard. I've got kids of my own, but I support your decision."

A. And he copied me on the e-mail.

Q. Right. And ---

A. Which was an extremely hostile --- never mind.

Q. And when you got that e-mail, you've now seen that your dad has sent you what looks like a hostile e-mail, and Jonathan is obviously aware of it because he's been copied. Did you call Jonathan and go, "What the hell's going on? What's this e-mail about?"

A. I'm sorry. Are you asking me why I didn't call him?

Q. I'm asking if you called him. You get an e-mail from your dad, a kiss-off e-mail ---my words--- and Jonathan

has been copied on it. Right?

A. And he copies me on his response saying, "Good job, Dad."

Q. Right. "Dad, I support your decision."

A. Yeah, yeah. "Screw him." "Screw my brother."

Q. All right. And after you got that e-mail from Jonathan, did you pick up the phone and call Jonathan?

A. Jonathan would not return my calls. You have letters where I tried to reach out to them before initiating this lawsuit to amend the relationship. They didn't respond to letters, they don't respond to phone calls. They don't communicate with me. Jonathan wrote me out of his life many years ago.

Q. So you did try calling, you just couldn't get through.

A. Jonathan? No, I did not try to call.

Q. Oh. Okay. All right. So you didn't try to call him. Did you call your dad? "Dad, did you send this e-mail?"

A. No, I think I was so stunned and hurt that I really didn't know what to do.

Q. But you felt like the motivation of what happened was sharing that e-mail. That's what pissed Jim off enough to make that decision, was when he saw the e-mail where you threatened to kill Sloan.

A. Well, no, I would say that was solely the reason.

My father was an authoritarian man and he responded to challenge with great aggression throughout his entire life. He smoothed it off in the professional world, but at home he did not hold back, in any manner whatsoever. There were repeated instances that, when challenged, he responds with incredible aggression. This was about as aggressive as he could be, other than getting in the car and punching me out. This was about as much damage as a man can inflict on a child without putting a bullet in their head. And it was so over-the-top. I think it was motivated by the e-mail; but the other contributing factors, which I've repeated probably way too often by now, impacted his ability to think clearly in this situation.

Q. Let me get you to switch over, Marshall, to you ---

THE WITNESS: I'd like to take a break.

MR. HAYNSWORTH: Good idea. Excellent point. Break time.

(BREAK)

Mr. Haynsworth Resuming:

Q. Okay, we're gonna switch over the Exhibit 3a, which, if you could take a look, I'll present to you that I believe 3a is a copy of your responses to the Request for Documents, along with a copy of the documents that you produced. I will forewarn you that the second letter in the pile from Uncle Ned is almost illegible. It just copied very badly. And then there's another bad copy in it. I don't think that's gonna be

a particular impediment, I just wanna make sure you're comfortable that what I've told you 3a is, is in fact your responses to the document request for the documents that you have provided.

A. Okay.

Q. Oh, I'm sorry. Go ahead, finish making sure that it's what I said it was, and then we're gonna skip back to the prior exhibit for a second.

A. This is illegible, too. (Indicating document) But do you know the date on this last page?

Q. That's the letter from Wyche?

A. Yeah. Personal letter from my father.

Q. Wait a minute. The last page, the personal letter --- yeah, I can tell you that date, too. The personal handwritten letter, "Dear Marshall," is 8/12/10. And then the letter that your dad referenced that you'd be getting from Cary Hall and Leslie Moore is dated August 11th, 2010. And I've got that Wyche letterhead August 11, 2010 letter as the final document in the stack.

A. All right.

Q. Does that generally look like the document ---

A. Well, I have a letter of 1917 (sic) that I referred to earlier about a very positive regard for everybody, and "Love, Dad" and all that. I don't see it in there. Maybe I didn't have it at the time.

REPORTER: Could you give me that date again. I heard 1917.

THE WITNESS: April 9, 1917 (sic)

MR. BLINCOW: 2017.

THE WITNESS: 2017.

REPORTER: I thought.

Q. And, again, I apologize, I got ahead of myself. We'll get to 3a in a minute. Let's go back to 3, which are the interrogatory answers we were talking about, and I skipped over one. Interrogatory No. 18.

A. Okay.

Q. And Interrogatory No. 18 asks: "Have you ever been treated for emotional or psychological issues by any physician, therapist or other provider? If so, please identify the condition for which you were treated, who treated you for the condition, and identify any documents related to the treatment or condition."

So, as we're sitting here today, same question: You ever been treated for emotional or psychological issues by any physician, therapist or other provider?

A. 1986. I got sober and I was in a halfway house.

Q. The halfway house, was that part of a program, like AA? Was the halfway house in connection with any sort of criminal issue? When you say halfway house, I'm thinking a transitional place ---

A. I went through a treatment program for alcoholism in a hospital in San Francisco. They suggested a halfway house. I went there for six months.

Q. And was that in 1986? Six months during ---

A. Correct.

Q. --- the year '86?

A. Yes.

Q. What was the name of the treatment facility?

A. Henry Ohlhoff House.

Q. Henry Olaf?

A. O-h-l-h-o-f-f House.

Q. Did you make the decison to check yourself in to Henry Ohlhoff House on your own?

A. Yes.

Q. And you were --- were you there for six months and then in a halfway house for a period of time later? Tell me how long ---

A. I was there for six months. I lived there for six months. And I worked, and went to meetings. It was a place to live in early recovery.

Q. And the treatment facility is Henry Ohlhoff House.

A. Correct.

Q. Is the halfway house, is that ---

A. Yes.

Q. Same place we're talking about.

A. Oh, no. The hospital was called Marshall Hale Hospital. It no longer exists.

Q. Okay.

A. It was a 28-day program.

Q. Okay. So let me make sure I understand. You were in a 28-day program in a hospital called Marshall Hale that no longer exists. And that would have been in the year '86?

A. Yes.

Q. Okay. And then following your 28-day stay in the hospital, then you went to Henry Ohlhoff House ---

A. Correct.

Q. --- for some period of time. Okay. Other than that treatment for alcoholism, any other emotional, psychological issues that you have seen a therapist or a physician or other provider about?

A. I take an antidepressant.

Q. Have you seen a doctor about ---

A. Yes.

Q. --- depression?

A. Years ago, I saw a psychiatrist. Now my internist resubscribes --- re-prescribes the antidepressant.

Q. And you said now your regular physician prescribes the antidepressants?

A. Yes.

Q. Who was it that first got you on them? Did you

--- who did you first see for depression? I'm sorry, I missed that part.

A. Dr. Gordon, in Smyrna.

Q. Do you know Dr. Gordon's first name, or what hospital ---

A. Michael.

Q. And is Dr. Michael Gordon in Smyrna, Georgia a ---

A. Psychiatrist.

Q. --- psychiatrist?

A. Yes.

Q. Do you know if Dr. Gordon practices with a particular group?

A. No. I don't know if he's still in practice or not.

Q. All right. And how long --- and I'm sorry if you told me, I didn't jot it down. When did you see Dr. Gordon in Smyrna, Georgia ---

A. Maybe ten years ago.

Q. --- about depression? So approximately ---

A. 2010.

Q. 2010. Okay. And how long were you treated by Dr. Gordon for depression?

A. Oh, you know, a few weeks. Got the antidepressant. Used it. It worked. That's it.

Q. And who is the doctor who presently prescribes the antidepressant to you?

A. Tejura. T-e-j-u-r-a. In Smyrna.
Q. And Dr. Tejura is what type of doctor?
A. Internist.
Q. Is Dr. Tejura with a practice?
A. WellStar.
Q. And what is the antidepressant that you take at present?
A. TRINTELLIX.
Q. How often do you take it?
A. Once a day. In the morning.
Q. Other than the 1986 stay in the hospital and then the halfway house, and the 2010 seeing of Dr. Gordon for depression, any other physicians, therapists or other providers ever treated you for any psychological or emotional issues?
A. I've seen therapists over the years, but it was a long time, I don't remember who they are. Julie and I see a couple's counselor.
Q. What is the couple's counselor's name?
A. (Referring to phone) C.C. Balboni.
Q. B-a-l ---
A. --- b-o-n-i. In Atlanta.
Q. And you said you forgot their name but you saw a therapist years ago?
A. In Berkley.
Q. Can you give me roughly the year?

A. '90s. In the '90s.

Q. And what were you seeing the therapist in Berkley, California in the '90s about?

A. Just, mainly, recovery.

Q. Okay. Helping you deal with licking the alcoholism.

A. No, not licking the alcoholism, just day-to-day challenges in personal and professional relationships. Just therapy. Everybody in Berkley's in therapy.

Q. All right. Thank you, sir. Let's kick back over to Exhibit 3a, the responses to document requests.

The first request was very generic: Any and all documents, hard copy or otherwise, that are related to the claims in your Petition. And you have objected that the request was overly broad and duly burdensome, and indicated that information sought would best be discovered through deposition. So who should I depose to discover what documents are in your possession that relate to the claims in the Petition, other than you, of course?

A. I don't really --- I mean, this is boilerplate language that I got from somebody. I might even have gotten it from you. So... (Reviewing Exhibit 3a) I'm not aware of any documents that I have that I haven't produced. I've been very thorough in my document production and communications. Kinda stands out, actually, in this experience.

Q. So when you've got this phrase "best discovered

through deposition," you think that's just some boilerplate language you got from somewhere? You weren't really meaning that there were specific people to depose to find out the information sought by that request?

A. That was the language that some buddy of mine said, "That's what you need to answer that for. Give 'em what you got, but cover your bases with that boilerplate language." So I threw it in there.

Q. Okay. So any documents that you have that are related at all to the claims you made in the Petition, you've already provided to me.

A. Correct.

Q. Okay. There's a second line in your answer. It says, "Personal communication produced prior to, or outside the scope of, litigation will be shared." I was a little unclear on what you were talking about there.

A. I don't really know what I meant there. That looks to me like a typo. I don't know what that refers to. Maybe it meant to say "will not be shared." Maybe that's what I meant to say.

Q. Well, it begs the question. Do you have communications, personal communications, prior to the litigation that relate at all to the claims you've made in the litigation?

A. Yes. I've produced them. Communication with my

father, and mother, and brothers.

Q. So you haven't held anything back just because the communication was prior to the lawsuit?

A. No. No.

Q. Okay. All right. Next question, same issue. You've given me anything you've got that was sent to or received from Uncle Ned regarding your mom, your dad, or Sloan or Jonathan.

A. Yes. What question is that?

Q. That would be Request No. 2.

A. Oh, I see. Okay. Thank you. Yes.

Q. Request 5. Again, I just wanna understand your objection. I've asked for sketches, plats, photographs, any other tangible evidence relating to the subject matter of your lawsuit. And you have objected the request as overly broad and duly burdensome, telling me it'd be best discovered through a deposition, and then indicated that, "...much of the information requested is material produced in preparation for litigation in a suit in which I am representing myself, therefore protected against discovery."

What --- it sounds to me like you've got material that's covered by the request, you just object to producing it to me. Is that what you're saying?

A. I had communications with lawyers in pursuit of building relationships with them, which I understand is

privileged. I guess that's what I'm referring. I also believed that there was a great inequity in our relationship and that I was producing information starting in 1998 and you were restricting your production of information starting to three months before my father's death. Because you repeated said medical information was irrelevant --- his earlier history.

Q. Okay. So you haven't held --- let me back up. You might have had some correspondence with some lawyers that you withheld because your understanding was, you weren't supposed to produce communications with lawyers. But short of that, any documents, sketches, plats, photographs, or other tangible evidence that relate to your lawsuit, you've already given to me.

A. Yes, sir. That's correct.

Q. Okay. And Request No. 7 may be the same issue, Marshall. It's any and all correspondence that relate to any of your claims, and you've given me essentially the same answer as you gave to the one we were discussing previously.

Same question of my part: Other than communications you had with potential lawyers to represent you, you've produced everything ---correspondence, memos, documents, e-mails, etcetera, that relate ---

A. Yeah.

Q. --- to the lawsuit.

A. Yes. I have.

Q. Okay. Number 8 we have covered. You have not retained any expert witness at this time?

A. No.

Q. Number 9. Again, I was just a bit unclear in your answer. I asked for any statements, whether recorded or transcribed, with any party or witness. And your answer was, "The above statements will be produced through deposition." What are you trying to tell me there?

A. I didn't go out and get affidavits from people. So I don't have any of those to produce.

Q. Okay. Speaking of, have you seen the affidavits from the various people at Wyche, and Harrison McLeod, the Rector at Christ, and ---

A. Yes. You've given me copies of those.

Q. Okay. Have you talked to anyone about giving you a statement or an affidavit that relates to the claims you've made ---

A. No.

Q. --- in this lawsuit? Okay. Do you intend to depose any of the witnesses I have listed in the lawsuit and/or the affiants, the people who have given the affidavits that I have produced to you?

A. I don't know my lawyer's strategy about that.

Q. Well, before you had a lawyer, you had the

information about the witnesses and you had their affidavits. Were you intending at that point, when you still represented yourself, to take those people's depositions?

A. I was intending on deposing my brothers and Mrs. Moore. And I did not find those affidavits to be of any weight, and, therefore, I wasn't gonna spend time and money talking to those people.

Q. Okay. So we should expect that you'll want to depose your brothers and Mrs. Moore?

A. I'm no longer running this show here.

Q. Fair enough.

A. So it's up to my lawyer.

Q. Fair enough.

Number 10 is probably the same thing we've been talking about, Marshall. You've given me all the documents, and "best discovered through deposition" --- same sort of drill we've gone through in the last few, you've really given me everything except some communications with some lawyers?

A. Correct.

Q. All right. Let's roll over --- the first document I have in the stack that you have produced is a letter to you from Edward D. Sloan, Junior, dated March 17, '19. And it references a letter that you wrote on March 5th, which is right behind it. Begins "Dear Uncle Ned."

A. Yeah.

Q. Let me ask you first about your letter to Uncle Ned dated March 5th. You indicate that you continue to seek your mom's commitment to meeting with your and your Uncle Ned.

A. Correct.

Q. What was the purpose with you wanting to meet with your mother and your uncle?

A. I was not aware at this point that my mother had participated in writing me out of my father's will and that she'd written me out of her will, also. And I thought that, with Uncle Ned's help, I could persuade her that the actions taken three weeks before my father's death were extremely damaging, and that perhaps she would help seek a correction to this situation. Basically, throw out the last will.

Q. How was your mom going to help you resolve the situation?

A. Well, she was there, and influential over my father, and interacting with my brothers. So I was seeking to talk to her about it, to try and understand what had happened, and if there was some way to correct it...this injustice.

Q. Did you ever have occasion to talk to your mom about what had happened? "Why did Dad do what he did, Mom?" Did you ever have that conversation with her?

A. I had a conversation in which I asked her why she participated in it. She goes, "Well, I stand by my husband." And it was sort of one of her strange, histrionic kinda

statements. And, in hindsight, she was hiding the fact that she'd written me out of her Will, too, and she didn't wanna talk about it, because it would've been confrontational to her. And I was trying at this time, which you've got copies of letters to my brothers, to reach out to my brothers. And my uncle had expressed the opinion that he thought it was a terrible thing that my father did, that he would never do it, and that he was willing to talk to my mother about rectifying it. But he was only willing to do it if my mother was willing to have the conversation. And my mother kept postponing the conversation. And I kept saying, "Mom, I'm gonna have to file a lawsuit by the end of June. If we don't have this conversation and try and resolve this, I'm gonna end up in a lawsuit. We're gonna end up in a lawsuit." And she just kept postponing it. So she basically refused to have the conversation.

Q. You mentioned the letters to your brother, and they're further down in the stack. If you'll just keep turning in the documents we've been looking at. And I'm gonna kick back over to Uncle Ned's first letter, but let's go ahead and turn to the letters you wrote Jonathan and Sloan. The letter to your mom, and then Jonathan, and then Sloan should start right behind Ned's letter dated March 2.

A. Yes.

Q. Okay. So you wrote your mom March 2nd and you

explained about reading her Will, and seeing the words, and how that shocked you. And this is basically what you've just told me about reaching out to mom to see if there's some way to have a meeting with Uncle Ned and figure this out. Seek some sort of resolution. And then the next page is a letter you wrote to Jonathan, February 25th.

A. Yeah.

Q. "I wish to make amends to you for my mistakes in our relationship over the years." And then a similar letter to Sloan a little earlier, February 7th, 2019. "...make amends to you for my mistakes and failures in our relationship over the years." Right?

A. Yeah.

Q. You wrote these letters after you knew your dad had cut you out and Sloan and Jonathan were gonna inherit significant additional amounts of money; correct?

A. That's the cynical interpretation.

Q. Really, just as a factual matter, Marshall, these letters were written after you had found out that your father had cut you out of his Will and, as a result, Sloan and Jonathan are getting a lot more money.

A. You're suggesting a causation. I do not agree with it.

Q. I'm suggesting a date range. Factually. February 25th, 2019.

A. Correct. You're right on the dates.

Q. Okay. Thank you. At this time, February of '19, were you of the opinion that your father lacked the sufficient capacity to make the changes to his Will that he had made?

A. Yes.

Q. Well, I see your reference in the letter to Sloan to what you perceive to be your father's alcoholism but no reference to any cognitive deficits. Any reason you didn't mention that in these letters, whereas you did mention alcoholism?

A. I wrote these letters in working the steps in AA, trying to clean up what's called the wreckage of that past. And as I reflected on my relationships, there was still wreckage for which I was interested in taking responsibility. I tried to call both of these men, but neither one of them would talk to me on the phone. So I decided to take the risk of putting in print my feelings just to make the amends. I sent them these letters via UPS so I was assured that they got them. So I had, in effect, made my best attempt to reach out to my brothers before initiating a lawsuit, and cleared up my side of the street.

I was not aware of all the medical and all that complexity at this point. I didn't get a lot of the medical records from you until...I don't know, two or three months ago.

Q. Okay. Flip over to --- this is actually an e-mail

that we alluded to earlier. Flip over to the document after your letter to Sloan of February 7th. It is the e-mail from Jonathan back to your dad addressing your dad's e-mail to you that he sent on July 3rd, 2018. Does this --- do you believe this to be the one we were talking about earlier?

A. You're talking about the one at the top of the page from Jonathan, where he copies me?

Q. Yeah.

A. Yeah, I have that in front of me.

Q. From Jonathan, date Tuesday, July 3rd, 2018? Starts off, "Hi Dad. I'm very sorry you had to write this."?

A. Yeah.

Q. And the e-mail below it to which Jonathan refers is the one that your dad sent to you on July 3rd, 2018; right?

A. It came from my father's e-mail account.

Q. Well, when you saw Marshall e-mailing your dad back to his e-mail account ---

A. Jonathan, you mean?

Q. Jonathan ---I'm sorry--- were you still suspicious that this was not really your dad generating this e-mail? When you saw Jonathan e-mail back to your dad about it? Were you still questioning whether that really was your dad ---

A. Correct.

Q. --- typing that?

A. My father was incapacitated, struggling to breathe,

going in and out of the hospital, in bed all the time, busting up furniture. I didn't know what his capabilities were. His e-mail is very cold, and very blunt, and makes no attempt to engage about what's motivating him. So, basically, it's the kind of blunt thing that somebody would send somebody who didn't give a shit about them whatsoever, and I didn't feel that to be true in my dad's case. So it was out of character. And Jonathan's e-mail was offensive, obnoxious, petty, destructing and arrogant, to bring my children into this situation.

Q. Ever make any efforts to determine whether or not your father actually sent you that e-mail? Or had it sent to you?

A. As I mentioned before, I was in shock at this point at what was going. And, no, I did not pursue --- I did make more phone calls to the house. I did not pursue conversation with Jonathan.

Q. And when you say phone calls to the house, you mean your mom and dad's house?

A. Yes.

Q. And that's where you'd leave messages on the answering machine?

A. Correct.

Q. Did you ever write your mom either a letter or an e-mail --- when you got this e-mail that appeared to be from

your father but you weren't sure, and it was so terse, and no elaboration, did you contact your mom in any fashion? Send her an e-mail and say, "Did Dad send this? This can't be him?" anything of that nature?

A. I've done that in the past. I brought up the fact that he demanded I return the hundred thousand dollars, and she said she didn't know anything about that. So my mother did not deal openly and honestly about things that disturbed her. And there was no point in engaging her, really, about this, as long as my father was alive. So, no, I didn't do that.

Q. Okay. Turn over a couple more pages. It's another e-mail that we spoke generally about earlier.

A. The one to the cop?

Q. Yes. You send this correspondence to Detective Palmer and you copied a number of people: Sloan and Jonathan and Cary Hall at the Wyche Firm. Why did you copy Mr. Hall?

A. Mr. Hall is the co-trustee of my father's irrevocable Will, and maybe even the Revokable Will, too, with Ms. Moore. And in the past my father's had me consult with Mr. Hall. And he was introduced to me as the trustee in 2010. So, obviously, he trusted Cary Hall. And I always had positive regard for Mr. Hall. And so I thought that my parents were incapable of taking care of themselves and it had reached the point of putting $15,000 in an envelope and mailing it off for some fraud that they were being taken advantage of. And I was

hoping that somebody ---I knew my brothers wouldn't do it, but I attempted--- would take responsibility for the fact that my parents could no longer manager their affairs and elder fraud was being committed against them. I never got a response from anybody about this letter.

Q. On the second page of the letter ---

A. And somebody did it a second time.

Q. Did what?

A. Attempted to get money from them. But this time they picked up the phone and called my ex-wife before the money. I think they were very embarrassed by what happened the first time. But they took themselves into, at the help of this housekeeper, without ever calling me, my son, my daughter, or my ex-wife. So they learned a lesson on the second time.

Q. Okay. On that second page, at the top it says, "I have two concerns which I would appreciate your addressing with my parents," and then there's paragraph 1) and 2) below that and you've got some bullet points. And one starts, "My parents refuse to speak with me." So at this point, in June of '18, I presume, as your words indicate to Detective Palmer, that neither of your parents are talking to you at that point. Is that right?

A. Yes. They were not returning my phone calls, I believe.

Q. The next bullet point to Detective Palmer: "My

father drinks and my mother takes drugs."

Third bullet point: "I'm a recovering alcoholic and have on multiple occasions confronted them about their dependencies." And this is going back decades, right, that you had confronted them at various times about alcohol and drugs?

A. I don't know about decades, but it is true it had happened in the past.

Q. And I apologize if I'm replowing old ground. The first time you raised issues about your dad being an alcoholic, I thought, was something like twenty-five years ago.

A. Correct.

Q. Okay. Go on to say that, "They find the situation intolerable, so have written me out of their lives." What situation are you talking about that was intolerable that caused your parents to write you out of their lives?

A. Alcoholics' and drug addicts' primary relationship is with the substance. And when people threaten their use of that substance, it's intolerable to them.

Q. Okay. And then the next line down, after you say, "They find the situation intolerable, so they've written me out of their lives," then you say, "And probably their wills!" --- exclamation mark.

A. This letter was written in anger and in hast, and upset. So, you know, there's a bit of hyperbole in it.

Q. Okay. Well, did you know, did you have an inkling

from any source, that as of June 12, 2018 you were written out of their Wills?

A. I had an intuition that, based on the fact that my brothers were edging me out of the relationship, not telling me about traumatic events in their healthcare, and that the communication was spotty, that there was a movement afoot. And for the last few years, there was, in the back of my mind, "You know, these don't really treat me like a brother, and it's really gonna pay off big for 'em if there's a pile of money." Now, I didn't know how much money was there. I didn't know that until I got into this legal situation. But I assumed there was gonna be a lot of money. And I also assumed that my brothers were in a campaign of edging me out.

Q. Okay.

A. So that was a guess. That was a wild shot.

Q. Okay. Reading a little further, the next paragraph begins, "You are free to communicate..." The end of that paragraph starts, "As persona non grata in the Shoemaker family, I am obviously not going to get selected for this responsibility." I gather, as the words you've used indicate, that you felt like you were persona non grata in the Shoemaker family as of June 12th of '18?

A. That's a fair assessment, yes. Of the way I felt, yes.

Q. All right. Let's keep thumbing through. If you'll

turn the next couple of pages. This was a text you extracted for me from an e-mail that you sent to Sloan on April 26th of 2018. Would that be correct?

A. Yeah. I think you have a copy of the original e-mail.

Q. I do.

A. Yes.

Q. I want to ask you about the second paragraph. It begins, "I would prefer that you not show up for Peter's graduation. I know that my wishes have in the past meant nothing to you or hematology oncology or my father or mother..." What are you talking about there, that your wishes in the past have meant nothing to your brothers or your parents?

A. I'll take them one at a time. Jonathan did not invite me to his wedding, never showed up to any of my children's important events, never sent Christmas presents. When he'd show up at family events, he was surly and demeaning and disrespectful. So, you know, that was pretty obvious.

My relationship with Sloan over the years was sometimes very positive, sometimes not. But it was obvious in the e-mail exchange, if you go to ---that e-mail was on 4/26--- if you go to earlier in the e-mail exchange, on...let's see. I sent him in invitation on 4/17, and he was flippant and disrespectful in his response. I responded to that on 4/18 and

said, "I withdraw the invitation." He writes back another flippant and disrespectful e-mail: "I'm coming anyway. I'll stay in a hotel. That's when I wrote him and said, "No, I don't want you to come. Let me be clear why I don't want you to come." That's what the genesis of that letter is.

Q. Okay. The page we're looking at, the one at the top says, "Text extracted from e-mail to Sloan 042618."

A. Yeah, I'm looking at your production of the original e-mail.

Q. I'm asking you about an exhibit to the deposition, Marshall. So if you would reference --- we've both got the e-mail, I'm not gonna argue with you about that, it's obvious we do. But I'm asking you about your document you produced.

A. All right.

Q. So if you look at the third paragraph: "I wanna focus on my son's considerable achievement..." That paragraph?

A. Yeah.

Q. You go down to the last line, beginning, "I have also, and more blatantly..." See where I'm reading?

A. Third paragraph...

Q. Third paragraph down. The paragraph starts, "I want to focus on my son's considerable achievement..."

A. Yes. I see it.

Q. That paragraph, the last line in the paragraph begins, "I have also, and more blatantly, failed to build a

bridge with Jonathan, and now with my mother and father, with whom visits and phone calls have become openly hostile on their part..."

Now, I was under the impression that they weren't returning your calls around this period of time. And maybe I've got my timeline off. Were you having openly hostile phone calls with your mother and father in or around April of '18?

A. No. My father wrote me some hostile e-mails, to which I've previously referred. This letter was sent in upset and some of these statements are overly broad.

Q. Okay. So is it incorrect that visits and phone calls have become openly hostile on your parents' part as of when this e-mail was sent to Sloan?

A. The last visit to my parents before my father died in November of 2017 was civilized --- civil. Yes. So it was not openly hostile.

Q. Well, I just wanna make sure I understand, Marshall. So if you had this to do over again, would you delete that phrase, "with whom visits and phone calls have become openly hostile on their part"? Is that no longer an accurate statement?

A. No, it's not accurate. My father would go off the deep end and write me hostile notes sometimes, but the visits weren't openly hostile, no.

Q. All right. Go look at the next paragraph, that

starts, "I believe my father will go to his grave a miserable practicing alcoholic..." and take a look at the...I believe it's the second to last sentence in that paragraph. It begins, "They will go to their graves knowing..." See where I'm reading?

A. Yeah.

Q. "They will go to their graves knowing damn little real experience of felt love, and much more experience of constant intoxication, and it is unnecessary. Your stance towards Jonathan's treatment of me ---hostile, political, without any love whatsoever--- also feeds into the Shoemaker family mythology that 'Marshall is the only one with problems, the rest of us are fine.'"

Tell me about this Shoemaker family mythology that's represented by what you've got in quotes there in your e-mail.

A. It's alcohol systems theory. The children get labeled. One's a hero, one's a scapegoat, one's a clown. I became the scapegoat.

Q. And scapegoat to me implies blaming someone for things that weren't their responsibility.

A. Correct.

Q. Okay. What were you blamed for in the Shoemaker family mythology that wasn't your responsibility?

A. I wanted my mother and father's mental health to be addressed and that was more important to me than sucking up to

inherit money. That distinguished me from my brothers. I also did not allow my father to physically intimidate me or demean me in others' presence, which is how we were raised. Sloan received the same treatment. My mother did, too. Not physically, but in her personal demeaning. Jonathan escaped that.

So when I got sober, people, instead of saying, "That's wonderful. What a wonderful thing for somebody to get a spiritual program like AA that creates such great results," it was, like, "Marshall's not an alcoholic, we're not alcoholics, it's embarrassing, don't talk to the neighbors, why do you bring that up?" That's their reaction.

Q. Reaction to you. Why do you bring this up?

A. "Why do you bring this up?"

Q. Okay.

A. And, like a lot of Southerners, who are full of ignorant religious views, they looked at alcoholism as a sin as opposed to a disease. And, therefore, they were very judgmental about me deciding to stop drinking and advocating that others do the same in the family.

Q. Anything else you were a scapegoat about in the Shoemaker family mythology?

A. Yeah. When my father would start berating people at the dining room table, or bullying people, I would stand up to him. And people can interpret that in two ways: Marshall's

causing problems, or Jim Shoemaker's being a bully. They didn't wanna take my dad on. He was a big, aggressive, dominant person. It was much easier to blame me for the conflict.

Q. So, in your opinion, you were being wrongfully blamed for conflict, when you were really just trying to get them to address their problems and ---

A. Or start treating me in a decent manner. Like the conversation around divorce.

Q. And I haven't seen that referenced in the documents. This conversation around divorce, you were upset that your family was bringing up your and Amelie's divorce? I'm just lost on ---

A. Yes. Yes. And other people's divorce.

Q. All right. They liked to bring it up in conversation and ---

A. My mother liked to bring it up, yes.

Q. And was this after y'all are divorced she would wanna bring it up?

A. Yeah. Well, no, when I was going through problems with Amelie, she inserted herself. She was a very negative influence on my relationship with my ex-wife.

Q. You might be trying to work it out and your mom was advocating divorce? Is that ---

A. Yeah. And she's inserting herself and expressing

opinions to my ex-wife which she's not communicating to me. She's just playing a very negative role. A manipulative role. Manipulative and controlling.

Q. When did y'all get divorced, by the way?

A. 2005. My parents were of the generation that divorce was some sort of moral failing, and was a shameful thing for everybody in the family, and that I had brought shame on the family by getting a divorce.

Q. So you were ---my words--- you were criticized, not praised, for going through AA and getting a handle on the alcoholism and advocating for others to do the same, and you were also criticized, not praised, for realizing that if two people can't get along to a certain level, divorce is what you ---

A. Correct. Exactly.

Q. And then on your document you produced you reference Sloan's reaction. We've actually got his e-mail in another exhibit. Let me go back, Marshall, if you would, to the very first document, the letter from Uncle Ned, on March 7, 2019.

A. I don't really --- I have to get my own copies, because I can't read the copies in this packet.

Q. Well, I had attempted to replace Ned's March 7, 2019 letter in your stack and John's stack with a better copy.

A. I don't have that. I have my own copy.

Q. Well, that's fine. That's fine.

MR. HAYNSWORTH: And, Irveta, when you hit on some of these, if you can't --- if it's too blacked out to read, let me know. My copy and Marshall's copy are more legible. When I went to make a better copy, it just didn't work out too well.

Q. So, yeah, Marshall, grab ---

A. I have it. March 7th, 2009.

Q. 2019.

A. Yeah.

Q. Ned acknowledges your March 5th letter and indicates, "Last night" ---I guess March 6th--- "your mom and Sloan and a stranger were here for dinner." Do you know who the stranger was?

A. No.

Q. "Your and my correspondence was not mentioned." Had you asked Uncle Ned to keep in confidence that you were communicating with him around this time?

A. No, but it was in the nature of the communication that we were talking about the behavior of other family members and didn't want that information to be misused.

Q. Got you. Okay. I guess the third full paragraph down, begins, "I think you genuinely feel strongly..."?

A. Yes.

Q. "...that your late father unwisely, perhaps unlawfully, disinherited you in his Will. Be that true or not,

I think you'll be wise to accept as a fact that for several years he thought that you did things that so offended him he thought it wise for him to disinherit you."

Now, can you tell me what your uncle's talking about that for several years ---

A. No, I don't know what he's talking about there.

Q. Did you ever ask him, after you got this letter, "Ned, what do you mean for several years Dad" ---

A. No, I didn't ask him.

Q. Can you think of what he could possibly be talking about ---

A. No.

Q. --- that for several years your dad --- okay. Do you know if your dad ever discussed with Ned his intentions as to you and your inheritance?

A. No, I do not know.

Q. Okay. Next paragraph: "I sense that you're planning to contest the Will. Even if there was undue influence affecting revisions of the Will, I think you'll be unable to get the judiciary to rule in your favor."

Did you ask Uncle Ned what he meant by that statement?

A. No, I did not.

Q. Uncle Ned attended the hearing that you have attended in Probate Court since this lawsuit was brought.

A. Yes.

Q. Did you and Uncle Ned not discuss, either before he came to court with you or after, some of the things in this letter that he alluded to?

A. We talked on the phone quite a bit over this time period. But I didn't know he was gonna show up in court that day.

Q. But when y'all talked over the phone a good bit, it never came up in conversation what he meant by your dad had thought for several years that you'd done things to so offend him he thought it wise to ---

A. No. Apparently, my father complained to several people.

Q. About you?

A. Yes. About our relationship.

Q. "If your contest fails, your expense of the litigation will be significant. More importantly, failure will have a negative impact on the status of your long-troubling mental health. I urge you in your best interest to abandon any plans you might have to contest his Will."

Well, we wouldn't be sitting here today if you had taken Uncle Ned's advice and not contested your dad's Will. But what I'd like to ask you about is his reference here that, if you did, and you lost, "failure would have a negative impact on your long-troubling mental health." Do you know what Ned is

alluding to by that phrase?

A. I don't really know, no.

Q. Okay.

A. I mean, I've been open about being in recovery. And, again, in the Shoemaker and Sloan world view, alcoholism is not talked about, it's not seen as a disease, and people who have drinking problems are not encouraged to get sober. As a matter of fact, you have a document in which my father sent me a disparaging article about AA. Uncle Ned lost a child to alcoholism. But he didn't --- the family doesn't talk about Courtney dying from alcoholism. They said, oh, he got infection because his leg was amputated. It's typical Southern denial about alcoholism.

Q. Did you share with your Uncle Ned --- well, let me back up. So I assume by your answer that you believe his phrase "troubling mental health" related to your alcoholism and efforts to get straight.

A. Correct.

Q. I assume you did not share with Uncle Ned anything about depression, or being treated for it, or things of that nature.

A. No.

Q. When you and Ned have been talking about this situation, initially trying to have a meeting with your mom and figure out some solution ---you obviously talked to him after

you found out what happened--- I presume y'all have still been talking. You said you didn't know he was gonna come to the hearing. Were y'all still communicating around the time the hearing was held?

A. Yeah, but not frequently.

Q. Did he just show up? Or ---

A. Correct.

Q. You didn't know he was coming?

A. Correct.

Q. Do you know how he knew what time the hearing was?

A. He was following the postings on the court website.

Q. Fair enough. Did you ever talk to Ned about whether he had any information, medical information, related to your dad's condition at or about the time he executed his Last Will and Trust?

A. No.

Q. Did your Uncle Ned ever express to you --- well, let me back up. Did you express to Ned your opinions that your father lacked the capacity to do his final Will and Trust?

A. Did I express that?

Q. Yeah.

A. I think so, yes. I mean... Yes.

Q. Do you have any knowledge as to whether your Uncle Ned has seen a copy of the Petition that you filed in the Probate Court?

A. I think so. He got it --- well, I think he got it from the court, but he also got it from me. As soon as the lawsuit happened, because he knew I was getting ready to file it, he asked me for copies and I provided him copies. I sent him an entire document of the pleading and exhibits.

Q. All right. And did you and he have conversations about the stack of pleadings you sent after he'd seen them?

A. No, not in de --- no, not that I remember.

Q. Did you ever ask Uncle Ned if he knew of anyone who could help you establish the allegations you had put in ---

A. No.

Q. --- your Petition?

A. No.

Q. Okay.

A. I looked to him for emotional support, which he has offered. I did not try to embroil him in the lawsuit.

Q. Let me switch gears for a second. And you may have to fill in the blanks because I'm not super-familiar with it. But Ned and your mom are brother and sister.

A. Correct.

Q. And their dad, your granddad, left you and Jonathan and Sloan some money.

A. Correct.

Q. And you used some of that money, I think, to attend Princeton and do some other things in college, I seem to

recall. Maybe that's wrong. It's not important. But your grandparents left you some money and your two brothers some money.

A. Yes.

Q. How much were you left?

A. There was an educational trust fund that I think paid for Christ Church and college. And I think my dad gave me a hundred grand when I was twenty-two and living on the West Coast. I inherited three batches of money: 200 at 25, 300 at 30, and 400 at 35.

Q. Okay.

A. My father and David Freeman managed the Trust.

Q. Did you ever get crossways with your father or Mr. Freeman over their management of your trust?

A. Well, that is an interpretation that I think my father took. However, that's not the interpretation I would have.

Q. Okay. Well, without anyone interpreting it, tell me about the events that you interpreted one way and your father interpreted another way relative to your dad's involvement in the management of the Trust.

A. Let's see. In the spring of '94, I graduated from business school. Shortly thereafter, I wrote my dad a letter saying, "Okay, I know I'm getting the last distribution of Grandfather's Trust on my birthday in December of '94. You've

sent me some documents about property that I own with my brothers in the Trust. I would like to divest myself of that property. Please tell me some more details about it." I think it was a gas station or something.

In the next letter --- he didn't acknowledge my letter. The next letter I got was, "Oh, okay, we signed a long-term lease with So-and-So." So I wrote him a letter and said, "Dad, you just signed a long-term lease and I'm trying to get out of that property. Why did you do that without communicating with me?" And I think he wrote --- I don't know if he wrote back or not.

So I went to a buddy of mine, a lawyer in Oakland, and said, "How do I get out of this?" Most of the money was gonna be in financial assets, so easily transferred. I didn't wanna be a property owner with my brothers and be under my father's thumb, so to speak. Because I felt sort of like I was on an allowance until age 35. And so I asked the lawyer, "What can I do to get out of this?" And he said, "Well, contact a realtor in South Carolina." Which I did, I contacted Howard... I forgot his last name, he worked for Brad Halter at Caine.

Q. Hill?

A. Huh?

Q. Hill?

A. Yeah, yeah. "And can you please give me an assessment of the value of that asset?" And he said, "I don't

know, it's worth 150." So I wrote a letter to my brothers and said, "You know, how about you buy me out for 40 grand or something? Make an attractive offer to be bought out." Well, when --- but my father --- the lawyer also wrote my father a letter and said, "Marshall has a desire to be free and clear of any financial entanglement with his brothers when the estate is distributed. Could you please give us information?" Dad, which he tended to do, if challenged, he went ballistic. He produced boxes of documents of his management of the Trust over the years, his and David Freeman's, as if we were suing him in court. All my lawyer did was write a letter, because my father wasn't communicating with me at the time. And then we started to --- then, as it became close to my birthday --- I was kinda shocked, because my father --- actually, I called him in the fall of '94, and he said, "I can't talk to you." I said, "Why can't you talk to me?" And he said, "You sued me." I said, "I didn't sue you, I asked you for information about the Trust." "Well, your lawyer contacted me." So he went over the deep end.

As a matter of fact, my son was born in August of '94. My father didn't come to the West Coast, like my mother did, to visit my son when he was born. He was doing one of his sort of petulant, you know, "Fuck you, Marshall" --- excuse my language.

Can she not put that in the thing?

Q. Well, she's supposed to put down everything everybody says in the record. But don't worry, Marshall, you will not be the first person to cuss on the record. And I have actually used the F word on the record, so no big deal.

A. Okay.

Q. No one's gonna think ill of you.

A. Thank you.

Okay. So basically he's ramping up. He's offended. And I don't know what to do. And then suddenly I get a letter where he's gone in front of the Probate Court, Diane Smock --- Brad Wyche's wife--- and asked her to say the money was appropriately managed, there's no problems here, everything's fine. And I was just shocked. I was just shocked he went in front of a judge. I was shocked that he went in front of a law partner's wife. I mean, I was just shocked.

Well, six months later, you know, I'd calmed down. I realized, okay, maybe I shouldn't've --- maybe I should've tried to handle that directly and not get a lawyer. Maybe I should've foreseen that he was gonna feel threatened or something. So I went --- on one of my flights back to South Carolina, I went to him and said, "Dad, I'm sorry about our conflict over the last distribution of the estate. How much did it cost you? I wanna make amends." He said fifteen hundred bucks. I wrote him a check for fifteen hundred bucks.

Q. I wanna make sure I wrote down what I think you said

correctly. Did you say, when you were talking about your lawyer buddy writing your dad a letter --- did you say your father was not communicating with you at this time?

A. When he received the letter from a lawyer, he stopped communicating with me. And I called him up and said, "Dad. What's going on? How ya doin'?" "I can't talk to you." He said that. I said, "Why can't you talk to me?" He said, "We're in a lawsuit." I said, "A lawsuit? Rich just wrote you a letter. He's a friend of Amelie's and mine, he just wrote you a letter to try to negotiate out of this thing. But he went nuclear.

Q. Didn't communicate with you further about the issue.

A. Not for six months or longer, until I reached out again after it was resolved.

(Off-record discussion regarding lunch recess)

(LUNCH RECESS - 11:45 A.M. TO 12:18 P.M.)

Mr. Haynsworth Resuming:

Q. Marshall, the next document I was going to ask you about is in that same batch of Exhibit 3a, the documents you produced. It's kind of towards the end. It's the e-mail from Dad --- you've captioned it "email from dad re polly's injury." It's about when she fell and he said, "I got my hands full, y'all, don't call..." If you're just thumbing through the documents, there's an April letter from you to Uncle Ned:

"Thanks so much for sending along so quickly..." The next document is from Sloan to you: "Hi Marshall. Yes, it does sound like a fun weekend." The next one is April 8th, 2018, to James Shoemaker, Mary Shoemaker: "Dear Dad and Mom..." I think maybe another copy of that same letter, and then behind that is "email from dad re polly's injury." It's the page before the handwritten ---yours will be illegible because of the copy--- the handwritten letter on Wyche letterhead.

A. "Polly had a terrible fall..."

Q. Yep. That's it. And at the very top, "email from dad re polly's injury." Yeah, that's the next one in our sequence that we'll be starting on.

A. Okay.

Q. Marshall, we've talked a couple of times about this situation and this e-mail and this event with your mom injuring her eye very badly. And I think that you were telling me about this situation from the standpoint that you didn't really know it was going on, and when you finally found out, you discovered that your brothers had already gone to Greenville. I think that's the context ---

A. Correct.

Q. --- in which we were discussing this e-mail.

I wanted to ask you a question about some of the people copied on this. The person that your dad sends it to, and then everyone else is a CC, was to Ben Clauss. Do you know

who that is?

A. He's the money manager at Merrill Lynch who took over for Niles Ray, I believe, in managing my father's money.

Q. Have you ever talked to Ben?

A. I met him at my father's funeral.

Q. Okay. Short of that, have you ever ---

A. No.

Q. --- talked to him?

A. No.

Q. Do you know what knowledge he has, if any, about your dad's wishes as far as his estate was concerned?

A. No.

Q. Do you know whether Mr. Clauss has been provided with any documents from your father that express his wishes as far as where his assets went upon his death?

A. I think I saw an IRA document somewhere, a document you produced, that's about it.

Q. James Warren is the first CC. Do you know who Mr. Warren is?

A. No, I don't.

Q. Appears to be somebody at Wyche. Leslie Moore, who was at Wyche and at this point in time was with her and David Freeman's firm, Freeman & Moore, she is also copied. Do you know why your dad copied Leslie?

A. No.

Q. Do you know about any conversations, if there were any, between Leslie and your dad about your mom's injury?

A. No, not specifically.

Q. Okay. How about Niles Ray, do you know who that is?

A. Yep. Money manager at Merrill Lynch.

Q. And then it appears to have you at gmail, and Jonathan and Sloan, and Katy Spicuzza is your dad's sister, right?

A. Correct.

Q. And then Amelie would be your ---

A. Ex-wife.

Q. --- ex-wife. And you told me, y'all got divorced in...when? '10?

A. 2005.

Q. 2005. I'm sorry. Did Amelie remain close with your parents even after y'all were divorced?

A. She remained in communication with them, yes.

Q. All right. Can you think if --- well, let me back up. Do you think that --- she remained in communication with them, was she close to them? Did she talk to them often? Or do you know?

A. I don't think often, but regularly.

Q. Do you know why your dad chose to have her as one of the people he included to notify her and these others, including you, about Polly's fall?

A. She is the mother of his grandchildren. So she's in the loop.

Q. Okay. And I don't know how legible your copy is, but the next document over is the handwritten letter your dad sent you 8/12/10?

A. Yeah.

Q. I think you talked about this letter with me earlier and you referenced it, I think, in your Petition. And I don't wanna put words in your mouth, which is why I'm going to ask you: What is the significance of this letter? I think in the Petition you said this was an example of the love and affection and equity that your dad had previously expressed. But I don't wanna misstate it. What am I to conclude from this letter as far as you and your dad's relationship was concerned?

A. That he was trying to protect my children's financial interest by not having them claimed by a potential partner of mine, since I was going through a divorce; and, in hindsight, he would have just given a third to me outright. So maybe he would've --- he's saying, "Well, I'm sure you would've taken care of them and I wouldn't've needed to protect them like that, from your potential divorced spouse." Because my ex-wife took half of my inheritance from my grandfather. Because I put it --- I mistakenly put it in joint custody in California.

Q. Even that final 400 or whatever that you were gonna

get from ---

A. Yeah. I loved the woman. I trusted her. And I put it all in joint custody and she took half of it. She got 800 grand when she left me.

Q. Okay.

A. So he was aware of my lack of caution in sharing money with spouses who then might leave and take a chunk of money. So it was smart, in a way. Let's see. (Reviewing letter) Explains the tax impact. Shows some respect for my relationship with my kids, giving me the right to break the information to them, "if you want. Love Dad." I thought it was a very decent letter.

Q. All right. As of the date you got this letter, what was your understanding as to what Sloan and Jonathan were gonna get out of your dad's Irrevocable Trust?

A. I had no understanding. Because we never openly talked about my father's assets or his estate plans. This was the first I'd ever heard of his estate plans.

Q. And when you got this letter and saw that your dad said he'd put a sixth interest of what he was leaving --- that your kids were gonna get a sixth and you were gonna get a sixth, and that if he had it to do all over again, he'd give you the whole third, did you have any conversations with him after you got this letter? "Well, hey, Dad. I got your letter." You know.

A. I talked to him. I think I wrote him. I got a letter right after from Cary Hall and Leslie Moore explaining the mechanism of the Trust.

Q. And at what point in time, if any, did you become aware of what Sloan and Jonathan were getting out of this Trust?

A. In December of 2018, when I started to communicate with Ms. Moore about my father's estate information, I started to get some kind of inclination about what was going on.

Q. Oh. And I won't go pull it unless we have to. But in your Petition, towards the end of it, one of the things you requested was replacing Leslie as PR of your dad's estate. And I believe that one of the things that was concerning for you was Leslie communicating...how close she was with your folks on a personal basis.

A. Yes.

Q. How was that problematic, if the person that your mom and dad had named as the Trustee of the Trust, or the Executor of their estate --- how is it that that person so named being good friends with them is problematic?

A. Because I think it was in the same communication that she expressed a certain amount of animus towards me; and, therefore, I saw her as choosing not to be a detached professional about a financial relationship and basically presenting herself to have a personal relationship and

therefore not acting in the best interest of everybody, which was my father's children and his grandchildren.

Q. So you believe that the Trustee of his Trust or the Executor of his estate had some legal obligation to look out for the best interest of the children and grandchildren?

A. Correct. And I also believe that, to be blunt, she failed in her role as a professional in advising my father when she allowed him at the last minute to take this action, because of the very negative effect it would have on his family. And what do we have now? We have a lawsuit. We have a lot of money being spent. We have a lot of acrimony. There's financial divisions, emotional divisions, relationship divisions. And all of this could've been avoided. And if the goal was to treat his three...I don't know, the legal term is stirpes or something...to treat them equally, then many people have commented to me, "Well, I don't know he didn't just leave it all to your children, then. If he wanted to ex you out of it, why not leave it all to your children instead of dumping it over to the other sons and their children and their children's children?" And then other people told me that typically in situations like that, they set up --- they throw a bone. They say, "Okay, give Marshall 500 grand if he doesn't contest the Will and not if he does contest it." And they film the execution of the Will. So, to me, the whole situation showed a lack of ethics on her part.

Q. As we sit here today, you have absolutely no idea what conversations Leslie Moore and your father had about the execution of his most recent testamentary documents, do you?

A. No, I do not. I draw my conclusion on her allowing herself to become involved emotionally sometimes in the ups and downs between my father and then taking the liberty of communicating it to me. So I draw my conclusions that she did not act in the best interest of either my father or his heirs.

Q. Well, if your father had expressly told her to prepare a document cutting you out, and she followed his express wishes, then, as to your father, she would have done exactly what he asked of her; right?

A. Well, it's my contention that he was not in his right mind. I think any rational person who looks at the history of all this and what happened, and if we ever get the pharmaceutical records we'll show that he was strung out on painkillers and that's why he broke his hospice and went back to a hospital and fired his hospice caregivers. He was out of his mind. He was in agony. And for Leslie to allow that to happen was unethical. He didn't even initialize every page on his Last Will and Testament, as he did on all the other documents. So her behavior --- and there is one redeeming person here. Carl Muller, in his affidavit, said --- at the end of his affidavit, he said, "I will do whatever I can to reunify this family from this terrible situation of this

conflict. So one person out of the so-called ethical professionals alluded to the bigger picture here, as opposed to "Screw Marshall, write him out of the Will."

Q. Well, Marshall, what is it you would have wanted all these professionals to do? To talk your dad out of cutting you out so as not to create dissention amongst the family?

A. To talk him out of taking an irrational action on his death bed that went against his long-term will, which was, he loved me and I loved him, and I was his son and it was not based on one tiff e-mail exchange between two of his sons. It was not a rational response to cut them out of the Will.

Q. Well, Marshall, you would agree with me that you are now aware that 2018 is not the first time your father or your mother had treated you differently than your brothers as far as their estate plan was concerned.

A. No, I'm not aware of that.

Q. Well, let's use this 8/12/10 letter. Do you now know --- or do you? Do you know what Sloan and Jonathan get out of the Irrevocable Trust? How their interests ---

A. I think Jonathan gets a third distributed outright and Sloan gets a third managed or something.

Q. Okay. Used to be. Sloan gets his outright, too. So both your brothers get one third. Back in 2010, you were not getting an equal share with your brothers, were you?

A. I don't understand your point. It's obvious here

that me and my children are getting a third share, together.

Q. But Marshall is not. Marshall is not being treated the same as his two brothers, Sloan and Jonathan.

A. Yes ---

Q. --- Marshall's getting a sixth.

A. And it's explained, because I was going through a divorce, and then it's later explained that he would do it differently otherwise. What is your point?

Q. Well, my point is, Marshall, you keep alleging to the court that for the last twenty years your father has treated you and your brothers exactly fairly. Everyone is gonna get the same thing. "We're three children, our father loved us all equally, he wanted us to split everything equally." So my point is, this very letter you got in 2010 says you don't get it split equally; you get a sixth, not a third.

A. I think you're --- well, do you have a question?

Q. Yeah. Are you aware that your father did not treat you equally with your two brothers as far back as 2010?

A. No. Because six months before he died he reaffirmed Wills that treated me equally.

Q. This Trust still treated you differently...one sixth instead of a third; correct?

A. And the letter said he would have done differently if it weren't irrevocable.

Q. Okay. Are you aware as to whether your father had cut you out of his estate plans any earlier than 2010?

A. No, I'm not.

Q. You believe the reason your father cut you out of his estate plans is he was infirm mind and not able to make his own well-reasoned decisions; that, due to pressure from your mother and your brothers, and due to his condition and medication, he was so weak of will that he was not able to execute the documents expressing his wishes. Is that correct?

A. Correct.

Q. That weakness of will that made him so susceptible that he's not really wanting to execute, he's executing into what he's been pressured into executing...when did that level of weakness start for your dad?

A. I don't agree with your statement there.

Q. Okay. Well, tell me why your dad's will is no good.

A. I keep going over this over and over again. So at some point you're just gonna have to accept my answer. He was dying. Suffocating. He was going in and out of hospice. He was on painkillers. He was at the end stages of alcoholism. My two brothers provoked him. My mother was verifiably nuts at this point. The people around him were not acting in his best interest.

Q. If he had cut you out of his estate twenty years earlier than 2018, what could the possible explanation for that

be?

A. I have none. It's a hypothetical that doesn't exist.

Q. It's actually not a hypothetical. If you'll review the documents that I produced to you in discovery, you will see in fact, Marshall ---

A. What documents?

Q. All the IRA documents, Marshall. There are hundreds of them. From Ben Clauss. I can go up and look at the e-mails and mail transmitting them to you. So you're sitting here today saying you do not know, as a factual matter, that your dad cut you out of some of his estate plans decades ago?

A. I don't think that's a factual matter. Because I've seen the iterations of his wills and his trusts and they all affirm it up to three weeks before, and that's what I'm going on.

Q. Have you ever seen his IRA designations? Where you indicate who you want to inherit your individual retirement account upon your death?

A. I've seen some of them.

Q. The ones you've seen, does it show you getting ---

A. I don't remember.

Q. --- the same share ---

A. I don't remember.

Q. --- as everybody else?

A. I don't remember.
Q. Well, assume for purposes of my question ---
A. I'm not assuming anything.
Q. Marshall.
A. You're just trying to box me in.
Q. Marshall. If you wanna get in an argument again about how this process works, we certainly ---
A. What's your question, Knox?
Q. My question is: Assume for purposes of my question that the documentation regarding your father's wishes showed that twenty years ago, give or take, he treated you less favorably than your brothers. Would you agree with me that, if that is true, if my hypothetical is true, the reason your father did that could not possibly be that he was of weak mind, on his death bed, heavily influenced by medication?
A. I do not assume that and I do not accept the hypothetical. That's my answer.
Q. Okay. Hypothetically, if he did it, what would be the reason? Can you think of any?
MR. BLINCOW: Object to ---
A. I don't engage in hypotheticals.
Q. Marshall. The rules allow me to ask you a question and have you assume ---
A. The answer is no.
Q. --- for purposes of ---

A. The answer is no.

Q. I haven't finished my question, sir.

A. (Laughing)

Q. And the rules allow me to ask you to assume for purposes of my question certain facts. I'm not asking you to agree with those facts, I'm asking you to make the assumption for purposes of my question that those facts exist.

A. Really?

Q. Yeah, Marshall, really.

So, if your dad cut you out twenty years ago, would you have any explanation for why?

A. I have no proof he cut me out. I'm not gonna assume a hypothetical that doesn't exist. That's your answer.

Q. Did you and your dad get along well twenty years ago?

A. What date are you referring to?

Q. Generically, twenty years ago. Twenty-five years ago. Over the course of your adult life, have you and your dad gotten along well the majority of the time?

A. Yes.

Q. Okay. Did you threaten to beat up your father when they lived on Pine Forest Drive, back in the garden your mom and dad used to have in the back yard?

A. I told my father to get his finger out of my face or I was gonna break it off.

Q. Okay. And tell us about how that little discussion came up between you and your ---

A. I don't appreciate your sarcasm and belittling word choice there.

Q. Marshall. I'll be brutally honest. I really don't care what you think, I'd just like you to answer my question.

A. I don't care what you think, either. You're being a hostile, offensive, harassing attorney right now. And there are rules against that in depositions. I read about it.

Q. Well, why don't you tell me, then, what the rules allow at this point.

MR. BLINCOW: Ask him a question and let's get back on track, please.

Q. What led up to your telling your father you were gonna break his finger off when he stuck it in your face in the garden of your parents' house on ---

A. I was visiting my parents with my children and we were in the back yard. And he made some comment about Jonathan, and I made some comment about Jonathan. And he stepped towards me, physically got into my space, and waved his finger at me. And I said to him, like I'd say to any man in any situation who steps into my space, "Get out of my face or you're gonna get a negative reaction."

Q. Okay. And approximately when was this?

A. I don't know.

Q. Do you know the year?

A. No, don't know.

Q. Do you know the decade?

A. I don't know. My mother and I and the kids went out to the Poinsett Club for lunch afterwards. I don't know.

Q. Okay. Dad didn't attend the lunch, I assume.

A. No.

Q. Were Jonathan and Sloan visiting as well?

A. No.

Q. So it was you, your ---

A. Children, and my mother.

Q. --- children and your parents.

A. Yeah.

Q. And did you and your dad speak any further after you left and went to lunch at the Poinsett Club with your mom and your kids?

A. Yes, we did. I don't know when, but we did.

Q. I mean that same visit, did y'all speak?

A. I don't remember.

Q. Take a look, if you would, at Exhibit 4.

A. I don't know if I have an Exhibit 4. Oh, there it is, under 5.

Q. Take a second to read over it, let me know if you recognize that e-mail.

A. (Reviewing Exhibit 4) Correct. I recognize it.

Q. About halfway down this e-mail it looks like the font changes, I don't know. Anyway, about halfway down: "The sad part is that the Shoemaker assholes that I grew up with..." You see where I'm reading?

A. Uh-huh.

Q. "...have an incredible methodology of holding out the promise of love, and more importantly money, and never delivering."

What are you talking about there?

A. I'm talking about a dysfunctional family where people don't consistently treat each other on a loving basis and exchange a lot of hostile behavior on a regular basis.

Q. Well, what is this "...holding out the promise of love, and more importantly money, and never delivering." ? What specific holding out of money were you referring to?

A. Well, that's an angry way of referring to my dad demanding back the hundred grand. And the cycle of communication where my parents would profess their love and then go off the deep end if they didn't like something I was doing. Which is all about control.

Q. Next sentence: "The only thing you assholes deliver is withholding and judgement (sic) and delusion scapegoating."

You assholes, plural, are you talking about Sloan and Jonathan? Or Sloan and Jonathan and your mom and dad? Who

are the assholes to which you refer?

A. Well, I'm not entirely sure, but probably my brothers.

Q. Okay. And the delusional scapegoating, is that going back to what we talked about earlier, that you felt like you were the family scapegoat?

A. Correct.

Q. Okay. Next sentence: "So my children naturally seek out the love of a Shoemaker..." Which Shoemaker are you referring to in that sentence?

A. An extended family. My children have a desire to have a loving, extended family: grandparents, uncles, cousins.

Q. Reading on: "...love of a Shoemaker 'extended family' which never had any love to give, only devious family politics and ongoing wounding (to them) by rejecting their father."

Can I assume there is, is that by your family --- your mom and your dad and your brother--- rejecting you, that has wounded your children?

A. Of course it has.

Q. Did you ever talk with your children about why ---

A. Yes.

Q. --- your family ---

A. Yes.

Q. Okay. What did you tell your children the reason

for your ---

A. They're very familiar with my feelings about untreated alcoholism, violence, bullying, family politics, the impact of money. I'm very open with them about that.

Q. Okay.

A. And I've been open with them where I've made mistakes, too.

Q. Okay.

A. Which also puts me in a bit of a different category from the other people in my family who never admitted to any mistakes in their relationships.

Q. I presume your kids are aware that you brought a lawsuit against your ---

A. Absolutely. Fully aware.

Q. They have an opinion whether that was a good idea or a bad idea?

A. Probably.

Q. Your children got a disposition from your dad of some money upon his death; right?

A. Correct.

Q. Two fifty?

A. I believe.

Q. Each?

A. Yeah.

Q. That 250 that your dad gave your two kids directly,

that provision isn't in his prior Will, is it?

A. I don't believe so.

Q. Your position is, when your dad executed his Will leaving your two children $250,000 each, he wasn't in his right mind. He was under undue influence, and that document is no good, and should be thrown out, because your father was not competent to execute the document that left your two children $250,000 each.

A. Yes.

Q. And are they aware, your children, that you believe your father's gift to them is invalid because he wasn't in his right mind when he executed the document leaving them that money?

A. They're aware that I have sought to set aside the Last Will and Testament, revert to the one six months beforehand that would leave 3.3 million dollars to their father, of which they would be beneficiaries of the vast amount because it would be put aside to generate income for everyone's benefit. Yes, that's what they're aware of.

Q. Are they gonna give back the $250,000 each that the last Will left them if you are successful in having that Will determined to be invalid?

A. I don't know what the legal ramifications are of that.

Q. Well, I mean, wouldn't that be fair? If they got

money based on a Will that your dad was too mentally addled to know what he was doing?

A. No, what would be fair is that I sue Leslie Moore for her participation in this and have her insurance pay for this mess. That's what would be fair.

Q. Well, that's not where we are, I guess.

A. Not yet.

Q. Oh. Speaking of suing and such things... Recently you have ---or your lawyer has--- filed paperwork challenging your mother's estate. Correct?

A. Correct. That's my understanding.

Q. And you believe your mother was not in her right mind to have cut you out of her Will?

A. Absolutely certain of it.

Q. And she was not in her right mind --- we've covered why you think you dad wasn't in his right mind: because he was in the end stages of dying of pulmonary fibrosis, and under medication, and those sort of things. Why are your mom's wishes invalid? Why was she not competent to do what she did with her estate?

A. She had a diagnose of Sundowner's syndrome. I think when we get her prescription records we'll see that she was on benzodiazepines for a very extended period of time. Anyone who knows my mother knows that she basically did not...she did not have the ability for rational thinking, except that glimpses of

it would appear every now and then. And she basically had a child-like dependence on my father.

Q. Oh. And I apologize, Marshall, I'm doing the jumping around that I warned I might do. We were talking about the holding out the promise of love and money, in Exhibit 4. And I think you said that was your way of addressing your dad pulling back the hundred grand that he gave you?

A. Yeah.

Q. Why did your dad ask for you to give back that hundred thousand?

A. That was the weekend my daughter graduated from Georgia Tech. And he got offended that I made clear at a meal that I didn't wanna have the topic of divorce, my divorce or other relatives' divorces, such as my ex-wife's sister's divorce which was getting brought up --- I didn't want that to be brought up in a family context and have people filleted at the dinner table because of their judgmental, nasty attitudes toward people who've had divorces. And instead of just conceding to, okay, let's not talk about divorce for the good of the harmony of our family gathering, my father really pushed the point. Five days later he writes me a note saying, "You do not honor your father or mother and if you had any honor you'd send me the hundred grand back." After some reflection and consultation with my friends, I said, screw it, cowtowing to that man is not worth a hundred grand, so I wired him the money

back.

Q. And when, roughly, did your daughter graduate from college?

A. I think it was about five years ago. So 2015.

Q. Okay. When your dad invaded your space on the terrace in the back yard and wagged his finger at you and you told him to not invade your space, was calling the police mentioned in that conversation between you and your dad?

A. No. That never came up.

Q. So your dad did not threaten to call the police when ---

A. No, he came in and said to my mother, "He threatened me." And my mother says, "You guys need to put away your swords." So at that particular time, she took it in context: two guys butting heads.

Q. Back on Exhibit 4. Continuing where I was reading. "Just fucking shut down narcissistic 'grandparents' and mean asshole 'uncles' who have poisoned any hope of a loving relationship between my children's father, me, and his family."

The narcissistic grandparents you're referring to are your mom and dad, I presume? Is that correct?

A. No. I was pissed. I shot off my mouth. We can dissect it if you want. It's a bit ridiculous. Yes.

Q. And how is it that the narcissistic grandparents have poisoned any hope for a loving relationship between

you ---

A. No, my brothers are the ones that poisoned the relationship.

Q. Okay. I'm sorry.

A. It's very obvious in this sequence of events.

Q. Okay. Next line: "You" ---meaning Sloan--- "and Jonathan and Mom and Dad are a tribe of mean drunks."

You have talked a lot about your views that your dad was an alcoholic and your mom was a drug addict. I have not heard much about you thinking that your two brothers were alcoholics. And maybe a tribe of mean drunks doesn't mean the same thing as alcoholics. Are these alcoholic issues that you were suggesting your dad needed to get a handle on and get some treatment for, did you have the same thoughts about Sloan and Jonathan? Do they have alcohol issues, in your opinion?

A. I did drugs with Sloan in college and in high school --- well, mainly in college. I don't know what his consumption is now. I think his behavior's a little off, but I don't know what the cause of that is. I don't see Jonathan --- I've seen Jonathan drink, I've never seen him drunk. So that was basically talking about the concept of mean drunks. And what I refer to there is a family that is quite vicious with one another, and critical, and judgmental, and has been influenced by multiple generations of alcoholism.

Q. Okay. Next line: "I highly recommend you stay the

fuck away." I don't need you to explain what you meant there. "I am contemplating, strike that, I am going to rip your fucking heart out if you show up. Nobody here needs your 'support'; you have none to give."

Rolling over to the next page: "I'm going to fucking kill you if you show up. Stay in Colorado, running away from life, waiting for the Patriarch to die and refund your insanely dependent life style."

I presume the "waiting for the Patriarch to die" means waiting on the death of your dad so Sloan could inherit money to refund his insanely dependent life style?

A. Correct.

Q. Sloan never came to the graduation, I presume.

A. Correct.

Q. Were you in regular communication --- when you sent Sloan this e-mail in May of 2018, were you in regular communication with your mom and dad at that point?

A. Yeah. You've got letters in your exhibit where I talk about going to Ireland to visit my cousin ---I mean my girlfriend's family--- and keeping them up to date on visiting old relatives. And I was talking to my dad on the phone. So the answer's yes.

Q. So, in your opinion, your family's a tribe of mean drunks and the other things you allude to in this letter, but you're still --- are you on good terms with your folks at this

point, in your opinion?

A. I'm on the best terms I could be, given the context, yes.

Q. The context, meaning...?

A. Of their emotional states.

Q. Did their emotional states cause your relationship with them to degrade over time?

A. I think over the last few years of my mother's life it became impossible to have a rational conversation with her. I mean, you could have a conversation about the weather, or what are we gonna eat, but that's about as far as it would go.

For my father, he would still talk about politics, or my contemporaries' athletic abilities. But we didn't have deeply meaningful conversations with an exchange of love and support and affirmation, no.

Q. All right, Marshall, take a look at Exhibit 1. Exhibit 1, I will represent to you, should be the Petition you filed in Probate Court here in Greenville County, with all the exhibits to that Petition.

A. Yeah.

Q. But I don't want you to believe it just because I say it. I'm happy for you to review it and satisfy yourself that that is in fact the Petition that you filed with the exhibits.

A. Yes, it looks to me like it's complete. I haven't

checked every page but...

Q. Okay. And we have covered some of this because the interrogatories track some of the allegations of the Petition. But let me get you to take a look, if you would...this would be --- you've got the first two pages and then you've got the page that says "Petition for Formal Hearing." It'd be Page 2. The numbers at the bottom out from Shoemaker, Jr.-1, this would be dash 2.

A. Yeah.

Q. And at line 7, the first full sentence that begins, "He was also heavily influenced by my mother, Mary Hunter Sloan Shoemaker, and my two brothers..." See where I'm reading?

A. Yeah.

Q. Tell me what you're talking about, your dad being influenced by your mother. In what way?

A. My mother was in a dependent relationship with, basically, a guy who could be a bit abusive. And the way she got power in the family was that she played the men off against each other. My parents were pretty good at having their sons compete, as opposed to having them, you know, be in affirmative relationships with one another. And my mother used to complain to me about certain behaviors of my father, which I found very disturbing that she was complaining to me. So she got power in the family by being at the center of the information flow and by, as much as possible, brokering the relationships between my

father and myself and my brothers.

Q. So you ---

A. And she had a tremendous amount of power over my father. My father was the dominant, you know, alpha male corporate attorney out in the world. But at home, my mother basically ruled the emotional environment.

Q. And my mistake for assuming. So this sentence on line 7 of Page 2 of your Petition, "He was also heavily influenced by my mother, Mary Hunter Sloan Shoemaker, and my two brothers, Edward Sloan Shoemaker and Jonathan Evans Shoemaker." The influence to which you refer there about your mother was not influencing your dad to change his estate plan, you're just talking about influence generally? Or are you alleging that your mother influenced, provided undue influence on your dad to cause him to change the disposition ---

A. Yes.

Q. --- of his estate?

A. Yes.

Q. Okay. So your mom was one of the people who was utilizing your dad's weakened mind to convince him to change his estate plans as far as you were concerned.

A. Yes. As attested to by her reaction to try and exclude me from the funeral when Sloan put these e-mails in front of her. She took great offence and went nuclear.

Q. Well, two different time frames. What you just told

me about's after your dad's death.

A. Correct.

Q. I'm talking about when your dad was still alive. Is it your contention that your mother, along with Jonathan and Sloan, were unduly influencing your father, because of some weakened state, for him to do his Will and Trust, not based on his wishes, but based on their undue influence? Was your mother involved in convincing your dad to change his estate plan?

A. Yes. On the long-term basis, she abetted his alcoholism. We had a rule at my house: Do not talk to your father about a difficult topic before he's on his second Scotch. His son's made his Scotches for him. So one of the way she got power was to take a guy who basically was very high strung and who was mellow once he was on his second Scotch. So she abetted him drinking because it mellowed him out and made him more pleasant to be around.

She also abetted this sort of competitive relationship between the brothers. And she did not stand up for, really, me, when my brother Sloan put these e-mails in front of my father.

Q. Well, in the e-mail we're talking about, this is one where you threatened to kill Sloan; right?

A. Right. Like two guys in a bar who are pissed, screaming, "I'm gonna kill you!" Right. I didn't --- well,

anyway, never mind. Go ahead.

Q. So when your father sees an e-mail that's been put in front of him that you've threatened to kill your younger brother, and your mom is made aware of that, what is it that you felt like your mom was supposed to do?

A. Well, what she did with my father is, she said, "Put away your swords." That's what I would do with my children and others. I would say, "Put away your swords. What's going on here? Why are you guys so upset?" That's the rational approach when people you care about are in conflict.

Q. And the irrational approach would be to exclude you from the funeral.

A. Yes. As a father myself, there's no reason I would ever write off one of my children. Certainly not for some stupid e-mail.

Q. All right. And, again, I want to draw a distinction between the e-mails after your dad has passed versus how he had been influenced before. Do you know of any specific instances where either of your brothers or your mother talked to your father about him changing his Will or Trust?

A. No.

Q. You believe they were involved in convincing him to do that, you just don't know any of the specifics.

A. The chain of causality's obvious, yes.

Q. Well, it's not as obvious to me, that's why I have

to get you to explain some of it.

This is along the same vein. Look at the line sort of in between line 17 and 18: "...collusion of my mother and brothers to vilify me..." This is on Page 2 of the Petition, line 18, I guess it is.

A. Yeah. Well, let me re-read it just a second.

Q. Sure. Go ahead.

A. (Reading document) Yeah. Go ahead.

Q. "As a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his will and trusts..."

Now, a couple of questions about those lines. At this point in time did your mom not like you? Why would she collude with your brothers to have your dad cut you out of his Will?

A. Because my brother Sloan shoved the e-mails in their face. And they were not of sound mind, in general, but they went off --- those e-mails disturbed them. And instead of picking up the phone to talk to me about it, they just took this sort of nuclear reaction.

Q. "I no longer wish to communicate with you," the e-mail you got. The nuclear reaction "Dad doesn't wanna have any contact" ---

A. No, the nuclear reaction is changing your estate when he's going in and out of the hospital, and then not seeing your son on your death bed. Can you imagine that as a father, doing that? I don't think so.

Q. I guess it would depend on my relationship with my son when I'm on my death bed.

A. Yes. And you would judge him and condemn him and tell him to go to hell, I'm sure.

Q. I guess it depends on how he'd been in his grown-up years. But, hopefully, we won't be there for a while.

A. Yeah, but the facts of the matter are, that for twenty years, the legal documents that I have show him treating him in equity. So you can do whatever you want to to slander me, and collunify (phonetic) me, and besmirch me, and make me out to look like a monster, but those are not the facts.

Q. I'm sorry, I don't know what collunify means.

A. Well, maybe I'm not saying the word right.

Q. All right. Same sentence we were reading: "...to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his will and trusts..." By whom was he persuaded, exactly?

A. My brothers, my mother, his Personal Representative. Obviously these other people. Maybe Carl Muller might've --- Carl Muller, based on his affidavit, might've tried to counsel otherwise. But all these people who you see as the good

citizens of Greenville who were testifying to the righteousness of his activity.

Q. Let me make sure I understand what you're contending, now. So in addition to your brothers and your mom, you're now telling me that Leslie Moore and others persuaded your dad to revise his Will?

A. No, I'm not saying that.

Q. Okay. Well, I'm just focusing on who persuaded him. You've alleged that he was persuaded to sign revisions. I'm just trying to get the limited universe of people that you contend persuaded him to change his Will.

A. Right. My brothers and my mother.

Q. And the day that he revised his Will and Trust, when he sat down and signed them, you hadn't talked to him that day, had you?

A. No.

Q. Hadn't seen him that day, had you?

A. No, I don't believe so.

Q. He didn't talk to you ahead of time about what he was planning on doing.

A. No.

Q. Didn"t call you up right after the fact and tell you what he'd done.

A. No.

Q. And you don't have any information one way or

another from any of the people who might have been with him, either when he prepared the documents he signed, or he signed the documents. You've not talked to any of them and don't know what they know about the discussions with your dad or the actual execution of the documents.

A. I don't know, that's kind of a big question. So I'm not sure how to answer that.

Q. Okay. Let me try to break it into smaller chunks.

The day that your dad actually executed the revisions to his Will and Trust, the ones that you have challenged, that day, you didn't talk to your father; correct?

A. No.

Q. You had not seen him that day.

A. No.

Q. Or a week before, as an example?

A. No.

Q. The people that were involved with your dad, such as Ms. Moore, in preparing the revisions to the Will and Trust that he ultimately signed, you weren't with your father and Ms. Moore and the others to know what the discussion was about what was to be changed and not.

A. No.

Q. Okay. You're not aware of what discussions, if any, were had during the actual execution of the document. When he was sitting there signing it and his signature was being

witnessed.

A. No.

Q. You don't know what was talked about in the room or what went on.

A. Well, no, and I don't know where the room was and --- no, I don't know that.

Q. I'm over on the next page now, Page 3. Look up at...I guess it's line 4 or 5. "...my girlfriend, of my mother to allow me to have access to my father's bedroom." And then the sentence that begins, "My mother's influence over my relationship..." You see that one?

A. Yeah.

Q. "My mother's influence over my relationship with my father was undue and hostile, in large part I believe because of her own untreated emotional problems, and anger at me for suggesting that both she and my father required treatment for chemical dependency."

Well, you told me that your mom was upset because of the e-mails, should have been "Put up your swords," and, instead, her reaction was to get very upset at you over the e-mail that you and Sloan had exchanged. If I understood you earlier, that was one of the reasons she was miffed at you in this period of time. Did I ---

A. I don't know for sure when Sloan was showing her e-mails. I know that she stated in a phone call to me two days

before the funeral that, "I'm sitting" --- she stated, verbally, quote/unquote, "I'm sitting here reading e-mails that Sloan showed me," or "that you wrote." And then she was torqued out. I'm assuming that when she was asked to change the Will and the estate in such a significant way some explanation was given to her.

Q. You say when she was asked to.

A. She signed the document.

Q. Yeah, but ---

A. Her signature's on the document.

Q. But who asked her to change it?

A. Well, I...I would imagine my father asked her to change it. Because when I asked her about it after my father's death, she said, "Well, I'm sticking by my husband."

Q. But you don't know --- just like with your father, you don't know anything about any conversations your mom had with anybody about the changes she made to her estate plan.

A. Well, I don't know, but when you refer to her estate plan, I don't know what you're talking about, other than the documents I have for their joint estate plan. I have no knowledge about it.

Q. Well, what I mean is, Marshall, you now have brought --- or John has filed a separate lawsuit challenging the Will of your mom. Okay?

A. Correct.

Q. Different. The fight we're in today is the Will and Trust of your dad.

A. Okay.

Q. You know. Your dad could cut you out but your mom could leave you in, if she were so inclined. So it's two different estate plans. What your mom's gonna do with what she has when dies, what your dad's gonna do with his when he dies.

A. I have not seen my mother's estate plan. I do not know anything about it.

Q. Have you seen your mother's Will?

A. No. I've only seen the document that was executed three weeks before my father died. I don't know of another document.

Q. Are you aware that you have challenged your mother's Will, in court?

A. Yes.

Q. But you've not seen your mother's Will that you are challenging?

A. I thought my mother's Will was part of my father's Will and they were a joint estate plan. And the challenge is about her component in dealing with this. Which is what this document says. But the judge said, when we had that hearing, we have to separate it out. So now we're gonna do it with my mother. She's now passed away, so we're gonna deal with it with my mother.

Q. And my apologies for getting a little off track. But what I was trying to explore is, is I thought your mom was mad at you about e-mails, and maybe I'm wrong on that. What we were reading is this contention in your Petition that your mother was angry at you for suggesting that she and your dad required treatment for chemical dependency.

A. Correct.

Q. And not to beat a dead horse, but the sentence says, "My mother's influence over my relationship with my father was undue and hostile, in large part I believe because of her own untreated emotional problems, and anger at me for suggesting that both she and my father required treatment for chemical dependency."

Is that why you believe that your mother was trying to influence your father, along with the help of your two brothers, to have you cut out? Because she was PO'd at you for suggesting she and your dad required treatment for chemical dependency?

A. Correct. And when she came out and announced that my father for a second time refused to see me on his death bed ---which I do not know if that's what his view was, but that's what she communicated--- she expressed joy and glee in the pain she was witnessing on my face when she communicated the news. It showed malice towards me when she delivered that news. And her sarcastic remark, "Boy, I'll bet that must've hurt," and

smiled. That's how I come to these conclusions.

Q. Let me get you to look at line 26 on Page 3. This line that beings, "Vulnerable and unstable in the best of times..."? See where I'm reading?

A. Just a second please. (Reviewing document) Yes, okay, I got it.

Q. Okay. And when you say "Vulnerable and unstable in the best of times," you're referring to your mom; right?

A. Yes.

Q. When you say unstable ---

A. Do you mind muting the phone so I don't have to listen to the coughs on the other end?

Q. I'm sorry, it'd be like if I coughed in here.

A. It's distracting, and I think it's intentional.

Q. Well, Marshall, I guess we're just gonna have to endure the occasional cough, because, otherwise, they're not gonna be able to ---

A. They could mute their line.

MR. HAYNSWORTH: Guys, if y'all are intentionally coughing loudly, could you please cough quietly?

Q. "...unstable in the best of times." Are you talking about mental instability, with your mom?

A. Yes. Vulnerable and unstable.

Q. Mentally unstable.

A. Yes.

Q. When did her mental instability begin?

A. She didn't work until having a job out of college. She was fully dependent on my father. He bullied her quite a bit. Although, he was also loving to her and cared about her. And I think that, like the rest of us, we all tended to walk on eggshells on a regular basis around him. Because his anger was something you did not want to provoke. That created instability in her. Vulnerable because she was so dependent.

Q. Let me get you to go over to Page 5 of your Petition.

A. Okay.

Q. And we won't beat the dead horse. You're referencing an August 12th letter that your dad hand wrote you and he said in that letter that you'd be getting something from Cary Hall and Leslie Moore. And they, in fact, as you've put here, "...followed one day later with confirmation from his two then law partners, Cary Hall and Lesie Moore."

A. Yeah.

Q. So they basically wrote you to confirm the gist of what the handwritten letter from your dad said.

A. They talked about the insurance trust and the mechanism of it.

Q. Okay. When you got the letter from Cary Hall and Leslie Moore, did you believe what they said in the letter?

A. Yeah.

Q. Have any reason to disbelieve it?
A. No.
Q. As we sit here today, do you have any reason that you can think of to disbelieve what Cary Hall may say about any of this?
A. I don't really know how to answer that.
Q. Do you have any reason to think that Mr. Hall would lie about his knowledge of your dad's wishes, the execution of documents that your dad signed, anything of that nature? Any reason you can think of that Cary Hall would lie about any of this?
A. I'm not in the business of declaring whether or not he's an honest man. I have no opinion on that.
Q. But that wasn't my question. My question was: Do you have any reason to believe the man would lie?
A. No.
Q. Same question for Ms. Moore.
A. Yes.
Q. And what is that reason that you believe Leslie Moore would lie?
A. I think she was emotionally involved with my parents and lost professional detachment. I think that she's built a business on sort of getting into and involved with wealthy people in Greenville. I think that this case is an embarrassment. I think that the outcome of this case is gonna

have a very negative effect on her practice. And so I think she'd like it to go away.

Q. I was a little ---

A. And, also, I would like to further add, that when I inquired of her in December of 2018, like, "Can you please send me the Will?" it took about three months before I got all copies of the Will. And the only way I got the final copies that indicated when it was changed was from David Massey when he took over the case. So her interactions with me was, she dribbled out information and she withheld as much as possible until I pressed.

Q. And I think this all started with the question that you said you believed she would lie.

A. No, I have not made the statement I believe she would lie.

Q. Okay.

A. You're asking me to make a judgment about how much I trust her. Maybe you can rephrase the statement.

Q. Yeah. And I think I was just following along with the same questions about Cary Hall, which was: Do you have any reason to believe that Cary Hall would lie about your dad's wishes ---

A. No, I do not.

Q. --- and conversations with your dad? And I think then I said, Well, same question with Leslie Moore: Do you

have any reason to believe Leslie Moore would lie about her interaction with your father, and these documents, and his expression of his wishes as reflected in the documents.

A. And I told you what my belief is.

Q. You believe she would lie.

A. No. I believe that her self-interest and her behavior that I've observed would --- that she would have a motivation to at least withhold information and perhaps not divulge everything.

Q. Okay. Same question for Mr. Kehl, who you happened to speak to at the funeral, because we were walking in together. Bill Kehl. Long-time partner of your dad's at the Wyche Firm. You spoke to him at the visitation after your dad's funeral. Do you know the man I'm talking about, Mr. Kehl?

A. Yeah.

Q. Do you have any reason to believe that Mr. Kehl would lie about his knowledge of your father's wishes, his knowledge of any of the execution of Will and Trust documents that we're here about? You got any ---

A. No.

Q. --- reason to think that man would lie?

A. No.

Q. Do you know who Amos Workman is?

A. I'm aware that he is in the Wyche Firm. I've never

met him, I know nothing about him.

Q. Would you have any reason to believe, or to think, or to suspect that Amos Workman would lie about his knowledge of your dad's wishes with regard to his estate plan or the execution of any of the documents?

A. I would not use the word lie, no.

Q. What word would you use?

A. I find it very strange that men, that I never saw as guests in my father's home, and other people you got affidavits from who I never saw as guests in his home, who basically had a financial relationship, are the ones who are giving these affidavits as opposed to Jack Sterling, Bob Hassold, is companions from the University of Virginia --- maybe I shouldn't even be giving you these names.

Q. No, it sounds like these people may have some knowledge of what we're here about. So, in that sense, you're actually required to give me their names.

A. No, I'm --- you've gotten a bunch of people on his payroll. Everybody involved in here is on the payroll.

Q. And Bob Hassold's dead, so we can't talk to him. But Jack Sterling's still alive. So if I went and talked to Mr. Sterling, what would he tell me about your dad's execution of these documents that you've challenged?

A. He probably wouldn't know anything about it. He wasn't there.

Q. Then what is he gonna know that has any bearing on what we're here today about?

A. Because you're trying to get me to characterize people as liars, and it's ridiculous. And I wish you'd move on.

Q. Well, Marshall, I'm sure that to the extent there's some rationale for me doing what I'm doing, John can explain that to you when we're finished.

So you believe that all the affidavits you have seen were given because of some monetary connection to your dad?

A. Oh, I know it's true.

Q. All right. Have you seen the one from Harrison McLeod, the rector at Christ Church?

A. Yes, there was a monetary connection.

Q. Because your dad gave money to the church?

A. Correct. He set up a foundation so that people could funnel money into the church and the National Episcopal Church would not have influence over it, because those people didn't like homosexuals being in the church. And at my mother's funeral, Harrison McLeod got up and the only thing he said about my mother was that he went to visit her and got a check to move a transformer because it obstructed the view of the church. And that offended me and it offended my uncle. He spoke up in church and mentioned it. So, yes, Harrison McLeod was on the payroll.

Q. Do you believe that the representations in Harrison McLeod's affidavit are untrue?

A. I don't have an opinion about the representations.

Q. True as far as you know?

A. I'm not gonna say that, I don't have an opinion.

Q. Okay. Well, Marshall, you've given me an opinion that you think Harrison McLeod's motivation is suspect because he's on the payroll.

A. Correct.

Q. So you believe his motivation is questionable.

A. Correct.

Q. Okay. Do you believe the factual representations in his affidavit are questionable?

A. I believe that the people who wrote affidavits about my father were not in an intimate relationship with him. They dealt with him as a professional, which is different from a man inside of his own family and his relationship with his wife and children. So I believe they're basically irrelevant. And they weren't at the execution of the Will, anyway.

Q. Well, who was?

A. I don't know who was there. I suppose, since their signature's on it, Workman, and my mother and Carl Muller.

Q. The people who gave the affidavits.

A. The what?

Q. The people who gave the affidavits.

A. Well, Workman and Muller, yes. Not my mother.

Q. You weren't there to see Workman and Muller talk to your dad or witness what your dad signed. So you don't have a clue what went on, other than what they've said went on in their affidavits.

A. Correct. We've talked about this a couple of times today. Yes.

Q. Dr. Grover, your dad's physician, he gave an affidavit too. Is he one of the ones whose affidavit you're suspicious of, motivation-wise, because he's on the payroll?

A. Correct.

Q. And he's on the payroll because he's your dad's doctor and your doctor pays his bills after he has medical visits?

A. It's a financial relationship. It's not a personal relationship.

Q. Do you have any evidence that the representations made in your dad's doctor's affidavit are anything other than true?

A. No.

Q. Martha Louise Ramage Lewis. Do you know who that is?

A. Yes.

Q. Have you ever talked to Martha Louise?

A. Maybe at a party. But it's been a very long time.

Q. Do you know what her relationship was, if any, with your mom and dad?

A. I think she kept their books or something. Or their taxes. I'm not sure.

Q. Do you know if she had any knowledge of your mom and dad's wishes as far as what would happen to their estate upon their death?

A. I don't know much about that.

Q. Have you reviewed the affidavit that I obtained from Martha Louise?

A. Yes, I read it.

Q. Was anything in her affidavit incorrect as a factual matter?

MR. HAYNSWORTH: I'm gonna make that 12.

(RESPONDENTS' DEPOSITION EXHIBIT NO. 12 MARKED AND ENTERED)

A. (Reviewing document) I don't see anything to call into question.

Q. Because she was in a financial relationship, she would fall in the category, though, of people that there may be suspect motives, in your opinion?

A. Yes.

Q. Do you know what your mom and dad's opinion of Martha Louise was?

A. No.

Q. Do you have a Will?

A. Do I have a Will?
Q. Yeah.
A. Yes, I have a Will.
Q. Have you nominated someone in your will to be your Personal Representative or your Executor of your estate ---
A. Yes.
Q. --- when you die? And is that a person that you trust?
A. Well, it's a very old Will. It needs to be updated. He was a good friend of mine, yes.
Q. At the time you did it, the person you put in that position is someone you trusted a lot.
A. Yes.
Q. And the reason, I presume, you put a trusted person in there is, you wanted them to execute your wishes once you were gone.
A. Yes, that's part of it. Doing the right thing is also part of it. My understanding is, the personal representative has a certain amount of judgment about how they handle matters. I would want somebody with good judgment.
Q. Fair enough. Rita Christopher. Do you know who that is?
A. Yes. I met her at my father's funeral.
Q. Had you ever met Rita before then?
A. I might've talked to her on the phone, but I don't

remember meeting her face to face.

Q. And I'm asking because I don't know. As I understand, Rita was your dad's secretary for a good while. Do you ---

A. I read somewhere that she was with him for twenty years. But I'm not sure.

Q. Back when you and your dad might've talked twenty years ago, did you ever call the office and talk to Rita to get to your dad?

A. Usually I called directly to his extension and went to voicemail. I had more interactions with Sarah Barfield, his previous legal assistant.

Q. Okay. Other than Rita says in her affidavit that she was aware of the strained relationship between your dad and you, do you have any knowledge of discussions that your dad had with her about you?

A. No.

THE WITNESS: I'm gonna get some water, I'll be right back, okay?

MR. HAYNSWORTH: Sure. Absolutely.

(BREAK)

Mr. Haynsworth Resuming:

Q. Marshall, in July of '18, did your dad know who he was?

A. July? I saw him very briefly in...well, actually,

I'm not sure what date I saw him.

Q. Or June of '18. Well, I'll put it this way: The day that he changed his Will and his Trust to exclude you ---that day, when he signed those papers that had the effect of doing that--- did he know who he was?

A. I did not see him or talk to him on that day. The bigger picture leads me to believe he was not in control of himself, or he would not have taken this action and caused so much damage.

Q. Do you know if on that day, when he was signing the documents, if he knew where he was?

A. I don't know.

Q. Do you know if your dad knew who his attorney was on that day?

A. I don't know. I wasn't there.

Q. Do you know whether or not he was talking with his attorney on that day?

A. I don't know.

Q. Do you know if your dad knew on that day, generally, what was in his estate? What he had to leave to ---

A. I do not know.

Q. Do you know whether or not your dad knew generally who he wanted to benefit in his Will?

A. No, I don't know anything about what he was thinking that day.

Q. Do you know if your dad knew he was signing a Will when he signed it?

A. I do not.

Q. Has anyone told you that they know that he didn't know who he was that day, didn't know where he was, didn't know what he was signing, didn't know what he had to leave, anything of that nature?

A. Not specifically.

Q. How about generally?

A. Well, I understand there's medical research about people dying from pulmonary fibrosis that says it impairs their cognitive abilities. I haven't followed up on the research yet.

Q. Okay. So you have been told about or read some research out in the world that suggests pulmonary fibrosis may affect cognitive function.

A. Correct.

Q. But no human being has said, "Marshall, I know about your dad the day he signed that, and let me tell you what I know."

A. No. It would help to get the prescription records.

Q. And just to be clear ---and John and I'll go through it--- so you want to know the prescriptions that your dad was on during what period of time? Because, to my knowledge ---and I'm not affirmatively saying, well, you've got it--- to

my knowledge, I gave you the hospice records from both hospice agencies. I gave you the records from his family physician for the last year of his life --- Dr. Grover. As far as I know, any prescriptions that I was aware of, I provided to you. But it sounds like you are of the opinion there's a hunk of prescriptions out in the world that, if you could just get them, it's gonna show your dad didn't know what he was doing.

A. Correct. When I was visiting my mother the weekend before she died, I went with my brother Jonathan to a pharmacy to get morphine. Some very strong drugs.

Q. Okay.

A. I would imagine that if we had the prescription records, we would see exactly the doses, and the quantity and the types of drugs that were to be given my father while he was on hospice. I imagine, since he was having panic attacks and going back and in and out of hospice and going to the hospital, and, I'm told, suffocating to death, that he was on some very strong drugs. But I have not been provided his financial records or the transactions related to his prescriptions. Therefore, I have not got that data yet.

Q. Well, good. I just wanted to make sure I understand what you want.

So you went with Sloan to get a morphine ---

A. Jonathan.

Q. Excuse me. Jonathan. --- to get a morphine

prescription for your mother.

A. Correct.

Q. This is after your dad is dead.

A. Correct.

Q. And while at that pharmacy, it occurred to you, or at some later point, there've gotta be records for dad at a pharmacy somewhere ---

A. Correct.

Q. --- for the meds he was on.

A. Correct.

Q. Okay. And you believe that those prescription records are going to establish that your father did not have the capacity to do what he did.

A. Correct.

Q. Okay. And the reason you believe those pharmacy records are gonna show you that is because you feel like he must've been on some strong painkillers and perhaps morphine, or what have you, and those medications may influence him cognitively.

A. Correct. Because I observed my mother over the course of several days when she was basically suffocating to death, too, because her systems were shutting down. And the hospital kept loading her up with painkillers. And that was their treatment, was to load her up with painkillers. And she was out of it. Because people who are suffocating to death are

in great emotional and mental agony, and they load 'em up with painkillers.

Q. And in order to analyze these prescription records which you wanna look at, are you wanting them for the day he did what he did, what he was taking that day or that month, or are you wanting them for a year before? I mean, when do his prescription meds become an issue in your mind as far as his competency?

A. Well, initially, I would think during the time he was under hospice. However, since he was under treatment for pulmonary fibrosis for years, perhaps it'd be good to look at that, too.

Q. Well, are you contending that your dad did not have testamentary capacity? The capacity to know what he had, who he was leaving it to, to be able to do ---

A. Yes.

Q. --- a Will and ---

A. Yes.

Q. Let me finish. You talk about he was treated for pulmonary fibrosis for years. Are you contending that, years before, he was under such medication he was not competent? Or is that just during the period of time when he changed the Will and Trust to cut you out?

A. I'm not sure. The last time I saw him face to face was seven, eight months before he died. So I don't really

don't know what was going on during that time period.

Q. And as far as you know, seven or eight months before his death he had not done his new Will or changed his Trust.

A. Well, the documents that your law firm provided said he hadn't. As a matter of fact, he confirmed his old arrangement in February before he died.

Q. And I noticed that in your Petition lots of places you kept using the phrase "for the last twenty years he has shown, by words and deeds, that he's gonna treat his three children equally." You remember using that phrase a couple of time?

A. Yes.

Q. That for the last twenty years he ---

A. Yeah.

Q. What about for the last thirty years, or forty years? What do you know, if anything? You've told me for the last twenty he treated you and your brothers equally. What about before then? How did he treat y'all?

A. He never talked about money, and I never saw --- I have not seen any documents. He did, when he gave the hundred grand, he gave each son a hundred grand, equal amount of money.

Q. Okay.

A. I think that was a value to him: treating his sons equally.

Q. Other than the documents you have challenged in your

Petition, where you're treated differently than your brothers as far as your dad's estate is concerned, are you aware of any other documents relative to your mom or dad's estate or their assets where you are treated differently than your two brothers?

A. Not really. Not other than you said something about an IRA, and maybe he switched an IRA or something. But I'm not aware of other documents.

Q. Would your dad have had any reason, other than because he was under the influence of drugs and medication and your brothers and your mother were pressuring him, would he have ever had any reason that you can think of in the past to have provided less for you than Sloan and Jonathan?

A. No, not that I'm aware of.

Q. Y'all relationship was never so bad in the past that you feel like he would have favored your two brothers over you in what he left.

A. Well, the fact is he didn't.

Q. That he didn't...?

A. He treated us three --- in the formal estate planning documents that I have in my possession, three or four versions, he treated us equally until three weeks before he died.

Q. You had conversations with Uncle Ned kind of in connection with all of this. And I don't remember if I asked

you: Did you and John, Ned's son, talk about any of the issues involved here?

A. John Sloan?

Q. Yeah.

A. No. He was cordial a couple of times I saw Uncle Ned, both at the courthouse and visits to Ned's house. I understand my brother has given him my mother's car. I found that out recently. But I never had any conversations with John about this, no.

Q. Other family that you've talked to about this? For instance, your dad's sister?

A. Katya?

Q. Yeah.

A. At my mother's funeral she said that my dad was hurt. That's what I --- somehow the topic of the Will came up. And I didn't really press it, but she said, "Your dad was hurt," or something like that.

Q. Did you know what she was talking about?

A. I assume because of what Sloan did, putting the e-mails in front of his face.

Q. But other than your dad was hurt, she didn't elaborate and you didn't press as to what she was talking about.

A. No.

Q. And the reason I'm asking, Marshall, is just trying

to figure out who might have some knowledge about this situation and your contentions. So I've asked about your conversations with Ned, and that's why I asked about whether you had conversations with your dad's sister. Any other family, cousins or anything, that you have talked to about this, inquired if they knew anything about mom and dad's wishes, or why your mom and dad might've changed things to exclude you?

A. Cousins?

Q. just other people.

A. I talked to Caroline Sloan at some point. Yeah. But it was a brief conversation, not of any significance.

Q. And Caroline Sloan didn't know anything one way or another about the situation, why it was, what it was?

A. No.

MR. HAYNSWORTH: All right. Tell you what let's do. Why don't we take a ten-minute break.

MR. BLINCOW: Gonna reshuffle the deck and ---

MR. HAYNSWORTH: Gonna reshuffle the deck. Leslie and I are gonna converse and try and find some light at the end of the tunnel.

MR. BLINCOW: Yeah, this is good. And we'll be glad to give you ten minutes.

MR. HAYNSWORTH: Yeah, let's take ten and let us chat a little and I'll come get you and

we'll, hopefully, be heading towards the finish line. But I don't run very fast, so it may take a bit.

MR. BLINCOW: Sounds good.

(BREAK)

Mr. Haynsworth Resuming:

Q. Marshall, I think you told me, if I've got the dates correct, that you and Julie came up...was it...you reference this when you said, "Hi," kind of a surprised look. Was that June of '18?

A. It was a week after he changed the Will.

Q. Okay.

A. Yeah.

MR. BLINCOW: Or maybe early July.

Q. So late June of early July of '18 would be the time frame that you and Julie came up. And you wanted to see your dad and ---

A. June 25.

Q. Okay, June 25. And did you and Julie drive up from Atlanta?

A. Correct.

Q. Did you tell your parents you were coming?

A. No.

Q. So it was a surprise when you and Julie showed up. They didn't know y'all were coming ahead of time.

A. Correct.

Q. And, again, I'm trying to remember this correctly. You had found --- the reason you drove up is you found out from Dottie Schipper that your dad was in bad shape.

A. Yes.

Q. Is that what prompted you and Julie to drive up?

A. Well, she said, "Folks are saying their goodbyes." So she made it clear that she thought he was passing away soon.

Q. And that was the motivation for you and Julie to hop in the car and come see him.

A. Yes.

Q. All right. We covered in great detail what you went through as far as the hospitalization and the halfway house for alcohol issues. We talked about therapists you have seen, or treatment you've received, for depression. You ever been treated for bipolar disorder?

A. No.

Q. Manic depression?

A. No.

Q. Ever had a diagnosis, or suggested diagnosis, of manic depression or being bipolar?

A. No.

Q. And, again, short of Irveta looking at her chicken scratch and saying whether you said this, I'm not positive, but I think ---and I don't remember the context, Marshall, that we

were talking about it--- but I think you said that your dad from time to time would send you hostile --- I have the phrase "hostile notes" written down. Do you recall saying your dad sent you, ---

A. Yes.

Q. --- on occasion, hostile notes?

A. Yes.

Q. I wanna explore that a little more with you. When you say notes, would it be handwritten notes, or e-mails, or both?

A. Let's see. The one about the hundred grand was handwritten. He sent an e-mail, which you have a copy of, about --- he got mad about something and threatened to not talk to me.

Q. That was the one that, "Given our years of discord, I no longer wish to" ---

A. No, it was a different one.

Q. Okay.

A. It was five years previous. Something like, "I wanna see your children but I'm not gonna talk to you anymore."

Q. Any other hostile notes that you recall receiving from your dad?

A. No.

Q. Do you still have the --- and I've got the e-mail, of course, because it's one of the exhibits, that was sent

there towards the end. But do you still have copies of these hostile notes that your dad sent?

A. No. I threw away the card about the hundred grand.

Q. One was about the hundred grand, and you've alluded to one about five years earlier than the e-mail that was sent, saying, "Due to our years of discord..." The one about five years earlier, where your dad sent some other note ---you might've said about the hundred grand, I don't remember--- that is also one you wouldn't still have?

A. I'm trying to find the e-mail. It's in this pile that I think John gave me, that you gave him, or something. June 17th, 2014. "I have the impression that you'd like to completely disassociate yourself from your mother and me."

Q. Well, if John gave that to you based on stuff that I gave to John, then that would suggest that I already have it. But could I borrow your copy and make a copy? Because I don't know if I could find mine.

(Off record to copy document)

(RESPONDENTS' DEPOSITION EXHIBIT NO. 13 MARKED AND ENTERED)

Mr. Haynsworth Resuming:

Q. The letter that we marked as Exhibit 13 is the e-mail you were kind enough to provide me a minute ago from Jim Shoemaker to you dated June 17, 2014. "I have the impression that you would like to completely disassociate yourself from your mother and me --- to which we are agreeable. The

relationship since you left for Princeton has always been sour most of the time. Is that what you would like to do? We will, of course, stay in touch with your adult children as much as possible. Dad."

Do you know what, around June of '14, led your dad to be under the impression that you wanted to completely disassociate yourself from him and your mother?

A. Well, I don't remember. But Princeton was always a burr in his saddle. Because I got into Princeton, Yale and the University of Virginia, where he went. And he said, "You can't go to Yale," and I didn't wanna go to UVA, so I went to Princeton. So he always resented that. So he identified Princeton as the cause of me...I don't know, being an autonomous individual or something.

Q. All right. Well, was there anything --- I mean, is this e-mail he sent you in June of '14 where he thinks you want to disassociate yourself from him and your mom, is that just the culmination that he's pissed about you going to Princeton? Or did something happen closer in time?

A. No, it was his practice that if I disagreed with him about something ---such as the divorce, or whatever--- he'd go off the handle and try and power-drive me to conform to whatever his wishes were. And I don't remember what this argument was about.

Q. Do you recall if you responded to this e-mail?

A. Like all of his notes, they hurt my feelings and, in general, I didn't respond to them. There was one that you've got copies of where I did respond where my mother and --- well, they withdrew an invitation to go to Lake Toxaway.

Q. I do have that one. I recall that.

A. So just sort of part of the process.

Q. So no particular event triggered this June '14 ---

A. Not that I'm aware of. I don't know. I don't remember.

Q. Okay. Marshall ---and part of this is housekeeping-- I'm gonna ask you about a couple more exhibits. But we've marked a number of exhibits that we have not specifically talked about. Because we've generally talked about them in the context of the importance of some of the e-mail. They're part of the document production you gave me, so we talked about them there. I've got some of the same ones separately marked as exhibits. But what I'd like to do is just run through some of the other exhibits and confirm that they are what I think they are. Because I don't wanna attach an exhibit that you don't have any clue what it is or the position that...that it shouldn't be an exhibit.

So we've looked at and gone over Exhibit 1, your Petition. We're square on that. I think we've covered that. Take a look in your stack at Exhibit 2, which should be a copy of your Amended Petition. And if you'll just confirm for us

that Exhibit 2 is a copy of the Amended Petition you filed in Probate Court.

A. Yes, that appears to be correct.

Q. Okay. And we've talked about 3 and 3a already. Those are the Interrogatories and Document Requests. So we've talked about those.

Take a look at Exhibit 5. That appears to be the e-mail, or one of the e-mails, between you and Sloan that we went over in the context of talking about the e-mails earlier.

Exhibit 6 is also --- it is the same e-mail that was included in your document production responses but I've also separately marked as Exhibit 6. That's the e-mail that you got from your dad's e-mail address, that, "In light of our years of discord, I do not wish to speak to you..."

Exhibit 7 is your mom's Will. Or ---let me back up-- I represent to you that Exhibit 7 is your mom's Will. I think you told me maybe that you haven't seen it.

A. I have seen it. I forgot I've seen it. This was signed the same day as the other documents in my father's estate.

Q. Correct. This is the Will that, as I understand it, you are now challenging, through Mr. Blincow, relative to your mom's estate.

A. Okay.

Q. Well, ---

MR. BLINCOW: That's correct.

Q. Will and Testament, I think.

A. (Reviewing Exhibit 7)

Q. You now recall you've actually seen that before; right?

A. Correct.

Q. Now, you talked earlier, with regard to your dad, it seemed to be a big deal to you that the pages were not initialed. I noticed that the pages on your mother's Will are initialed. Does that signify anything in particular to you about your mom's Will versus your dad's will, other than there are initials on hers and not on his?

A. It seemed like he initialed all the previous versions, so I thought it was curious that he didn't.

Q. Well, your mom initialed this version as well. Does that, in your mind, make it more legitimate, or more valid, than had she not initialed every page?

A. Well, speaking in general terms, yes. But in terms of my mother, I don't think she had any --- she was just doing whatever my father told her to do.

Q. Okay. So you believe that your father exerted undue influence on your mother to get her to do this Will that we've marked as Exhibit 7?

A. Yes.

Q. And was that undue influence put upon her when she

did this document? She was under that influence when she signed this document?

A. Yes.

Q. Okay. It appears that --- well, on the back, on Page 13, there's a provision in the middle that says, "I, Mary Shoemaker," etcetera, and it's dated. It says, "I signed it willingly...that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence."

You believe when your mother signed below that, that that information above is incorrect; she was not exercising this as her free and voluntary act, and she was not of sound mind, and was under undue influence.

A. No. Family members used the term "crazy" when they described my mother. I would not use that term, because I think it's very derogatory. But other family members have.

Q. Well, you disagree, I assume, with her representation on Page 13 that she of sound mind and this was her voluntary act.

A. Correct.

Q. And similar to what I asked you about your dad and the witnesses to his execution: You've not talked to Carl Muller or Amos Workman, who indicate that they witnessed your mother sign this document and that, to the best of their

knowledge, your mom was of sound mind and under no undue influence. You have not talked to either one of them.

A. No.

Q. Can you think of any reason that Carl Muller and Mr. Workman would sign this document and lie? That they would represent that, to the best of their knowledge, your mom was not under any undue influence, if they knew that she was?

A. First of all, I'm not --- I'm not --- I don't know that they're qualified to determine whether somebody's of sound mind. My mother had a diagnosed case of Sundowner's syndrome, which, when we get her medical records, it will be obvious.

Q. Okay.

A. Many people in the family are aware of her infirmity of mind.

Q. And when did her infirmity of mind first begin?

A. I don't know. I think five years before she died. But the Sundowner's syndrome I probably heard of for three years before she died. But I'm not real clear on it.

Q. And you think that her infirm mind began five years before she died, based on her ---

A. My observation of her behavior.

Q. All right. Let me get you to take a look at Exhibit 8, Marshall. It is a Memorandum Regarding Personal Property from your mother. Appears to have been executed, actually, before, earlier ---or, excuse me, I'm sorry--- after. July

2nd, 2018. The Will was June 24th, 2018.

Had you seen this memo regarding personal property before this lawsuit?

A. No. There's a lot of documents I haven't seen here. Which kinda surprises me. I thought that you were under obligation to produce these?

Q. Well, as you and I have talked about before, you asked for documents, I asserted objections to some of the documents. And the way around that, absence an agreement, is to file a Motion to Compel and convince the court that I am wrong and you are right and you're entitled to documents. So I have given you the documents that I intended to give you. And I'm sure if John thinks there are some more that you're entitled to, he and I will talk about that and probably get it worked out. And, if we don't, that's why they have the people in the black robes, to be the tie-breakers for us.

Take a look, if you would, at Exhibits 9 and 10.

MR. BLINCOW: I do not think he's seen these.

A. Nope, I have not.

Q. Well, I'll tell you what the rules provide. If you've not seen them before now, it is not fair for me to start asking you questions after I stick 'em in front of you. And you can actually go over them with your lawyer and talk about them and I'm not gonna ask about y'all's conversation. So if you and John wanna take a minute and go look at 9 and 10 and

talk about them, that's fine with me. If y'all don't need or want to do that, then that's fine, too.

A. What is this 11?

Q. Eleven (Exhibit 11) is the transcript of the hearing, where you came to court, and Uncle Ned was there with Cousin John.

THE WITNESS: How about we go talk about these two?

MR. BLINCOW: Just one second.

MR. HAYNSWORTH: Sure. Absolutely.

(Mr. Blincow and the Witness out briefly to confer)

Mr. Haynsworth Resuming:

Q. Before we go to that, Marshall, our court reporter pointed out, I left one out when we were kinda going through the laundry list. Exhibit 4. That is also one of the e-mails that we have already talked about, because it's in the batch of e-mails that you collectively produced to me. I just want to make sure you and I ---

A. Yeah, I agree.

Q. Okay. Because I forgot to ask about it, and now I've covered that. All right. So we'll go back to the ones that you and John just went out and had a chance to talk about.

Exhibit 9 appears to be a First Codicil to the Last Will and Testament of your dad. And the Codicil, or the document, appears to have been executed on July 20th of 1994.

As I understand it, you had not seen these documents before this lawsuit and, in fact, had not seen them until perhaps today.

You've told me a couple of times you really weren't aware of your dad's estate plans until he passed and you started asking for documents.

A. Well, that's not exactly correct. In 2010, he sent me a letter and I became aware of the Irrevocable Trust.

Q. Okay.

A. I was not aware of his Revocable Will until after he died.

Q. All right. We talked about, a lot, the fact that in your Petition a number of places you represented that for the last twenty years your father had clearly shown that his intention was to treat all three of his sons equally. And you believe the only reason you were cut out was because your dad's mind was so weakened and so influenced that he cut you out and he didn't really mean it.

A. And he was provoked.

Q. And he was provoked.

A. And engineered.

Q. Okay. These Codicils to your dad's Will, Exhibit 9, and to your mom's Will, Exhibit 10, were both done back in July of 1994. More than twenty years ago. And if you look at either document, in Item One of Codicil: "I hereby amend My

Will by deleting paragraph (5) of Item XVII of My Will in its entirety and by substituting in lieu thereof the following new paragraph (5)...

"For all purposes of this Will, all references herein to 'my child(ren', 'child(ren) of mine,' 'my issue,' 'issue of mine,' 'my descendants', 'descendants of mine' and similar terms shall not include my son, JAMES MARSHALL SHOEMAKER, III, and his issue, descendants and heirs. It is my intention not to make any provision in this Will for JAMES MARSHALL SHOEMAKER, III and his issue, descendants and heirs, and this Will shall be construed accordingly."

Do you read that as I do, to cut you and your kids out of his Will as it existed back in 1994?

A. I don't know where you're getting '94. I read April 23rd, 1991.

Q. Well, the document was executed in 1994. The amendment to his Will of April of '91 is amended when your mom and he signed this Codicil to it in July of '94.

A. Uh, in July of 94...

Q. Yeah. Why'd your parents cut you out of the Will?

A. Well, I'm trying to get the dates straight here. So my daughter was born in April of '92 and my son was born in August of '94. That is the time period in which I said, "Dad, I wanna negotiate my way out of that real estate property," and he flipped out.

Q. So your mother and father cutting you out of their Wills in July of 1994, you believe, was in response to your dad getting mad at you because you wanted to extricate your interest in the property that you and Sloan and Jonathan shared, the gas station.

A. Correct. And then I had a friend of mine who was a lawyer write him a letter and state that that's what we wanted. I don't remember exactly when my friend wrote that letter, but my father responded as if I sued him. So, apparently --- he attended my graduation from business school in, I believe, June of '94, and that's when we started talking about the...you know, the last distribution, which was coming up in December of '94.

Q. All right. Well, when your mom and dad, back in 1994 cut you and your kids out, thereby, as of 1994, treating you much differently than Sloan and Jonathan, was it because neither of your parents were of sound mind to have been able to validly execute these documents?

A. It was because my father did not tolerate dissent and he went nuclear, like he's done many times in our relationship.

Q. All right.

A. And he had so much rage that, when my son was born in August of '94, he didn't even acknowledge him, his own grandson.

Q. So much rage ---
A. Yes.
Q. --- that he didn't acknowledge ---
A. Yes.
Q. --- your son?
A. Yes. This insane rage of his. Which, when we were children, was very physical. And when I was too big and Sloan was too big to take it, for him to dish that out anymore, it just became emotional terrorism and manipulation. I don't know why he changed his mind two years later. Maybe he came to his senses.
Q. Do you have any evidence to believe that back when he executed Exhibit 9 and your mom executed Exhibit 10, in July of '94, that either one of them were not of sound mind or under any sort of undue influence?
A. Well, I don't know if you consider rage sound mind or not.
Q. Other than they were mad ---a rage--- do ---
A. Well, this pattern is part of the alcoholic family where everyone's trying to control each other all the time. So I don't know whether you call that sound mind or not. I wouldn't call it sound mind.
Q. Well, now that you've seen these documents --- I was talking to you and trying to give a hypothetical earlier, and you said, "Well, I'm not gonna respond to hypotheticals."

You've now seen the document in front of you, signed by your mother and father, cutting you out of their Wills, as long ago as 1994. Did their unsoundness of mind begin decades ago? Have they been unable to validly express their wishes as to what they wanted done with their estate from that far back? I'm trying to get a handle on why they would do this twenty, thirty-odd years ago.

A. I just explained it to you.

Q. It's the alcoholic rage and he was mad.

A. No, that's part of it. The other part was, is I questioned how he was handling my grandfather's estate.

A. And this is his response to being challenged.

Q. "You challenge me, buddy, I'll cut you out."

A. Yeah. He used to verbally talk about that. We'd get into a discussion and he goes, "Well, do you wanna be in my Will?" I mean, he was constantly dangling that carrot.

Q. So the documents that bring us here today in the lawsuit, and these back in 1994 that we're talking about, those weren't the only two times, at least, he discussed cutting you out of his Will.

A. No, he never discussed cutting me out of his Will.

Q. Okay. He would threaten, "Do you want" --- he would ask it ---

A. He would indirectly threaten it.

Q. "Do you wanna be in my Will?"

A. Correct.

Q. And those would come up in the context of you were bucking up to him and he was going to show you who was going to win the argument.

A. Exactly. Yeah, it's quite painful and astonishing to see these documents. Ha! I had two small children and it's, "Fuck you and your father."

Q. I don't really have any questions about the transcript, (Exhibit 11) other than you do recall going to court and us talking to the judge about the Petition, and... You have no reason to think this is not the conversations we were all having in court.

A. Makes sense to me.

Q. Back in July of '94 ---these Codicils where you were cut out that we're talking about--- to your knowledge, were your mother and father under the influence of any type of drugs during this period of time?

A. Sure.

Q. What drugs were they under the influence of?

A. My father drank like a fish from the day he went to college, I imagine, and my mother has always been in an altered state. But I don't know that for sure, because I didn't have...you know, I'm just guessing. People don't overnight start abusing alcohol and drugs.

Q. Are you keeping your Uncle Ned appraised of the

goings on? I think we covered that he knew the hearing was coming up when it came up because he just went on the court's website and somehow found out about it. Are you still communicating with him about what all's going on?

A. No. We have an ongoing relationship but I do not keep him appraised in detail about what's going on.

Q. Y'all still talk, just not about this.

A. Yes, we talk.

MR. HAYNSWORTH: I'll tell you what, Marshall, let's take another five-minute break. I might be finished. If I'm not, I won't have much --- hopefully, I will be. But let us talk one more time, talk to the other defendants.

(BREAK)

Mr. Haynsworth Resuming:

Q. Marshall, have you ever had occasion to discuss with Sloan or Jonathan ---this is obviously before you dad had passed, or your mom--- did you ever have occasion to discuss with them, trying to make any plans, where you kids maybe need to get organized and figure out...Mom and Dad are gettin' kinda older, we need to get organized about who's gonna take care of them? Do you recall any discussions like that with either of your brothers?

A. Yeah. I recall writing them letters, or e-mails, years before all of this recent stuff, suggesting that it would

be good to have a conversation with them about their estate plans. I think it was before I got that letter in 2010. It might've been in the late '90s or something. And I was rebuffed.

Q. Did you ---and I'm not gonna try and quote you, because I can't--- but did you say words to the effect ---and this is specifically with reference to talking to Jonathan--- that you guys needed to get organized as to your parents' estate because it was y'all's money?

A. No.

Q. Or words to that effect?

A. That's a lie.

Q. That's a lie?

A. And he's a coward for not putting that in print.

MR. BLINCOW: Don't --- no. Stop.

Q. Well, as you ---

A. There. You just had a good example of what my brothers do to undermine me right there.

Q. They tell lies?

A. Correct.

Q. Did you attend ---and I can't put an exact time reference on it, but I can tell you it would have been within the last year of your dad's life--- did you ever attend any meetings with your dad and Leslie Moore, or Ben Clauss, or any of the people who had knowledge of your dad's estate, to go

over his estate with them?

A. No.

Q. Do you know if either of your brothers had a meeting with your dad and Leslie, or Ben Clauss, or any other people who had knowledge of your dad's estate?

A. No. I don't know anything about it.

Q. Okay. If there was a meeting involving your dad and your brothers and you weren't there, can you think of any reason why your dad would have excluded you from such a meeting?

A. In my mind it didn't happen and I don't have an opinion about it.

Q. Okay. And if it did happen, we'd just have to see what your opinion was at that time.

A. I don't know that it happened. Do you have documents to say it happened?

Q. No, I don't have any documents that say that.

A. Man. You guys play a nasty game.

Q. What's that?

MR. BLINCOW: No, let's just finish up.

A. You lawyers.

Q. What do you perceive has been nasty?

A. Just your behavior. Not producing documents. Producing them later. Threatening me constantly. Maneuvering. This whole gamesmanship of civil procedure, it's just a nasty

game.

Q. Well, the Rules of Civil Procedure existed before I came into the profession. I can't speak to why they're there or whether they're a good idea or bad idea. They're just the rules.

A. I don't even think you're following the rules, though. Because it seems to me ---

MR. BLINCOW: Well, we're not gonna ---

A. --- that the ethics of discovery is, you produce. You don't withhold and force somebody to take you in front of a judge to produce. That's just gamesmanship.

Q. Well, again, Marshall, I won't get into why the rules are the way they are and mechanisms to address disagreements as to discovery. But, you know, the good news is that you've now retained a lawyer. So you won't have to worry about the rules and your perception of how they apply and whether I'm dealing fairly under those rules. Because Mr. Blincow is here with the training to address those issues for us.

MR. HAYNSWORTH: I think, Marshall, unless Mr. Blincow ask you any questions that prompt me to ask you any more, that I am finished.

MR. BLINCOW: I don't have any questions.

He is gonna read and sign.

(Deposition concluded at 3:24 p.m.)

STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF GREENVILLE)

Be it known that I took the deposition of JAMES MARSHALL SHOEMAKER, III;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 4 through 174 is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 29th day of July, 2020.

Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

APPEARANCES:

BLINCOW GRIFFIN LAW
126 Meeting Street
Charleston, SC 29401
BY John K. Blincow, Jr., Esquire

.....On behalf of the Petitioner

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC
106 Williams Street
Post Office Box 2464
Greenville, SC 29602
BY Knox L. Haynsworth, III, Esquire

.....On behalf of the Respondents

Also Present (By Zoom Teleconference)

Marshall Shoemaker
Edward Sloan Shoemaker
Jonathan Evans Shoemaker

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

Copy of handwritten letter from James M. Shoemaker, Jr. to Marshall Shoemaker dated 8/12/2010, marked for identification as Petitioner's Exhibit No. 1, is attached hereto as part of this record.

LESLEY MOORE, having first been duly sworn to tell the truth, testified on her oath as follows:

EXAMINATION

By Mr. Blincow:

Q. Good morning.

A. Good morning.

Q. Would you give us your name for this record, please.

A. Lesley, L-e-s-l-e-y, Moore, M-o-o-r-e.

Q. Ms. Moore, my name is John Blincow, we've met a time or two before. I represent Marshall Shoemaker in this case in Probate Court in Greenville County. And obviously you're a party and so I'm here to take your deposition. Thank you for coming so close to Thanksgiving. You understand that you're under oath this morning?

A. Yes, sir.

Q. And we need to be careful to get as good a record as we can get. So if I ask a question that you don't understand, will you please stop me and I'll be happy to start over again.

A. Yes, sir.

Q. Also, would you please answer the questions as completely as you can. If you have some information that fits with what I'm asking, go ahead and give me that information. All right?

A. Yes, sir.

Q. Also, you understand that, once we start, if you

have a question you need to direct that to me as opposed to Mr. Haynsworth.

All right. We spoke a moment ago, but can you tell me where you are employed?

A. I'm employed at Freeman & Moore, which is my law firm.

Q. And as we talked about a moment ago, Mr. Freeman passed away five or six years ago?

A. 2014, yes.

Q. All right. And so are you in practice by yourself at this point?

A. Yes, I am.

Q. And prior to Freeman & Moore, you were an attorney at the Wyche Firm.

A. Yes.

Q. For how long were you there?

A. 1988 to 2011. The very end of 2010.

Q. And I take it that your practice is...what?

A. Estate planning, probate and trust.

Q. What functions do you have with regard to Mr. Shoemaker's estate plan?

A. I drafted his estate plan, and supervised the execution of it.

Q. And so you serve as the Trustee of ---

A. Yes, that's correct. I was the Personal --- named

the Personal Representative with Mrs. Shoemaker, and the Trustee of his Irrevocable Trust with Mrs. Shoemaker.

Q. All right. Let me just dive in here.

A. Sure.

Q. In October we got some Supplement Discovery Responses, and I don't know if you've seen them but I wanna tick through and make sure I understand what's in the Trust and what didn't pass into the Trust, okay?

A. Sure.

Q. First of all, there was an Irrevocable Trust that was set up; is that correct?

A. Correct.

Q. Tell me about that, please.

A. That was what we typically call a life insurance trust that he created, gosh, I think in the early '90s. It owned a second-to-die policy, and I believe it was 4.9 million second-to-die policy. And I created that for him and he funded it. He and Mrs. Shoemaker funded it over the years.

Q. And is the single asset that was in the Irrevocable Trust the life insurance policy?

A. Yes, that was it.

Q. And I apologize, but tell me what is meant by a second-to-die policy.

A. It's a life insurance policy that insures two lives, and it pays off at the second death. So it paid off at Mrs.

Shoemaker's death.

Q. And is that trust closed now at this point?

A. No, it's not. Cary Hall, who is a lawyer at the Wyche Firm, and I are the co-trustees of that trust. And at the death of Mrs. Shoemaker, the funds were collected and then they were separated and sent to separate trusts that are described and required to be funded in the actual trust document.

Q. Got it.

A. With the exception of the share for Jonathan. He received his outright, per the trust document. Sloan's share is in a trust for him. And then a sixth was put in a trust for Marshall's children, and then a sixth in a trust for Marshall.

Q. Help me understand why Jonathan received his share of the trust, the trust benefits, and the other two sons did not.

A. That's what the trust instrument provides.

Q. Well, do you know why Mr. Shoemaker set it up that way?

A. Set it up that way? Well, '92 is stretching my memory a little bit. But I think he felt that Jonathan was very responsible with his money, and very stable. And I think he felt very comfortable that he could manage things well.

Q. Okay.

A. And then for Sloan, I think he felt like it would be

helpful for him to have some assistance with money management and investment assistance and that kinda thing.

Q. Got it. And so the 4.9 million, a third of it would've been disbursed to Jonathan.

A. Correct.

Q. A third of it went into a Sloan trust.

A. Uh-huh.

Q. Which is being managed by Merrill Lynch?

A. It is. It is.

Q. And a sixth went to Marshall and a sixth went to his two children.

A. In trust.

Q. In trust.

A. Uh-huh.

Q. And those are also being managed by ---

A. Merrill Lynch.

Q. --- Merrill Lynch.

A. Yes.

Q. And are regular disbursements being made from that life insurance trust?

A. For whom?

Q. Either of those --- either Jonathan --- either Marshall or Sloan.

A. Sloan has requested some distributions. And Mr. Hall and I have made some disbursements to him. We've not

received any requests for disbursements from Marshall's trust and have not made any. And we've not received any requests for disbursements for Mary or Peter.

Q. The two children.

A. Right.

Q. All right. And I believe I know the answer to this: But why did Mr. Shoemaker set it up one-sixth/one-sixth for Marshall and his two children?

A. Well, as I recall, around that time, Marshall may have been either experiencing some marital problems, or starting the divorce, or whatever. So I think that Shoe --- and I'm always gonna call him Shoe, I'm sorry, instead of Mr. Shoemaker.

Q. I never called him Shoe.

A. I'm gonna call him Shoe. And he wanted to also make sure that his grandchildren were protected and provided for. Because they were young at the time, and he wanted to be sure that they were taken care of.

Q. And was that, was the life insurance trust, changed to reflect that one-sixth/one-sixth? I mean, when it was originally set up, was it ---

A. It was originally set up that way.

Q. Oh, it was?

A. Yes.

Q. I see.

A. It couldn't be changed.

Q. Once it ---

A. It couldn't be changed. The only change that happened over the years was the trustee changed. But it was irrevocable.

Q. Did you ever see correspondence from Shoe to Marshall explaining why it was different in his case? Meaning one sixth for him and one sixth for the children?

A. I do recall, I think, a letter he wrote to Marshall, and I think Sloan, too. And I think I have a --- I think I was given a copy of it, yes.

Q. When would the work of the trustee with regard to the life insurance trust end? In other words, there's a fair bit of money that's being managed by Merrill Lynch. Is there some provision in the trust where the trust will be distributed and end?

A. Well, for Sloan and Marshall, those trusts could conceivably last for their lifetimes, and will terminate at their respective deaths. For the grandchildren, I can't remember. I think it's held as one fund until one of them, maybe Peter, is a certain age and then maybe it divides. I can't remember. But that trust will terminate at some age for them, I think.

Q. I see. That, I guess was what I was asking.

A. Uh-huh.

Q. And the way it would work now is: Sloan or Marshall would have to ask the trustees for a disbursement.

A. Yes. And it might be good to understand, too, that the provisions for distributions for Sloan are different than the provisions for the distributions for Marshall. They're separate trusts and there are different provisions.

Q. Tell me about that, please.

A. Well, ---and I may not recall perfectly--- but as I recall, the trustees have more discretion to distribute income and principal to Sloan for, I would describe it as a broader standard. For Marshall, the provisions are discretionary for income only to him, for, I believe, health maintenance and support. But I don't believe that the trustees have any discretion over principal for him. So there are different standards that were put into the original trust.

Q. Uh-huh. And how about for Marshall's children, how was that handled?

A. As I recall ---and if you want me to look at it, I can tell you--- but I believe it stays as a pot for them until Peter reaches a certain age. I believe that during that time, distributions can be made to them for health, or support, or education. As I recall. But they have not asked for anything, so I haven't really consulted it.

Q. Sure. And it would be spelled out in the trust documents.

A. It is. It is, yes.

Q. And to be fair to you, we took Jonathan's deposition yesterday and one thing that came up, maybe in the exhibit that was marked, there was an e-mail from the guys at Merrill Lynch to Jonathan about, "Hey, we're funding a 529 account for your children."

A. Uh-huh.

Q. My question is: Did Mr. Shoemaker make provision for education of Marshall's two children?

A. Well, I don't know that I know that answer. He did not set up 529s for them. Of course, they're a good bit older. I believe that he provided some educational assistance along the way for them, but I don't think he ever set up 529s. I could be wrong.

Q. Okay.

A. I remember that he was --- he bragged about Peter getting a great scholarship to Georgia Tech. So I'm not sure that he did a lot of college assistance, but I think they did some ---

Q. Private.

A. --- private school. But he did not do 529s.

Q. And did Mr. Shoemaker ---Shoe--- set up 529 accounts for Sloan's children?

A. I believe he did. I believe he did. They were younger, and I think --- yes.

Q. To the extent you know, is that a function of those children's ages? In other words, by the --- Marshall's two children were older and perhaps out of school when he set up 529s for his other grandchildren?

A. I believe, yes. Yes.

Q. All right. Again, another thing that came up: Later, in the last four or five years of Shoe's life, I believe I understand from Jonathan's testimony that his day-to-day finances, or month-to-month finances, were really a Merrill Lynch account that had a checking component and maybe a credit card.

A. Yes.

Q. Is that how he managed... I don't know if he had a mortgage payment, but whatever the monthly payments and expenses would be, how did he manage that?

A. I believe so. I wasn't involved in the day-to-day. But I know that he made a concerted effort in the last few years to sort of consolidate things and have things sort of under one roof. And he had a lot of confidence in Merrill Lynch, so I think he used them primarily. He and Polly had a joint bank account at a local bank, but I don't think that they used that much. I think Merrill Lynch was their major account.

Q. Right. This discovery response ---and I apologize, I don't have a copy--- but it says at the time of Shoe's death there was a United Community Bank ---

A. Uh-huh.
Q. --- account with a balance of thirty-four thousand bucks.
A. Uh-huh.
Q. But this would be consistent with Jonathan's testimony, which is, if he went to lunch, he would use a Merrill Lynch credit card that was attached to a Merrill Lynch ---
A. That's right.
Q. All right. And whatever bills, you know, drycleaners, or pharmacy, or grocery store, all that, you believe, was handled from that ---
A. I believe so. Yes, I do.
Q. How was that checking account funded?
A. Which checking account?
Q. The Merrill Lynch account. I'm sorry.
A. Well, I think the --- well, let me go back. They both had ---or he had--- a CMA account at Merrill Lynch that probably threw off dividends and interest. So that could've been a source for funding. But he also, of course, had to take an RMD from his IRA every year. And my guess is ---I'm not for sure--- that that would have been the major resource that would have flowed in to provide cash for their ---
Q. Day to day.
A. Is that what you're asking?

Q. It is.
A. Yeah.
Q. Would he take the RMD annually, or monthly, or quarterly? How did that go?
A. I don't know. Martha Louise could tell you that. I don't know.
Q. All right. And let me make sure I'm understanding. You mentioned he had a CMA account.
A. Uh-huh.
Q. And is that first part of your last answer, whatever interest it generated would be available for ---
A. Would've been available if he needed it, right. Dividends. Uh-huh.
Q. But, far and away, your best understanding would be the RMDs from his IRA account...
A. ...funded their lifestyle. Yes, that's right.
Q. Okay. Now, did Shoe handle all of that, or did he have someone that would...a bookkeeper? Or do you know?
A. I don't think he had a bookkeeper. And he very much liked to read about investments, study investments. He was very astute.
Q. Read The Wall Street Journal daily?
A. Yes. Yes. And so I think he kept very much involved in that. He relied on Martha Louise Lewis a great deal for his tax work and some of the tax planning. The RMDs,

for example. But I don't think that they ever did the book-keeping for him. And he relied a lot on Merrill Lynch and their support staff to help him if he needed transfers and things like that.

Q. To move money.

A. Right. But I think he did it.

Q. Okay. And ---

A. Oh. Can I interrupt you?

Q. Absolutely.

A. And I will say this: When you live at the Cascades, you just pay one huge bill every month.

Q. Right.

A. And then there are not a lot of bills that come in.

Q. I get it. Sure. But he might occasionally, you could tell from the e-mails with his sons and what not, that they would plan a lunch when ---

A. Oh, surely.

Q. And Jonathan mentioned that his mom would often take her meals there. Maybe even have them delivered. Would that be included or would that be a separate dinner on Tuesday night, thirty bucks, or whatever it was?

A. Well, I think that the Cascades would charge a delivery fee, but I think if you pay, you get a certain number of meals. And so if she chose to have --- they frequently did have their meals at their home. I think you had to pay a

delivery fee.

Q. Got it.

A. But I don't think it was an extra meal, so to speak.

Q. Now, that, I'm gonna call it checking account, was a Merrill Lynch account. Would...I call her Martha Louise Ramage.

A. Uh-huh.

Q. ...Mrs. Lewis?

A. Uh-huh.

Q. Would she --- where would those records be? Would they be at Merrill Lynch or with Mrs. Lewis, or both? The statements and what not.

A. The statements. I don't know if Martha Louise would have those. Perhaps he gave them as part of the tax stuff every year. I don't know.

Q. All right. Now, did that picture change when Mr. Shoemaker died in July of '18? Meaning, how did Mrs. Shoemaker manage day to day and month to month? If you know.

A. Well, I think I know some. The people who had always helped them continued on. In other words, Martha Louise was involved, Ben Clauss at Merrill Lynch, and Amanda, who was his administrative assistant. They were all still involved. But at that point, Martha Louise's office starting taking over the bill-pay. And someone in her office started handling that for her.

Q. And Jonathan testified that as far as he knew no one had check-signing authority and, instead, they would maybe monthly get the bills, write the checks, and take 'em back and Mrs. Shoemaker would sign the checks and out they went. Do you know about any of that?

A. I don't know for sure. I think some of that happened, but I think some of the bills were automatically paid.

Q. Drafted.

A. Right. So I'm sure she signed some checkd, but I think some were automatically drafted.

Q. And would the same situation ---and I'm gonna ask you about this in a minute--- but it just carried on with the same setup after Shoe died, which would be: regular distributions from his IRA into an account that was available to Mrs. Shoemaker until her death.

A. Yes. I think that's correct.

Q. And I really don't know the answer. So at his death, he had a $700,000 interest at the Cascades. And I guess it was an undivided --- tell ---

A. Yes.

Q. What happened to that money on his death?

A. Well, it's a promissory note. You don't buy the cottage but they give you a note.

Q. Uh-huh.

A. And so at his death he --- the note went to Polly, because she was still living in the house. And then at her death the property was vacated. And then when the new resident moved in, then the note was paid off, to her estate. Does that make sense.

Q. That's right. So it didn't --- I got confused when it said guaranteed minimum...they had a joint one-half interest.

A. Right. Right.

Q. And I don't remember from law school days what that means. But in practical terms, it went, on his death, to Mrs. Shoemaker.

A. That's right. They were on the note together. I guess you would describe it as joint with right of survivorship. So it went from him to her. Because she continued to live there.

Q. And lived there until her death.

A. That's correct.

Q. All right. And then on her death, it went into her estate. The seven hundred thousand.

A. That's correct.

Q. All right. And he had a car that I believe he left to Sloan.

A. Uh-huh.

Q. Do you know that?

A. Yes. A Bronco, maybe, if I'm remembering?
Q. A Yukon?
A. Yukon. That's it.
Q. All right. So that gets us, then, to he had a brokerage account.
A. Yes.
Q. And when these were given in October of '19, the value was two-point-eight million dollars. What happened to that account on his death?
A. So that account was transferred --- well, that account was in his...I'm trying to remember...that account was in his Revocable Trust before he died, to minimize probate. That was a CMA account, an investment account. It wasn't actually in his name, it was in the name of his Revocable Trust.
Q. I see. So it was already in his Trust.
A. His Revocable Trust.
Q. Right.
A. And pursuant to the terms of the Revocable Trust, that account, or those assets, were to be put into what we called the Exemption Trust, for Polly. And I believe that a significant part of that account was actually dropped down, so to speak, to the Exemption Trust. But not all of it, because we were waiting for paying final bills and expenses, and then the litigation came so we kind of stopped. So that account is

sort of broken up between Shoe's Revocable Trust, still, and then there's an Exemption Trust. Does that make sense?

Q. Well, ---

A. Sort of?

Q. Let me ask this and then maybe it'll make sense. But is the Exemption Trust sort of for Mrs. Shoemaker's...to take care of her until her death?

A. Yes. Yes. And it was also to use a portion of his federal estate tax exemption, is why we call it an exemption trust. But it was a trust for her, for her lifetime.

Q. To keep her in the style to which she was accustomed.

A. That's right. That's right.

Q. So probably the bulk of that is in his Revocable Trust.

A. The bulk of the account?

Q. The bulk of the account.

A. Well, it's either in the Revocable Trust or the Exemption Trust. Now, remember, too, that there were some specific bequests in Shoe's plan that had to be funded.

Q. The church, UVA ---

A. Well, that came ---

Q. Is that not what you're talking about?

A. Those might've come from his IRA, I can't remember. He had bequests to Peter and Mary, of two-fifty each. And then

he had bequests to his brother and his sister. So that was...seven hundred thousand, maybe? Something like that. But those bequests were taken care of and satisfied.

Q. All right. So the two hundred and fifty to his grandchildren Peter and Mary has been satisfied?

A. Yes. That was done pretty early on, yes. And his brother and sister.

Q. And, you're right, then his pledge to Christ Church, and I believe UVA, was in his Revocable Trust --- to be satisfied out of the trust.

A. I think it maybe came from his IRA, but I could be wrong. We'd have to look at the beneficiary designations. It may be in the Revocable Trust, I don't know.

Q. Well, that's where I'm headed.

A. Okay. It's a lot to remember.

Q. He had an IRA account with a value of seven-point-three million.

A. Uh-huh.

Q. And as I read these documents, he --- and I do wanna ask you --- but, anyway, it was left to Mrs. Shoemaker; and in the alternative that Mrs. Shoemaker were to die first, then to Sloan and Jonathan. Or they were secondary ---

A. Yes.

Q. My question is: Because Shoe died first, the seven-point-three went to Mrs. Shoemaker ---

A. Yes.

Q. --- and is now in her trust?

A. It is in --- well, it was transferred. And the only thing I'm not sure of is whether there were some small pieces from the IRA that went to UVA and the church. But the bulk of it went to Polly.

Q. Because she was always the ---

A. Primary beneficiary.

Q. --- primary --- thank you.

A. Right. Primary beneficiary. And so after his death, that IRA was rolled over to an IRA at Merrill Lynch for Polly. So that she would then continue to take her required minimum distributions.

Q. Uh-huh.

A. Right.

Q. Well, just to be... I don't think... She couldn't spend --- probably Mr. and Mrs. Shoemaker couldn't spend their required minimum distribution. What happens if they got six hundred thousand annually and spent half of it. What would happen to the other half? I'm showing my ignorance by asking that question.

A. No. I mean, I don't know what they did with all of their money, obviously. I mean, they did some gifting, obviously. They probably did some charitable --- I don't know what their cash flow and their expenses were. That wasn't

something that I kept up with.

Q. I understand.

A. But if there was extra, I assume it would have gone into their CMA account at Merrill Lynch. Because they kept everything under that umbrella. So I would think that any extra that they didn't need or choose to do something with would have just stayed in there. Does that answer your question?

Q. It does. And I guess what I need to make sure I'm clear on is: That is still being managed now --- it's still being managed by Merrill Lynch, what was Shoe's IRA account.

A. No. So Shoe's IRA moved to Polly after his death.

Q. Yeah.

A. And she had an IRA. She designated beneficiaries for her IRA. And those beneficiaries were Jonathan and Sloan. I don't think any charities. I can't remember right now. And so, after her death, the IRA was disbursed pursuant to her beneficiary designations.

Q. When did she change --- was it set up that way --- when was it set up so that those were her two beneficiaries?

A. All of that was set up in June of '18 when they did their overall estate plan.

Q. Before Mr. Shoemaker died ---

A. Yes.

Q. --- in July.

A. Yes.

Q. Got it. But the point is, the seven-point-whatever went into Mrs. Shoemaker's...trust?

A. No. It just went on her side --- to her balance sheet.

Q. So then it would be ---and I just don't have those documents yet--- she set up an IRA --- she designated her beneficiaries of her IRA account on these Merrill Lynch forms ---

A. Yes.

Q. --- that have been produced in Shoe's case.

A. Yes.

Q. Again, all of that was done in June of '18.

A. Yes.

Q. Okay. I got it. Did she have an IRA account prior to Shoe's death?

A. I don't believe so. I don't believe so.

Q. I believe the discovery responses are due maybe the end of this month. But what assets did she have, other than Mr. Shoemaker's IRA?

A. She had her own CMA account at Merrill Lynch, with her own investments and... I'm struggling to try to remember amounts. It was roughly the same as Shoe's CMA account in size.

Q. Okay.

A. So she had between two and three million dollars in a CMA account at Merrill Lynch in her ---

Q. Name.

A. --- her name, or her trust. Her Revocable Trust name. She had some interest in a couple of partnerships that had some value but not significant. And then she had this joint account with him at the Community Bank. I think that's the bulk of it.

Q. Two questions: Did ever any of Mrs. Shoemaker's money find its way into Shoe's IRA account?

A. I'm not sure what you're asking.

Q. Yeah. Just, it's striking that Shoe's IRA has a value of seven million dollars. Even assuming he was a very, very successful lawyer. At least to me.

A. You mean it was big, or not big?

Q. Big.

A. Oh.

MR. HAYNSWORTH: Maybe we need to have the Turner Padget/Wyche lawyer comparison.

MR. BLINCOW: Well, maybe so.

Q. So I was just... And I get that this was over a long career, and I get it was a very successful career. And I guess I just wanna make sure ---and I guess it really doesn't matter--- but was any of Mrs. Shoemaker's money used as seed money for that?

A. No. No.

Q. Okay.

A. We had a very generous profit-sharing plan at the Wyche Firm that started probably in the '70s. And we also had an investment advisor that did extraordinarily well. And so Shoe actually, when he decided to move his profit-sharing from there, from the firm, to an IRA, he actually moved to a more conservative mix at that time. And, you know, had he not done that, it might've been even more. But it was remarkable. It was a remarkable thing for some of those older lawyers who worked there and enjoyed the really incredible decades.

Q. See, Knox and I --- we can go off the record for a second.

(Off Record Discussion)

Mr. Blincow Resuming:

Q. In round terms, Mrs. Shoemaker had a CMA account.

A. Uh-huh.

Q. And it would be worth approximately --- if Mr. Shoemaker's brokerage account was two-point-something, do you think that Mrs. Shoemaker's was in that ---

A. Comparable. Uh-huh. Very much.

Q. Now, as I understand it, Mr. Ned Sloan just passed away.

A. Uh-huh.

Q. Were there any assets that belonged to Mrs.

Shoemaker that were at his house that needed to be done something with?

A. Yes. Yes.

Q. Tell me about that, please.

A. That's the secretary. I think it's called an Elf, or an Elfe, E-l-f-e. Well, I know a lot of the history of it. But it's a family --- it was a family piece. It was a large secretary that was built by a famous Charlestonian furniture-maker. And Polly's mother acquired it at some point and it was in Polly and Shoe's house. And they had all the history of it, and spoke about it. It was a beautiful piece of furniture. When we were closing up their home at the Cascades after Mrs. Shoemaker died ---

Q. Oh, it was at the Cascades?

A. It was at the Cascades. Absolutely. It was there in the living room. It was beautiful. And after she died and we had to move out of the Cascades ---and there was some pressure to move out as quickly as we could--- we were ready to put it in storage. And Ned approached...I think he actually approached Sloan, maybe, and mentioned that that piece of furniture had great sentimental attachment to him, he cared about it, and it would please him very much if he could keep it at his home. And so we all talked ---Jonathan, Sloan and I, and also Ned's son John, who's a lovely fella--- and we decided that it would be a nice thing to loan it to Ned. And we did a

loan agreement, and it was transported to Ned's house, and he took great care of it and was very proud of it and enjoyed it. And then after his recent death we did collect it and it is in storage.

Q. Got it.

A. Does that help?

Q. Yeah. 'Cause something had to happen to it here recently.

A. Yes. And I think that was done last Friday, if I'm remembering correct.

Q. So on Shoe's death, the seven-point-three went to Mrs. Shoemaker and into her Revocable Trust.

MR. HAYNSWORTH: The seven-point-three ---

Q. No, no, no, no. Excuse me. Let me start --- I apologize.

Upon Shoe's death, the seven-point-three IRA account went to Mrs. Shoemaker.

A. Correct.

Q. And on her death it went into her Revocable Trust.

A. No. Her beneficiary designation for her IRA was Jonathan and Sloan.

Q. And do I understand your testimony that she did not have an IRA designation before the June '18 designations?

A. She would not have, because she didn't have an IRA. The IRA was Shoe's, so he had beneficiary designations for his

IRA.

Q. Right.

A. But she didn't have an IRA until he died and it rolled over to her, and then she put a beneficiary designation on it.

Q. And that was done --- coincided with the new Will and Trust in June of '18.

A. Yes. I believe it was the week after they executed theirs Wills and Trusts with me. The Merrill Lynch ---I'm gonna say Merrill Lynch folks; I don't know if it was Ben Clauss or Amanda--- they went out to the Cascades and that's when the beneficiary designations were completed. So it wasn't done on the day they signed, but it was within a week, I think.

Q. If that beneficiary designations of her IRA account had not occurred, what would happen to the seven-point-three that became hers on Shoe's death?

A. You mean if she had not filled out any beneficiary designation?

Q. In late or mid June of '18.

A. I think that by the IRA contract itself, in the absence of any beneficiary designation, it goes into that person's estate. So through their Will. That's typically what happens, and I think that's what would have happened in her case.

Q. Would have passed into --- would have gone into the

estate.

A. Into her estate, that's right.

Q. Okay. Did she have ---and we're gonna tick through it in just a minute--- did she have a Will and Trust prior to June of '18?

A. Uh-huh.

Q. Okay.

A. Sure.

Q. All right. I think I understand.

A. It's a lot of... Well, I have to...in my mind, I see buckets. And if you think about when someone dies there are buckets of assets: there's IRA, there's a joint account, there's a revocable --- you know. And I have to actually visualize the buckets to keep it straight.

Q. Uh-huh. And as we've discussed, the Irrevocable Trust was funded by a life insurance policy.

A. Uh-huh.

Q. The bulk of Mr. Shoemaker's that went into his Revocable Trust would be his brokerage account.

A. That's right. That's right.

Q. And the IRA passed pursuant to the designations that he gave ---

A. Exactly.

Q. --- prior to his death.

A. Exactly.

Q. Okay.

MR. BLINCOW: All right, we're gonna take a little break. We're gonna take five minutes.

(BREAK)

Mr. Blincow Resuming:

Q. We're back on the record, Ms. Moore.

And I've gotten an earlier ---actually before I was involved in the case--- some discovery responses. Information that Marshall had been provided. And it says, "Copy of policy," and then it has a policy number. That would be the life insurance policy ---

A. Yes.

Q. --- four-point-nine million?

A. Yes. John Hancock, I believe.

Q. And then there is a June 2015 Will and Trust; correct? And I can show you...

A. Yes.

Q. That --- well, we can start there. In Mr. Shoemaker's Will of that date, June 2015, how was his estate set up?

A. Well, his Will left household goods to Polly but his probate assets he left to his Revocable Trust.

Q. Okay. So beyond household furniture, and silver, and what not, the bulk of his assets went into his Revocable Trust.

A. Yes.
Q. Dated also June of 2015.
A. That's correct.
Q. And how was that set up?
A. How as that set up? Again, household ---I'm just running through it quickly--- household goods obviously to Polly. Any vacation residence, and then any interest at the Cascades, to Polly. And then the specific bequests to his brother and sister. And then the balance of his estate went in, potentially, two pots: one pot was the Exemption Trust, which would have been funded with his estate tax exemption amount; and then any excess ---and there wouldn't have been, I don't think--- would have gone into the Marital Trust. And it's a formula to use estate tax exemption but then defer any estate tax on the excess. But given what was flowing at the time and what he had, the Marital Trust would not have been created. So he would fund the Exemption Trust for Polly. It was for her during her lifetime and then, at her death, or if he predeceased her, it was going a third, a third, a third. Which is, I think, what you're asking.
Q. It is, yeah. And, again, the Exemption Trust business is just to minimize tax liability.
A. Estate tax. Yes.
Q. Okay. So as of June of 2015, the estate plan, his Will essentially, provided that everything went into his, as

you explained, two trusts.

A. Right.

Q. And the trusts were set up for the benefit of Mrs. Shoemaker for her life, and then to his three sons in equal shares.

A. That's correct.

Q. Then ---and I'm just gonna stick with the way this is organized--- then there's a First Amendment in February of '18 to the Revocable Trust. And what changes were made by virtue of the First Amendment to the Trust?

A. I would describe this as short of a technical tax provision that amended the Exemption Trust. The reason we amended the Exemption Trust was so that we could decide, at Shoe's death, if we wanted it to use his estate tax exemption or if we wanted it, instead, to qualify for a marital deduction. The language in the 2015 trust did not let us go either way. The amendment would have allowed us to go either way. And the reason we wanted to be able to go either way was that by 2018 the exemption, federal estate tax exemption levels, had gotten so large and so high that a lot of planners were really not interested so much in using the exemption; they were really more interested in getting the marital deduction so we could get a step up in basis in the assets when the surviving spouse died. So this was a technical provision to sort of adjust the Exemption Trust so that we could go either

way at Shoe's death.

Q. And maximize --- or minimize his tax liability.

A. Either minimize estate tax liability or preserve a step up in basis at Polly's death.

Q. That First Amendment made no change to the ultimate beneficiaries.

A. That's correct, it did not.

Q. Which were the three sons.

A. That's correct.

Q. Okay. Then we have a December 16 Restatement. Tell me, please --- and you may need a minute to...

A. (Reviewing document) I'm confused. Oh, okay. So I think that the --- I think that the Restatement is actually in between these two.

Q. Well, you just tell me ---

A. What it means?

Q. Yeah. And I would prefer to go in chronological order. You just tell me the significance.

A. Well, we've got the '15 Trust.

Q. Right.

A. Then we've got the Restatement of the '16 Trust. The amendment was done in 2018 and it references the 2016. So I think that the --- does that make sense?

Q. No.

A. See?

(Ms. Moore and Mr. Blincow reviewing documents)

Q. Amendment.

A. That references the 2016 trust.

Q. Okay. Well, you're right. And, again, the 2018 was a technical ---

A. Technical. Right. That's right.

Q. All right.

A. Now, what you're gonna ask me is, what are the differences between the '15 and '16?

Q. Yes, ma'am.

A. Let me look, if you don't mind. (Reviewing document) So, by that time, they had sold Lake Toxaway. So there's no reference to Polly getting a vacation home.

Q. And just while you mention that, because I saw it in some of the tax records.

A. Uh-huh.

Q. They had a condominium at Lake Toxaway?

A. They did.

Q. And that was sold approximately when? Before 2018.

A. Uh-huh. Probably sometime between '15 and '16 would be my guess. Because it's not referenced in the ---

Q. And so the proceeds from the sale of that property went where?

A. I don't know.

Q. Okay. I gather it was --- was it a substantial...

A. Well, I don't remember. I don't recall it being --- it was a --- I don't recall it being a significant sale. And I do remember that he tried for quite a while to sell it.

Q. I see.

A. It was a little slow to move. And he wanted to --- they wanted to --- they weren't gonna go there anymore. So it wasn't a huge...

Q. ...impact one way or the other.

A. I don't think so. I mean, huge is relative, but yes.

Q. And if this was between '15 and '18, what was driving that decision was, they weren't using it any longer, or were getting...

A. I went there one time. I think it was even three storeys. It was a lot of stairs, and it was not something that they were comfortable doing.

Q. All right. So the provision with regard to the Lake Toxaway property ---

A. Is gone.

Q. ---- is not in the restated ---

A. That's right. The same bequest to his brother and sister. Then it looks like there was an addition of a bequest, if Polly predeceased, to Deborah Wine, who was their long-time employee. And then it looks like we still had the Marital Trust in the Exemption Trust. And I assume you don't wamt me

to read this word-for-word ---

A. No.

Q. --- but just give you the gist of it?

A. Correct.

Q. We still had the Exemption Trust and the Marital Trust. We still had a third, a third, a third in that one, which is, I think, what you're asking about for the most part. And that may be where we had...let me look. Yes, that's where we had some change in the fiduciaries.

Q. All right, tell me about that.

A. Okay. So in 2015 ---this is Page 30 of 2015--- and then the next one is --- Item 15 of both documents.

Q. Okay.

A. So in the prior one he named Polly and me to manage his trusts during his lifetime. So, in other words, if he had become incapacitated, Polly and I were to manage his trusts. Then upon his death, he appointed Polly and Merrill Lynch as trustees.

Q. What was driving that decision?

A. Well, he had --- all through the years, he had a lot of confidence in Merrill Lynch. So he had them named as trustee, to help Polly after he was gone. That's 2015.

Q. Yeah. But if I'm understanding you, Mrs. Shoemaker was removed as a trustee.

A. No, she was a co- with Merrill Lynch. I was out of

the equation. And then she and Merrill Lynch would have managed those trusts together.

Q. Right.

A. And then in 2016, that's when he named Polly and me to be co-trustees and Merrill Lynch was removed.

Q. Sorry. In '15 the co-trustees were Merrill Lynch and Mrs. Shoemaker.

A. Yes.

Q. And the revised trust was you ---

A. Polly and me. Uh-huh. He took Merrill Lynch out. That's right.

Q. And do you know why that change was made?

A. Well, I think that he...I think he really liked Ben Clauss and the investment folks at Merrill Lynch. But I think he came to the realization that they wouldn't actually be the people who would be administering the trust. It would be an arm of Merrill Lynch that Polly would be dealing with.

Q. Yeah.

A. And I think he decided that he felt like Polly would be more comfortable working with me and using Merrill Lynch for investments.

Q. Sure. So likely, maybe, not even anybody from Greenville would be managing that.

A. That's right. That's right. And then the amendment was to the 2016.

Q. And that was, as you described it, a technical amendment.

A. Yes.

Q. All right. Those were the Will and Trust documents that were produced to Marshall early on. What happened after '18...yeah, February...

A. Wait a minute. (Reviewing documents)

Q. There it is.

A. February.

Q. Yeah. What happened after --- so in February '18 there were three ultimate --- three beneficiaries: the three sons.

A. That's correct.

Q. When is the next change of any sort to his estate documents?

A. That would have been June, when he signed the Restatement of his Trust.

Q. And as I understand it, you would have drafted those documents. The June '18 documents.

A. That's correct.

Q. But you were not involved in witnessing the signatures and so forth of Mr. and Mrs. Shoemaker. Is that right?

A. To their documents?

Q. Yes, ma'am.

A. Yes, I was.
Q. You went to --- that was at their house?
A. Yes.
Q. Do you remember what --- tell me about that. What do you recall?
A. The actual execution?
Q. Yeah.
MR. HAYNSWORTH: Of the changes in June of '18.
MR. BLINCOW: That's right.
MR. HAYNSWORTH: Just making sure I'm chronologically with y'all.
A. So it was --- I believe it was a Sunday afternoon. I had arranged it with Shoe and Polly in advance. We'd had some conversations about it. I asked Amos Workman and Carl Muller to be witnesses. And so we all met at the Cascades. As I remember, it was the 24th, and I think it was a Sunday afternoon.
Q. Okay. And it was in the afternoon?
A. I think it was late afternoon, yes. Sort of a Sunday afternoon, it was a good time for everybody to sort of get there.
Q. How was it decided to ask Mr. Workman and Mr. Muller to be witnesses? Did they live nearby? Or what was the...
A. So in the week or so before, I had a meeting with

Shoe and Polly at the Cascades and we talked about the draft documents that I had prepared. And we talked about the execution of it and how we would do that. And I suggested that since I was named in the Will as a fiduciary, while that's not disqualifying, I thought it would be better if we had two other independent people. And we didn't really want to ask --- well, at that time they didn't have a regular caregiver. But we didn't wanna ask somebody --- he was under hospice, of course, but we didn't wanna ask a caregiver or anything. So I suggested, or Shoe suggested ---I don't remember who suggested--- that we ask Amos and Carl. He knew them well; they were at the Wyche Firm. And I knew that Carl was very fond of Shoe and Polly, so I just thought that would be good and I lined them up. He thought that was great, and I lined them up.

Q. No aspect of that witnessing those signatures was videotaped; is that right?

A. No.

Q. Or recorded in any sort of way?

A. No.

Q. And you recall it being in the afternoon.

A. Uh-huh.

Q. And was Mr. Shoemaker up and dressed, or was he in bed?

A. No, he was up and dressed. We sat at the dining

room table. He sat at the head. I think I sat to his right and Polly sat next to me. And then Amos and Carl were across.

Q. Okay.

A. We sat at the dining room table. He was dressed. He had his oxygen, but he was dressed.

Q. All right. Let me back up. You mentioned that there was a meeting a week or so before. Or maybe it was --- was it a meeting or phone call, where you talked about "We've gotta get these" --- you had drafted the documents and they needed to be signed?

A. There were a couple of phone calls and a meeting. Do you want me to ---

Q. Yeah, what I --- right.

A. --- start at my first ---

Q. That's right.

A. --- interaction?

Q. And what prompted that call.

A. Okay. So about a week before the 24th, give or take, I had a phone call with Shoe. He called me. I was at the office. And he said that he wanted to make some changes to his estate plan. And he said that he was --- he wanted to remove Marshall from his estate plan.

Q. Prior to that call, when's the last time you would have seen Mr. Shoemaker?

A. Oh, probably...I probably would have seen him within

--- I would have talked to him or seen him within the prior month, probably. Just to casually have a phone call with him.

Q. Like a social call?

A. Uh-huh. Yeah. Just checking in. He had stopped going out to lunch, so I didn't meet him for lunch anymore at Pete's. But we would have a phone call, you know, every six weeks or so. So I had probably talked to him.

Q. So he called you.

A. He called me. And he said that he wanted to change his estate plan. And he said that he had...and I think these were his exact words...he'd had it with Marshall. He described to me the upset over Peter's graduation, and Sloan being dis-invited to Peter's graduation. And he talked about how that had upset him very much, it had upset Polly, and he was kinda done. So we talked a while. And, you know, I asked him some questions, just for clarification. I asked him about Peter and Mary. And I asked him about the other specific bequests. So he told me he wanted to do something, both of them would wanna do something for Peter and Mary, they loved Peter and Mary very much, but that he wanted to take Marshall out. And he said to me that Polly was in total agreement. That's what he said to me.

So I started the drafting. And I will say this: He was very calm. He was decisive and he was calm about it. He wasn't...I mean, he was upset and sad, but he wasn't emotional.

So I started working on some drafts. And the next day I talked with him again. And I think I called him. And he, you know, reiterated what he wanted to do. And I told him that I would have some drafts ready pretty soon.

Q. So you called him probably a day or so later.

A. I think it was the next day. And we talked again, and he was still very clear on what he wanted to do. And I told him I had some drafts that were underway. And so then I told him that I wanted to come out and bring the drafts to them. So I went out maybe two days later, three days later, and I took them both drafts of the new documents. And we sat in the den. Polly was there. And I went through those documents with both of them. And we talked about it and they were clear that that's what they wanted to do. And I felt good that they had expressed their wishes to me. So at that meeting, that's when we talked about how we would execute it, and when we would execute it, and what we would do. So it was sort of two phone calls that I remember and a meeting before we actually met on the 24th.

Q. Got it. And you mentioned that they loved their grandchildren, Peter and Mary. So is that why the provision for the two hundred and fifty thousand ---

A. Yes.

Q. --- for each grandchild?

A. Yes.

Q. Were you ever aware of any other reason, other than the upset with regard to Peter's graduation and the e-mails which we have, was there ever --- did Mr. Shoemaker ever say anything other than that, that was driving this change?

A. Well, I think that the episode with Sloan and Peter's graduation was more like the straw that broke the camel's back. I think there were a number of incidents, or upsets, in the family for years that had sort of led up to that.

He was unhappy and upset when the police detective got involved. And I can't remember if that was earlier in the year or not. But he talked to me about that when that happened. Because I got --- Cary Hall, at the office, I think got that e-mail. Cary reached out to me. I called Shoe. I wrote the detective. So he was upset about that. That was very embarrassing to him. So that was a situation. You know. I was aware of the management of Marshall's trust back in the '90s, and he felt like Marshall had sued him, or threatened to sue him. You know. He remembered all those things. And he told me about those things over the years.

Q. But there was also no question that up until a week or so before the documents were executed, Marshall was a beneficiary.

A. That's correct.

Q. And with respect to any reason that he gave when he

called you in June, the only thing he ever mentioned was this upset regarding the graduation.

A. That was the final, precipitating thing.

Q. Okay.

A. As I say, I think he said, "I've had it."

Q. One thing that came up --- I'm gonna switch gears on you or I'll forget it.

A. Sure.

Q. What came up yesterday was a meeting ---and Jonathan seemed to recall it being maybe a couple of years earlier--- where Mr. Shoemaker --- Jonathan testified that you were there and there was a discussion of his estate plan.

A. Yes.

Q. Do you recall that?

A. Uh-huh.

Q. All right. Tell me what you can remember about that, please.

A. Well, I think it was a couple of years. And it was a meeting at my office. And I think Shoe wanted Sloan and Jonathan to have a better sense of his plans and also the people involved who were gonna be there to help Polly. By then he'd had his diagnosis and I think he was thinking ahead to making sure that they understood the plans he had made to provide for Polly.

Q. Right.

A. So we had a meeting at my office when they were in town.

Q. Both boys.

A. Both boys. And he did not want Marshall present. Polly didn't, either. They didn't want Marshall to participate in that meeting. But in that meeting, we talked about the estate plan, we talked about Merrill Lynch.

Q. And the estate plan at that point was: everything to Polly for her life and then to the three boys.

A. That's correct.

Q. And there was, I believe, a discussion of the value of the estate.

A. I think so, yes. There was some. Generally, anyway, yes.

Q. Okay. Did you see Mr. Shoemaker following that Sunday afternoon meeting? Did you have an occasion to visit him?

A. I did. I did. When we were working through the documents on the 24th, and going through things, and getting everything executed. I had prepared a memo for personal property. And Polly was reading that and wanted to make a change to it. And I can't remember what the change was, but it was something about the household goods or the jewelry or something. And she was reading it as we were going through these documents. And she asked me to make a change to it. She

wanted to make a change to that memo. And I said, "Absolutely." So I don't think we signed that memo that day. I brought it back to the office and corrected it, made it the way she wanted, and then I went back out to their house...a week later, maybe?...and they signed that memo. And I don't know, there may be a date on that memo. But that's the last time that I remember seeing him.

Q. Now, when you say a memo, it would be like an exhibit to the Will?

MR. HAYNSWORTH: It's a one-pager ---

A. It's called "Memo for Personal Property."

MR. HAYNSWORTH: I think it's one of the exhibits from Marshall's deposition.

A. It may be. And it talks about how she wanted Sloan and Jonathan to sort of take picks on the art, and that kinda thing. But she was reading that as we were going through the documents and said, "I wanna change that." So then I went back and visited with them. In the meantime, I think Shoe had changed his beneficiary designation for his IRA during that interim. And at that visit with them, when I went out there, Marshall, in the interim, had come up to visit. Because they told me about that.

Q. And what did they tell you about that?

A. They said that --- well, Shoe said that Marshall made an unexpected visit, and that he didn't want to see

Marshall. And so he said he went back to the bedroom. And Polly, I think, visited briefly with Marshall. And she said that she went back to Shoe's room to make sure that he didn't wanna see Marshall. And he didn't. So she came out and she said that she told Marshall that Shoe didn't wanna see him. And she commented that that was an uncomfortable conversation, but that's what Shoe wanted.

Q. And at that point, Marshall left.

A. Yes, I think that's correct. But that happened in between when they had signed their documents and I went back.

Q. Would --- and you weren't there for any of that visit. You weren't there, they told you about it.

A. That's right. They relayed that to me.

Q. Would the change in the IRA designation have been done by mail?

A. I don't believe so. I believe that Ben Clauss, or Amanda Wood, or someone from Merrill Lynch, physically took it out there. I believe. But I can't say that with a hundred percent certainty.

Q. Do those designations have to be re-upped annually? In other words, it looks like in the documents that have been produced there are a number of times where he's affirming his IRA --- his beneficiaries to his IRA. Do you know if that has to be done annually?

A. I don't think it does.

Q. Do you know why there would be four or five or six of 'em?

A. I would assume that if they're being done, there are some slight changes. But I don't know. I'd have to look at them to compare. But I don't think you have to re-up them.

Q. There's no question that it was the week after the new Will and Trust were signed that the first IRA designation was signed in which Marshall was not a beneficiary.

MR. HAYNSWORTH: Object to form.

Q. You can go --- does that ---

A. No, just say that again. Sorry. I got distracted.

Q. IRA designations, all the way up until June of '18, listed Marshall as a beneficiary?

A. I don't think that's correct. I think that going back in history there were times when it wasn't a third, a third, a third. But in '15 or '16, it was a third.

Q. Okay.

A. But it wasn't always a third.

Q. All right. Do you know --- and I can just show you. There was a Codicil to Mr. Shoemaker's Will in 1994. And I can hand you that. (Providing document to the witness) Does that... What can you recall about that period of time? If anything.

A. Well, that was a time when they were not on good terms at all. So Shoe wanted to take him out of the estate

plan.

Q. In 1994.

A. In 1994, yes.

Q. Back into the estate plan in 1996. And that destroyed the Codicil?

A. Yeah, that looks like that's right. That's correct.

Q. And do you know what was driving the decision in 1994? Or would that be something you don't know?

A. I believe that this is around the time of the controversy and conflict over the trust that Polly's father had created. I think that's sort of around that time.

Q. And it was a leased property, maybe a gas station or something?

A. Yes.

Q. And that was between '94 and '96. Are you aware of any other times that Marshall was not a one-third beneficiary in his dad's estate?

A. I do. There was a period where the estate plan tracked the insurance trust. In other words, it was a sixth to a trust for Peter and Mary, and a sixth to a trust for Marshall that was more restrictive.

Q. And I asked you earlier if you ever saw a letter that Mr. Shoemaker had written explaining why he had set it up that way. Do you recall that?

A. I do remember getting that letter.

Q. And the point of that letter was that, because Marshall was having some difficulty in his marriage, it was set up one sixth/one sixth, and in later years, if he could have set it up differently, he would have done so.

A. Yes. I mean, I remember that letter.

Q. Well, how would you have, if you wrote it --- and it's a handwritten letter on Wyche letterhead. Did he give you a copy of it?

A. I think he did. I think he did. He was good about keeping up with paperwork. And he would send me a financial statement every year. Not in the '90s, but in the 2000s. And, certainly, when I was over at my own firm, he would send me a financial every year, he'd send me information if he had an appraisal done. So he sort of kept me in the loop on those things.

Q. Approximately when would he have gone from a Wyche-managed retirement account to a Merrill Lynch?

A. I don't...

Q. Years and years and years ago.

A. No. No, not years. Well, I would say probably ten to fifteen years ago. He moved from the profit-sharing at the Wyche Firm to an IRA that was invested. I'd say ten to fifteen years.

Q. So the sum of your testimony would be, from...let me make sure...from '96 to 2018, Marshall was a one-third

beneficiary of his dad's estate. So we have this upset over some aspect of Marshall's grandfather's estate, from '94 to '96.

A. Right.

Q. And then you told me about there were some periods of time where Mr. Shoemaker's estate plan tracked along with the Irrevocable Trust.

A. Uh-huh. Yeah. I just don't know what years that was. I don't know if that was subsequent to this or prior. I just don't remember.

Q. Okay.

A. That's why I was looking at you funny.

Q. I'm gonna hand you the first... Well, no, that's the same thing. Let me show you this, that I don't think was produced initially, and tell me what that is and what you know about it.

A. This is the Insurance Trust.

Q. I see.

A. This is the Insurance Trust.

Q. Okay.

A. So, '98.

Q. Well, so you're right.

A. Yeah.

Q. The '94 to '96 would be the first time that Marshall was treated differently.

MR. HAYNSWORTH: Object to form.

Q. In 1994, Marshall was treated differently.

A. Yes.

Q. And that ended in 1996.

MR. HAYNSWORTH: Object to form.

A. I believe so, yes, that's correct.

Q. And we think we know what prompted Marshall to be taken out in '94. What prompted him to be put back in in 1996? Do you know?

A. I don't know anything specific. My experience with being around Shoe and Polly ---particular with Shoe--- was that their relationship with Marshall ebbed and flowed. There were good times, and times when they got along okay, and then there would be upsets. They could be as simple as a phone call that wasn't pleasant. So I don't know. To me, this says that this was a time when things were going a little better and they were making an effort at trying to get along. But it changed. And those conflicts and those problems persisted, even though the Wills weren't changed.

Q. I understand that.

A. Right.

Q. But if we look at from the start to the finish, there were two times when Marshall wasn't --- well, let's say there were three times when Marshall was not treated similarly to his two brothers,

MR. HAYNSWORTH: Object to form.

Q. The first in 1994, which ended in 1996. Correct?

A. Yes, I think so, but I can't remember earlier than '94. You know. And there was a time when I wasn't involved.

Q. You're not aware of any time from his first Will, or Trust... Well, the only times that you're aware would be from '94 to '96, and then I believe you just mentioned in 1998 was when the trust was changed to track along with the Irrevocable Trust.

A. That's my recollection, yes.

Q. And you've seen the letter where Mr. Shoemaker explains that "the only reason I'm doing this is because..." or, "if I had to do it again, I would just do one third, one third, one third," in his letter.

A. I've seen that, yes.

Q. How was the trust changed...I guess, would it be the 2018 document that'd be the change from the one third to one sixth/one sixth. Is that right? Does that make any sense at all? In other words, after 1996 he's a one-third beneficiary.

A. Yes.

Q. And then you've told me that there was a period of time where the Revocable Trust was patterned after the Irrevocable Trust.

A. Uh-huh.

Q. Did that ever change until the 2018 documents that

we've discussed?

A. Probably. Probably. But I don't remember specifics.

Q. And you wouldn't be able to remember when or what drove that decision.

A. No.

Q. Just that it was made.

A. Uh-huh. I think there were changes made periodically over the years.

Q. All right. What did you know of Mr. Shoemaker's medical condition?

A. I knew that he had a very serious pulmonary disease. He described it as terminal. He was very open and frank about it when he was diagnosed.

Q. And was he ever a cigarette smoker?

A. He was, I believe, in the '80s or so. When I met him in 1988 he had given up smoking. I think he quit cold-turkey. But he had smoked.

Q. And, approximately, when was he first diagnosed? I'm just trying to get a sense of your understanding.

A. Yeah. I'm not good at that. I'm gonna say about five years prior to this death, something like that. And he was very open about it. And at peace about it, really.

Q. He would've been retired by the time he was diagnosed?

A. Well, Wyche lawyers kind of never fully retire.
Q. We established that yesterday.
A. He was semi-retired. He would still go in. He still had an office. He still had access to a secretary. He did personal work. But I would have described it as semi-retired.
Q. Okay.
A. But not, probably, fully retired. He was still going into the office.
Q. Other than the letter that we've talked about where Mr. Shoemaker explained to Marshall why it was set up one-sixth/one sixth, are you aware of any other correspondence between Mr. Shoemaker and Marshall?
A. I don't know. I don't think so.
Q. Have you told me about the specifics of --- and I get that your testimony would be that there were years of ebb and flow.
A. Yes.
Q. And you've identified something to do with Marshall's grandfather's estate that was upsetting to his dad.
A. Uh-huh.
Q. And then the business with Peter's graduation.
A. Uh-huh.
Q. And about they were victims of a fraud.
A. Uh-huh. Calling the detective.

Q. Other than those things, are you aware of any specifics that were between the two?

A. Well, I guess this isn't specifics, but I remember a couple of times him describing that they would have a phone conversation with Marshall and Marshall would lose his temper with them, raise his voice to Polly, and that that was upsetting to them and it really hurt him and upset him that Polly would bear some of the brunt of that. So it wasn't anything specific, but I do remember a couple of times when he would say that they had had very unpleasant phone conversations.

Q. Was this back when y'all were practicing together, or ---

A. Uh-huh.

Q. --- later?

A. Probably, yes. Probably when we were practicing, yes.

Q. And you told me earlier you left Wyche in...?

A. The end of 2010.

MR. BLINCOW: Let me take a five- or ten-minute break and make sure I've got everything and I will be right back.

THE WITNESS: Okay.

(BREAK)

Mr. Blincow Resuming:

Q. We've marked as Exhibit 1 to your deposition a letter that Mr. Shoemaker wrote to Marshall in August of 2010. And we've referred to it several times. Is this the letter that you were mentioning that you had seen?

A. Yes.

Q. And as I understand it, he is writing Marshall and explaining why he has set up his life insurance trust the way he had.

A. Uh-huh.

Q. And you testified that there were times, years ago, when his Revocable Trust had the same provisions.

A. Yes. Actually, it could've been his Will at that point.

Q. Will.

A. We didn't do a Revocable Trust until kind of later.

Q. And, again --- well, two things: What he's saying is, "I've done it this way to protect you, Marshall, and your children," with respect to Marshall's marriage. He doesn't say that, but isn't it true that the reason he did what he did was because of difficulties in Marshall's marriage?

A. I think that was part of it. I also think that when he did the life insurance trust he also, wanted to be sure that Peter and Mary were taken care of and provided for. So I think it was sort of two-fold.

Q. Okay. And you would consider this a loving letter

from Mr. Shoemaker at the time.

A. Yes.

Q. Now, you mentioned that it wouldn't be terribly unusual that you would have --- after you started your firm, and after Mr. Shoemaker became at least semi-retired, that you would have lunch, maybe, at Pete's.

A. Uh-huh.

Q. How often would you say that you had those get-togethers?

A. Every couple of months we'd have lunch at Pete's, or once in a while go to the Poinsett Club. But usually it was Pete's. He liked that.

Q. And was it purely social, or was there a work component? Tell me how you would describe those lunches.

A. I think it was social. But we obviously had enough history that he would, you know, talk about the firm sometimes. Or talk about clients we had had in common, or things like that. But it wasn't work-related, it was social.

Q. Were others involved or just you two?

A. Usually just the two of us. I sort of have a recollection that Carl Muller joined us one time for lunch. Possibly my daughter joined us one time. You know, for lunch or something, if she was home from school. She was very fond of him.

Q. Have you told us the extent of your testimony with

regard to Shoe's relationship with Marshall? In other words, have I covered it all, do you think? Are there any surprises that you haven't told me about?

A. I think so. I think we've covered everything. I would say that he would frequently say, when we were doing estate planning, that Marshall would probably raise problems, have problems --- be a problem. He would say that to me periodically as we would change things. I think that was one of the reasons he didn't want him participating in that family meeting. But nothing specific.

Q. And, again, it was always the case that, while there may have been problems, other than the two times that you've explained, Marshall was a regular one-third beneficiary like his two brothers.

MR. HAYNSWORTH: Object to form.

A. I think we said three times. But, yes, that's ---

Q. And we've talked about those.

A. Yes, that's my recollection.

MR. BLINCOW: All right. I think those are all my questions. Thank you very much.

MR. HAYNSWORTH: I have no questions.

(Deposition concluded at 12:30 p.m.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) C E R T I F I C A T E

Be it known that I took the deposition of LESLEY R. MOORE;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 3 through 61 is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 10th day of December, 2020.

Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

APPEARANCES:

BLINCOW GRIFFIN LAW
126 Meeting Street
Charleston, SC 29401
BY John K. Blincow, Jr., Esquire

.....On behalf of the Petitioner

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC
106 Williams Street
Post Office Box 2464
Greenville, SC 29602
BY Knox L. Haynsworth, III, Esquire

.....On behalf of the Respondents

Also Present (via Zoom teleconferencing)

James Marshall Shoemaker, III
Jonathan Evans Shoemaker
Lesley R. Moore, Esq.

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Probate Court Rules of Civil Procedure; reading and signing of the deposition by the witness are expressly reserved.

EXHIBITS:

See Index, Page 3.

INDEX OF EXHIBITS

Petitioner's No.	Description	Entered at Page
1	Deposition Notice	11
2	DNR Order and e-mails between Jonathan Shoemaker, Sloan Shoemaker and Katya Spicuzza	14
3	Letter from Marshall to Sloan dated February 7, 2019	33
4	E-mails between Jonathan Shoemaker and Sloan Shoemaker in March 2018 Re: night nurses	38
5	E-mail exchange between Jonathan Shoemaker and Ben Clauss dated April 16, 2018, and e-mail exchange between Jonathan Shoemaker and Sloan Shoemaker dated April 14, 2018	42
6	E-mail from Sloan Shoemaker to Jonathan Shoemaker re: DNR dated April 19, 2018	44
7	E-mail exchange between Jonathan and Sloan and Katya in May 2018	45
8	E-mail exchange between Jonathan, Sloan, Marshall and Detective Palmer Re: Concerns about elder fraud with my parents" dated June 2018	52
9	Collection of various e-mails	55
10	Sloan's e-mail to Detective Palmer	59

EDWARD SLOAN SHOEMAKER, having first been duly sworn to tell the truth, testified on his oath as follows:

EXAMINATION

By Mr. Blincow:

Q. Good morning. How are you?

A. Good, John. Thank you. How are you?

Q. I'm fine. Been a long time. But I am here this morning to take your deposition. Have you ever given a deposition before?

A. Yes.

Q. Tell me about that. What were the circumstances of that?

A. Well, it had to do with my work. Suing the federal government over fucking up the land...sorry. So we took 'em to court. Won.

Q. Got it. You were not a party. It was your employer, or your company?

A. Yeah, I was the plaintiff, if you like.

Q. Any other depositions besides that one?

A. Written depositions, as a party, but no ---

Q. Same sort of thing, with regard to your work?

A. Yes.

Q. There are a few things I need to tell you that our rules require. But you understand you're under oath, you're bound by the answers you give this morning?

A. Yes.
Q. Also, you may not be able to answer a question that you don't understand. So if I ask something that you don't understand, stop me and I'll start over again, all right?
A. Okay.
Q. Also, you understand that once we start your testimony, you're not allowed to discuss it with Knox.
A. Yes.
Q. And so if you have any questions, you need to direct those to me, all right?
A. Okay.
Q. And because our rules allow only one deposition in your dad's case, will you agree to answer my questions as completely as you can?
A. Sure.
Q. Okay.
MR. BLINCOW: And, Knox, no one's objecting to the court reporter being in Greenville and the witness being in Colorado; is that right?
MR. HAYNSWORTH: That is correct. We are all staying safe and isolated.
MR. BLINCOW: There you go.
Q. And, Sloan, if you need to take a break, just let me know and we will be glad to do that. Fair enough?
A. Thanks.

Q. All right. Can you tell me where you live, please sir?

A. You want my address?

Q. Yes. Please.

A. 1071 County Road 111, Carbondale, Colorado.

Q. And I think I know the answer to this, but where is Carbondale, say, in relation to Denver?

A. It's three hours west. A landmark people are more familiar with is Aspen, and we're thirty minutes down the valley from Aspen.

Q. West. All right. And how long have you been out in Colorado?

A. Since the fall of 1984.

Q. When did you finish school?

A. Spring of 1984.

Q. Where did you go to --- all right, so you would have finished Christ Church school.

A. '79.

Q. Got it. Do you still stay in touch with any of your high school buddies?

A. Some. Yeah. Not many, frankly, but some, yeah.

Q. What would be some of the names of the guys or girls that you would be closest to?

A. Well, Al Hipp was my long-time best friend growing up. Appy Apperson, who has done a similar journey with taking

care of elder parents at Cascades. Bill Beattie some; see him when I go home. When I went home before, I haven't been there in a while.

Q. Yep.

A. Those are the top three that come to mind.

Q. Got it. Thank you. So if you finished high school in 1979, where'd you go to college?

A. Washington & Lee University. Can't remember the dates.

Q. So finished in '84 and moved out to Colorado.

A. Yes.

Q. And you're married; is that right?

A. Yes.

Q. First marriage?

A. Yes.

Q. Children?

A. Yes.

Q. How old are they?

A. Two girls, fourteen and seventeen.

Q. Looking at colleges for the older one?

A. Started the process. I think there's a desire to do some visitation this year, but, you know...weird time.

Q. And tell me about you --- what do you out there? I really don't understand, so I need you to explain it, please.

A. Well, my current job title is trophy husband.

That's tongue-in-cheek.

Q. Not bad work if you can get it.

A. Yeah, right. I retired from --- I was executive director of a non-profit conservation organization, working in this area for twenty-plus years. And I stepped away at the end of...I guess it was fall of 2017. I can't remember exactly. Stepped away because it was time to move on, I was gonna burn out, and I was ready to hand it off to the next generation who had more energy and more at stake, frankly. And also, concurrently, there was the growing need for someone to be available on a short-term basis to respond to my parents' care needs. And so my retirement addressed multiple needs.

Q. All right. And do you have a plan to get back into the workforce, or is that it?

A. Well, I don't have any concrete plans. I've been doing some writing. I was publishing a piece in the local paper for a while. Little bit of consulting here and there. Nothing too substantial. Really, right now, my wife is the working member of the family and I'm the household caretaker.

Q. Got it. Does your wife work outside the home?

A. Yeah. She has a personal coaching business.

Q. In what regard?

A. She is a life-long educator. And when we got married and started having family, she stepped away from education, and wanted to get back into that world but not in

the classroom. And so she works with --- you know, she's been working with a lot of different people: moms like herself who have been trying to get back into the workforce, coaching them on how to do that, working with teenage kids, working with parents and kids. And she's currently developing some curriculum for gap-year programs for kids. That kinda thing. It's more extensive than that, but that gives you the picture.

Q. I've just seen an e-mail, sopris --- s-o-p-r-i-s. Was that the name of the non-profit?

A. No, that's the name of a prominent geographic feature, Mount Sopris, that looms over Carbondale, and they named the internet provider after it. The Wilderness Workshop was the non-profit that I was the director of.

Q. Okay. And did that have a single issue or multiple issues that were the focus of Wilderness Workshop?

A. We focused entire on federal public lands. That means national forests or Bureau of Land Management lands. And our mission was basically to protect their ecological integrity and wild character, so that we would leave something behind, for next generations, like we found it. And so the issues we addressed were anything that was detrimental to that mission. So it was oil and gas development, we took on the oil and gas industry, logging, mining, recreational development, ski industry. And, you know, then worked with a lot of forestry colleges to address the effects of climate change on our

national forests, be they insect infestations, or wildfire, or whatever.

Q. Got it. All right. Thank you.

Since your mom passed away, have you been back to Greenville?

A. There was an initial flurry of activity after she passed away, in organizing and coordinating the management of the estate. The physical elements of the estate. And once we contracted with a person who does that professionally, I stopped going back and I haven't been back since.

Q. Okay. Now, you lost me there a little bit. Who did you contract with? I mean, what was the nature of the work that needed to be done with regard to your mom's estate?

A. Well, it's all the physical items: the house, the ---

Q. Furniture.

A. --- belongings. Yes. Furniture, clothing, you know, kitchenware, silver, jewelry. All of that stuff needed to be dealt with in an organized and fastidious manner. So it was an overwhelming task for us who don't live there, and so we contracted with a person who does it professionally. I can't think of her name. Oh, wait. Nell O'Keefe is her name. And she took care of it all, and obviously it had to go into storage, pending the outcome of this process.

Q. Right. And I believe ---well, I don't believe--- we

took Lesley Moore's deposition a couple weeks ago and there was some antique furniture that ended up at your uncle's house. Is that part of the process?

A. Yeah.

Q. Got it. Did you have a chance to see the Notice that I had sent to Knox about doing this? Well, it wasn't many days ago, but did you see the Notice that I prepared? (EX-1)

MR. HAYNSWORTH: I don't think I sent it to him, John.

Q. I can get at it this way: Have you made an effort to try to capture and produce all e-mails and correspondence that might relate to this case?

A. Yes. And you should be in possession of those.

Q. And you're satisfied you've looked where those kinda things might be?

A. Yes.

Q. All right. I know that in Marshall's case, his dad wrote him a couple of letters, handwritten letters. Did your dad ever write you similarly?

A. I received very few handwritten letters from my dad, and they usually weren't very rich with content.

Q. And let me see if I can close this door. Your mom was not an e-mailer; is that fair to say?

A. That's correct.

Q. So in terms of e-mails to and from your dad, or to

and from Jonathan, those have been produced to Knox?

A. Yes.

Q. All right. Can you tell me, have you done anything to prepare for this deposition today?

A. Other than observing Jonathan's deposition and reading the documents that were in the packet, no.

Q. Have you had a chance to read Jonathan's deposition? I think we got it one day earlier this week.

A. I have not read it, no.

Q. And when you mention a package, is that something that Knox would have sent you yesterday?

A. It was the twelve exhibits that you provided in advance of Jonathan's deposition.

Q. All right.

A. And an additional one that showed up this morning.

Q. That's right. Okay. If your dad passed away in July of '18 ---and you mentioned that it sort of fell to you to manage things, I guess--- when was the last time you visited Greenville prior to your dad passing away?

A. Prior to my dad passing away?

Q. Correct.

A. Well, I was there the day before he passed away. So I can go into details about that visit. Would you like to hear that?

Q. Let me make sure I understand and then I'll ask you.

But did you happen to leave before he passed away, or were you there the whole time?

A. I left the day before he passed. So he passed on Saturday, I left on Friday. And I had been there for two weeks prior, because he had been hospitalized and I showed up to be with him, help him, as ever I could, with him and mom. With the goal being to get him stabilized in the hospital so he could get home, frankly, to return to hospice and live out his remaining days. At the time, we thought it was weeks, if not more. Didn't know that it was days. And so I left. I think we got him home on a Monday or Tuesday of that week, and settled in, got a routine going, got the hospice all dialed in. And it seemed like everything was stable, and settled, and I told him, "I gotta go home and see my family and I'll be back and I'll see you again in a few days." And his last... Well, anyway... I left, and he said goodbye. And we didn't realize it was goodbye-goodbye.

Q. And that visit was for several days, you mentioned?

A. Two weeks.

Q. I'm sorry?

A. Two weeks.

Q. And that coincided with a hospital admission; is that right?

A. Right.

Q. Got it.

A. Can you hear me okay? Do I need to speak up.
Q. No, no, I'm good. Can you hear me?
A. Yeah, fine.
Q. I have records of an ER admission in May. were you involved in that at all?
A. For Dad?
Q. Yes.
A. I don't recall that one. Do you have any more details on that?
Q. Yeah. Look, please, at what we have marked as Exhibit 2. And I believe...well, this is from Jonathan. I believe in order to become a hospice patient you have to have this DNR status. Is that your understanding? Do Not Resuscitate?
A. You know, I don't know if it was a necessity. But it was certainly something that the doctor was a strong proponent of, for the reasons outlined in an e-mail that you have in one of the exhibits.
Q. Sloan, if you look at the third page, Marshall (sic) asks how your trip to Greenville was.
MR. HAYNSWORTH: Are you on Exhibit 2, John?
MR. BLINCOW: I'm on Exhibit 2.
(Off-record discussion regarding marking of exhibits)
(PETITIONER'S EXHIBIT NO. 2 MARKED AND ENTERED)
Q. And Jonathan asks how your trip was, and you said,

"(Mom and Dad) are pretty good. Dad gets tired but he's in good spirits. Mom is nuts but cheerful." And that would have been at the end of May. Do you see that? Does that ---

A. Yeah.

Q. Was your dad --- here's my confusion. I thought that he had had this trip to the ER and had been discharged and was home for on the order of weeks before he passed away. And then when you mentioned that you got your dad home and situated, and then he passed away shortly after, that's my confusion.

A. Yeah, I understand the confusion. There's a lot of back-and-forth. But all I can tell you is that in early July he was hospitalized with an acute respiratory distress critical event. And I think he was --- he was on hospice, and then he had this respiratory arrest event that they ended up calling 9-1-1 for, and he was scooped up and taken to the hospital, and then I showed up the next day. So I sat with him a week and then got him home, and sat with him rest of that week, and that's when I left on Friday and he died on Saturday.

Q. And you're only aware of the one --- say, from May until your dad passed away, you're only aware of the one admission.

A. That's right. That's what I can recall. I'm sorry. I mean, there were so many with Mom in and out, and Dad's comings and goings with nurses and medical providers, and falls

and stuff, that I might've overlooked one. But I don't recall one in May.

Q. Okay. And you don't recall --- do you recall leading the charge in order to get this DNR order in place? Or not so much?

A. No, I do. I recall that. I was there, went to a doctor's appointment with dad. And this is something that we had been talking about for a while. Because we knew they had a Living Will, which,, you know, basically said no extraordinary efforts to prolong life, and the details of that were --- the only thing that was spelled out was, you know, no feeding tubes, or... I think that was the extent of it. And there's a whole lot of space between feeding tubes and nothing. And I wanted them to get really clear on that so they had an understanding of what the possibilities were. And so I went to Dad's respiratory/pulmonary doctor's appointment with him and raised the question, and I asked him for advice. And that's when he described that, you know, "You guys need to have these conversations in advance while everyone's conscious, so that you're not wrestling with these awful decision in a critical moment. And talked Dad into it, he agreed, and we got the DNRs and got them posted around the house.

Q. And do you recall that about this time period, Early May, is when he first started hospice at home?

A. Yeah.

Q. And then, you're right, there was an emergency situation which led to an admission, and got discharged and came home a second time. Correct?

A. I don't know about second, but, yes, he came home.

Q. All right. Do you recall a switch in the hospice providers?

A. Yes.

Q. What was driving that decision?

A. Well, I know of one for sure. When you call EMS and you engage in the medical system outside of hospice, that cancels hospice. Because the whole point, obviously, is to not do that, and just be comfortable at home, and slip away gracefully. And so when he had that respiratory distress and they called EMS, that, you know, by definition, canceled that hospice and we got a new one arranged while he was back in the hospital so they'd be available when he got home.

Q. All right.

A. There may have been a previous one. I think there might've been three hospices and the first one we didn't like, because they were inattentive, or didn't like the attitude. That was the one he was with when he dialed 9-1-1, and then third one is the one that was with him in the end.

Q. What was driving the decision to go to a third one, or a different one, when he came back from the hospital?

A. The previous one wouldn't take him back on.

Q. I see.

A. Because he violated it. Basically, dialing 9-1-1 violates the terms of that contract, I guess. So they terminated it.

Q. But you weren't dissatisfied with the first one, it was just that they didn't want, perhaps your dad as a patient.

A. We were dissatisfied with the first one, happy with the second one. But when he went to the hospital, that canceled and we had to find a new one.

Q. Okay. So you're there in late May, and you say, "Dad gets tired but he's in good spirits." Tell me, what do you mean by that?

A. Well, his lungs were slowly losing effectiveness. And so his resting oxygen, blood oxygen saturation, was good when he was sitting still and on the oxygen. But any exertion at all caused his blood oxygen levels to plummet and he would get really tired really easily.

Q. Like, say, getting dressed in the morning? That kind of thing would be a stress?

A. Yeah. Getting dressed. Walking across the house. You know, having to deal... Anything other than sitting still was a stressor on his respiratory system.

Q. And would it exhibit itself in being short of breath? Or what was the... How would you know he was being stressed?

A. Yeah, he would pant a little bit, and move really slowly. I don't think he used a walker. But, you know, he would steady himself on the furniture as he moved around the house, that kinda thing. And he would verbally express how challenging it was and how tired he was.

Q. Right. If you look, please, at the fourth page as what we've marked as No. 2, there is an e-mail from your aunt. And I guess you got copied on it. I think she may have sent it to Jonathan but you were copied on it.

A. You know, I'm going off of the documents and the numbering for Jonathan's deposition for No. 2 doesn't correspond with that. So give me a second to find it.

Q. The first page of 2 is the DNR order.

A. Oh yeah? And there's an e-mail from Katya there? Hang on a second.

Q. And end-of-April e-mail from her.

A. (Reviewing documents on computer) Oh, there. Sorry. It was just a short one. I scrolled right by it.

Q. That's her observation, but did you notice your dad confused in this spring of '18 --- 2018?

A. No, I didn't. I didn't notice him confused. He might've been confused about my visit. Because it was pretty fluid, when I was gonna arrive, based on flight availabilities, and demands at home, and it kinda happened all of a sudden. And, you know, I don't think I was updating --- I don't know

what happened. I don't think I was updating him in real time, waiting for it to get clear on my end. So I'm as much responsible for that as he is --- his receipt of it.

Q. Did you ever talk to your aunt about what she meant by that?

A. No.

Q. All right.

A. Oh. And that particular visit, that might've been the one that was connected to the aborted visit for Peter's graduation. And so what I had planned to do was spend the weekend in Atlanta, for the graduation, and then drive up to Greenville and be with them for a couple of days. And I think I was kinda figuring those details out on the fly, and then, obviously, that kerfluffle happened with the graduation, which threw that schedule into turmoil. So, yeah, there are a lot of extenuating factors in that one.

Q. Well, I'm gonna ask you about that in just a minute. But you did not go to the graduation in Atlanta; is that right?

A. That's correct. Under threat of death.

Q. Did not go. Did you go to Greenville instead?

A. Yeah. So I had a ticket, plane ticket, and I thought, well, I might as well just use the ticket and go see Mom and Dad. So I flew to Atlanta and rented a car and spent the weekend with Mom and Dad.

Q. All right.

A. Weekend plus two days: Monday and Tuesday.

Q. But there was clearly a visit after that visit where you were there for more like two weeks.

A. Well, there are multiple more visits after that visit. I think I --- I mean, you have the schedule. I don't have it in front of me, but I think I went in early June, just by myself. And then in mid-June, maybe, went when my kids were out of school. We went as a family, really with the understanding that it was a last visit for my wife and my daughters to essentially say goodbye. So we spent three or four days there and then went down to Charleston to go to the beach.

Q. You were by yourself for this last visit where you happened to leave the day before your dad passed away. you were by yourself.

A. Yes.

Q. Did you notice, say, from May to July, did he get worse? Or was it status quo?

A. "It" being what?

Q. Yeah, sorry. His physical and mental condition.

A. His physical condition was on a precipitous decline. His mental condition was stable.

Q. You never saw him confused or anything like that?

A. Not really, no. No. In fact, I thought --- I think somewhere in the e-mails that are part of this exhibit I

remarked in January that he seemed bitter and agitated and was prone to fits of anger. But by June, he had this...I don't know, it's more of a serenity that set in. And he seemed much more at ease, and resolved to his fate, recognizing that he was spending his last days. And, so, you know, there was this equanimity that I was really kinda taken aback by, that I observed in him in June and early July. In fact, he was cracking jokes.

Q. And I just wanna --- this is my characterization of what you just said. But in a period of --- in the months prior to, say, May, June, July, he obviously had this pulmonary condition, and he might get angry, or have a temper, in the months prior to all this?

A. I can only speak to what I saw when I was there in January. There's a written record in the e-mail that, you know, he was irritable. And he and Mom were kinda sniping each other. And anyone that's been married recognizes that.

Q. Right. All right. Were you --- did you --- what was the normal plan, how often would you get Greenville to visit your parents? Or did they ever come out to visit you, or did y'all go to the beach for a week in the summertime, or vacation together? What was the typical deal with that?

A. How far back do you wanna go?

Q. Just the last couple of years.

A. No, they didn't --- I'm up at six thousand feet.

There's not as much oxygen here. When Dad was diagnosed with his condition, they gave him three to five years to live, and they advised that he minimize his exposure to other people by not flying. And it was painfully clear that putting himself in a challenging respiratory environment like 6,000-foot elevation was not a good thing to do. So he said, you know, that the visits were over. And I think the two of them came when the girls were littler. I don't know, maybe 2012, 2011, 2010, something like that.

There was a period, there were two successive years, that we gathered at Litchfield, Inlet Point, where we had a condo, for a little family reunion/beach stays. I think we went two years in a row.

Q. In the summertime?

A. Pardon me?

Q. In the summer?

A. Yeah, yeah. It was like early June or something like that.

Q. Okay.

A. And then we talked about continuing on that condition. I forget why Inlet Point was...why we didn't stick with that. I think Mom was uncomfortable on the beach. She has allergy to sun, and she's not very mobile, can't get around very well, and walking on the beach was hard for her. So we tried to find alternative gathering places and nothing ever

really panned out. So that only happened twice.

And then in terms of my visit, you know, for the last five, six, eight years, I forget, you know --- well, more than that, really. I mean, since they moved into Cascades. I would frequently --- well, we tried to go every Thanksgiving, my whole family. We couldn't go for Christmas because my mother-in-law's birthday's on Christmas, and so we stayed here for that. But, also, Mom was in and out of the hospital for various things, falls and stuff. And I know that that was overwhelming for Dad. And so I would drop everything and go visit with them. Take care of Dad and be Mom's advocate in the hospital so that she got the best care possible. And I think that was all very stressful for them. They just needed someone to hold their hand a little bit while she was hospitalized.

Q. So the way it shook out is: Really, right after your dad was diagnosed, if you wanted to visit, that would require you and your family coming east for a visit.

A. Yeah. No, they didn't come west. Right.

Q. During that last visit with your dad, was there any discussion about Marshall?

A. The last visit? You know, I don't think that --- that was the last thing on our minds, really. I don't believe we talked about him at all.

Q. During that last visit, was there any discussion about your dad's estate plan?

A. No. That was all settled at that point. I mean, those conversations occurred...let's see...I came home, I visited them in the time period around Peter's graduation, the aborted visit of mine. And, you know, obviously, when the plan had been for me to go to the graduation and then come to Greenville afterwards, and then I show up on Friday instead, they were curious as to why. And I explained why. And that's the point at which Dad said, "Well, may I see that e-mail that Marshall sent?" And I shared it with them. And that's the --- I think that's the first time in these series of events that I heard Dad...where it seemed that a switch flipped where he said, "That's kinda the last straw." But he didn't talk much more about it at that point. And then when we came again, as a family, with my girls and my wife, in June, in early June, I think at that point he told me that he had decided he was gonna change his plan and what that meant.

Q. I'm basing these next couple of questions on what I believe Jonathan told me. But was there ever a time...(frozen)...estate plan?

REPORTER: I'm sorry, excuse me. Was there ever a time...

Q. Let me start over again. Thank you, Irveta.

Sloan, when did you first find out about your dad's estate plan?

A. Dad convened a meeting at Lesley's office...right?

Yeah, Lesley's office, in I think the fall of '17. We could find that date. It was Mom and Dad and Lesley, and Ben Clauss from Merrill Lynch, and Jonathan and I. I can't remember if my wife was there or not. And that's when we had a thorough, kind of going over of the plans. Because dad was...he'd been given a three- to five-year life expectancy. He was in year three, maybe? Four? And at that point he wanted to convey all the planning he'd done in preparation for his death.

Q. At that point --- well, first, Marshall was not at that meeting; right?

A. Correct.

Q. But Marshall was a beneficiary, along with you and Jonathan; correct?

A. Yes.

Q. And that would have been the first time ---I'm again, basing it on what I believe Jonathan told us a week or so ago--- that would have been the first time that you were aware of the value of your dad's estate.

A. Yeah. Absolutely. I was blown away. Had no idea. I mean, I knew he did well for himself, but I had no idea that it was that size.

Q. If I'm understanding you, the plan didn't change until I guess three weeks before your dad passed away.

A. I think it was more than three weeks. He passed away in mid-July and this was... I mean, I'm sure Lesley

could ---

Q. Well, you're right. The end of May.

A. I think it was early June when he came to that conclusion and made that decision.

Q. All right. To your knowledge, was there anything other than this dispute, or blowup, about the graduation that drove the decision to change the plan?

A. Well, as I said, Dad conveyed, like, "This is the last straw, I've had enough." And so that speaks to a series and a pattern of discord, as he remarked in that e-mail where he told Marshall he didn't wanna talk to him anymore, or whatever. So there's been a long history of it and I think Dad had been back and forth on this issue over the decades, where he'd written Marshall out once before and then, you know, had a charitable moment where he wrote him back in. And then things proceeded.

Q. When did you find out about taking Marshall out of the plan and putting him back in? When did you find out about that?

A. I think that was when I visited with my girls in early June.

Q. Okay. I understand that you're saying there had been years of discord and that your dad remarked, "That's the final straw," or words to that effect. But it wasn't until you showed your dad these e-mails that he changed his mind; is that

fair?

A. Yeah, I think that was the catalyst for it, sure.

Q. If you'd known then that he would have taken the action he did, do you think you would have shown your dad those e-mails? Or talked about it?

A. That would have been irrelevant in my decision-making. He asked to see them and I showed 'em to him.

Q. And what you're telling me is that you recall, because you had planned to go, you went to Greenville instead of Atlanta.

A. Yes.

Q. This is getting in the weeds a little bit, but did your dad keep his own checkbook, Sloan?

A. Yeah. Yeah. Well, I don't frankly know for a fact that he did. I know there were checks written in the household. Was it his or not? I don't know. I think he did everything by credit card and cash.

Q. But whatever those month-to-month bills were, your dad managed that as opposed to having a bookkeeper or something like that?

A. I don't know how he managed his month-to-month financial affairs.

Q. Would he have handled all of that? Was your mom --- did she have a checkbook or a credit card? If she went to lunch with her friends, how would that work, do you know?

A. Yeah, she --- I mean, she had her own accounts, as you know from the estate. And she had a credit card and she had a checkbook. And I know that she wrote checks to Debbie, Debbie Wine, the caretaker, on a regular basis. Yeah, that's how they worked, they split the task.

Q. And I get that things changed and they moved into this retirement area and so forth. But who would have been ---and these are two separate questions--- who would have been your parents' friends, and then did your dad have buddies separate from that? Does that make any sense?

A. Are you asking me who their friends were at Cascades?

Q. Well, I'll start with that, that'd be great. Yes.

A. Well, the Aikens. The Aikens --- Bud Aiken and Mom grew up together. They may have even dated in high school, I don't remember. But they were nextdoor neighbors on Pine Forest Drive forever. And they both moved out to Cascades pretty soon after it opened. I think Dad made a few new friends at Cascades. But I wasn't there enough, and when I was there we weren't socializing, so I don't know who they were. There were a lot of women, widows, who went to Cascades. Like Franny Apperson and Evelyn Runge. And those are part of the social circle. His closest friendships were associated with the law firm. And, from what I'm aware, no one else from the law firm was out at Cascades. Dad maintained a habit of going

--- he kept his office at the law firm, right up until, you know, six months before he died, I believe. Don't hold me to that. And he would regularly go on. And I remember visiting and seeing him trundle out of the house with his oxygen bottle on a little wheeler, shove it in the car and go to the office. And, you know, he didn't really have work to do, as far as I know, other than taking care of his personal business. And my conclusion was that that was largely a social outlet for him.

Q. I believe Lesley Moore testified that they would have lunch at Pete's every so often. So maybe he'd get dressed to go to the office so he could go out to lunch, maybe.

A. Yeah, that's true. And, in fact, Appy Apperson and he became pals primarily through a Pete's lunch connection. He was probably closer to some of my friends than I was at the end.

Q. All right. Your Uncle Ned recently passed away. Were you back in Greenville for that funeral?

A. No.

Q. Did you have any conversations with your Uncle Ned about your dad's estate plan and Marshall?

A. No. The only time --- I didn't talk to Uncle Ned much at all throughout my life until --- and the e-mail reflects this, that you have in one of the exhibits. We went out to dinner, Mom and I, and Ned and his son, John, my cousin. Went out to dinner and then afterwards Ned asked if I would

come over the next morning and meet with him.

Q. All right. I have seen that. But zero me in on when in the process that would've been.

A. To be definitive, it would be helpful to look at that e-mail because I wrote about ---

Q. I don't wanna stop you, but just ---

A. But I think that that was --- I was there by myself. It was either that aborted graduation weekend in May, or maybe early June. I was there by myself. I can't remember. In that time period, anyway.

Q. I'm with ya.

A. And Dad wasn't up for going out to dinner, so the four of us went out. And then the next morning, Ned, you know, asked me to meet with him. And he had some concerns. Primarily about Mom. And what he conveyed, which I didn't fully appreciate leading up to then, was how little communication occurred between him and my mom and dad. And I think there's a number of reasons for that. But he was conveying his concerns and didn't feel like he had a clear avenue of communication to Mom and Dad in order to express those concerns and so he did it through me.

Q. Right.

A. But the topic of Marshall and the estate did not come up at all in that conversation.

Q. He just at that time felt like it had been a while

since he'd had a good conversation with your mom and was concerned that he wasn't able to easily get in touch with them. Fair?

A. Yeah. I mean, there's two sides to that story. The complaint my parents had is that he never expressed any concern about Mom, in her repeated hospitalizations. Never stopped by. Never called to say "How are you?" You know. Never said, "I'm sorry," etcetera. You know, it's the chicken or egg thing: if he didn't feel like he was welcome and able, or what, what was the cause. But that's the status of it. He didn't call because he didn't think he was welcome to --- and he was concerned. You know. He would talk to Mom occasionally. I don't think he talked to Dad at all. And he was concerned about the way she was talking, which I detailed in an e-mail that's one of the exhibits. And ---

Q. The point there was that your mom might be --- was confused?

A. The point there was that, yeah, he was concerned about her condition. I guess both mental and physical. Sure.

Q. Okay. You mentioned just a minute ago, Sloan, that you were there in late May/early June and your dad said, "Hey, let me see these e-mails." Help me square that with what I thought I understood, which was that you dad's secretary Rita was involved in that.

A. I don't know how Rita got involved in that. Because

I had my laptop with me and I showed him on my screen. And I don't really --- I have zero recollection of Rita's involvement in that. It may be that Jonathan sent those e-mails to her. Or maybe, I think the printer at home didn't work and Dad wanted 'em printed out, and maybe Rita printed them out or something. I don't really know why she was involved. But I showed them to him directly, on my screen. I can't remember if I e-mailed them, too. I think I would have, but I don't remember, frankly.

Q. E-mailed them to your dad?

A. Yeah. But directly to him, not to Rita. But, of course, Rita had access to all his e-mails. So maybe that's how she got involved.

Q. Do you recall a conversation with Jonathan to the effect of, "Should I share this with Dad or not?"

A. That was a different thing. That was the communication with the detective and Greenville police, not this one. There was no conversation with Jonathan about whether or not to share those nastigrams from Marshall.

Q. Did you get ---

MR. BLINCOW: And, Irveta, let's mark the one I sent earlier this morning as the next exhibit.

(PETITIONER'S EXHIBIT NO. 3 MARKED AND ENTERED)

Q. Sloan, did you get a typed letter from Marshall, that we've now marked as an exhibit?

A. Yes.
Q. Did you respond to it?
A. No.
Q. When's the last time you've spoken to Marshall?
A. You mean to this day?
Q. Yes.
A. Briefly at the funeral. I guess Mom's funeral.
Q. And same with your dad's, too, I guess? Do you remember?
A. Maybe. I'm not sure I did then.
Q. What did you take away from this letter that Marshall wrote you in February of 2019?
A. You know, I saw it for what it was: working through the steps. At that point, I just --- it didn't feel sincere. It felt proforma. And I just dismissed it as a self-serving effort.
Q. When you mention working through the steps, you're speaking of the 12-step AA program?
A. That's right.
Q. And time marches on. Do you have any feeling that Marshall reaching out and apologizing, that he was sincere in that?
A. No, I didn't feel it was sincere.
Q. As a recovering alcoholic, is he entitled to his own perceptions about your dad's drinking?

A. As a recovering alcoholic or not, he's entitled to his own perceptions.

Q. Did you share that feeling? That your dad may have had a ---

A. That Dad was an alcoholic?

Q. Yes.

A. No, I don't share that feeling. In fact, when Marshall went on a rant, Dad had been dry for...he was dry for --- dry is the wrong word. He just didn't drink. And he'd lost all interest in having any drinks in the last few years of his life. So he stopped, even his evening cocktail.

Q. Do you know, is that what ticked your dad off? Or was it something else about that e-mail chain between you and Marshall and the graduation?

A. I don't think Dad gave a rat's ass what Marshall's diagnosis of him was. So I don't think that that particular comment had any bearing on Dad's thinking about Marshall or his decision-making process. You know, there's plenty of other material in that e-mail for Dad to be irritated at.

Q. And I guess that's what I'm asking. You think it was something other than that? Something ---

A. I think it's a lifetime accumulation of...to use Dad's word...discord, which is very diplomatic. But, nastiness. Volatility. Explosions. I mean, Marshall's like a ticking time bomb: he's gonna go off eventually and you don't

wanna be around him when he does. And he seems to always end up that way when visiting Mom and Dad.

I was at my niece Mary's graduation and, you know, the Sunday after there was a brunch. You know. Got through the weekend pretty well, until that brunch, and Marshall found something that triggered him to explode, and there was a big scene in the restaurant. So, yeah, it's predictable.

Q. Was it a mutual thing, or was it a one-sided thing? In other words, were either of your parents ever explosive or volatile, or was it only Marshall?

A. Well, you want me to talk about a whole lifetime, or what?

Q. Yeah. I mean, how you would describe it.

A. My dad had...he would...he was not nice some --- he would go into rages when we were little. And I'll be straight up: one of the reasons I maintained any contact with Marshall over the years was that we shared a similar experience growing up, on the receiving end of Dad's anger and rage. And it was expressed with a belt on many occasions. And not lightly. And so, you know --- and I'll be honest, I think in today's world some of the behavior would be considered abuse. But it was a different day back then, where, you know, it...it wasn't exposed publicly. Whatever. And so Dad had, certainly, some periods when we were younger when he would rage, and it was really scary. And Marshall and I have that common history.

And I will validate that. But he mellowed over time.

And I didn't see --- I mean, once I moved to Colorado, there was a long period of time when I wasn't very interactive with him, frankly, because I needed to get some space. But I never --- once I was out of the household, living my own life, I didn't see any...any other examples of that kind of raging at all, directed towards me. So that volatility, I saw Marshall as the exploder, as the bomb, if you will. But it takes two to tango and I think Marshall was responding to the things that were said, or perceived to be said, or interpreted to be said by Dad.

Q. You mentioned --- and you have been gone a long time. Maybe we all have. But are you aware of explosions between Marshall and your dad that you were not a part of but that you found out about some kind of way?

A. You know, they didn't go at it blow by blow, every event, with me. But it was inevitable that it would come up, that, you know, "Yeah, Marshall was here a month ago," or "We talked to Marshall," and "it ended badly." And it always ended badly, it seemed like, you know. There was the rare exception that it didn't. And it got to the point where Dad really didn't wanna deal with him. Mom was peacemaker in the family, was the go-between. And Marshall was abusive to her, based on her reporting of it.

MR. BLINCOW: All right. We've been at it

about an hour, so let's take a break. It's a little after twelve. I would prefer to plow on through, but I'm happy to stop, if people wanna stop. I'm proposing we take a little five-minute break and finish up. But I'll be glad to do it however the majority wanna do it.

THE WITNESS: I prefer to plow on through, too. I could take a pee break and then come back.

MR. BLINCOW: Let's do that.

THE WITNESS: Five minutes?

MR. BLINCOW: Five minutes.

(BREAK)

Mr. Blincow Resuming:

Q. Sloan, let's hope these are in sequence, but would you look at what we've marked as Exhibit 6, please. (Referring to Exhibit 6 to Jonathan Shoemaker Deposition)

(Off-record discussion regarding exhibit numbering)

(PETITIONER'S EXHIBIT NO. 4 MARKED AND ENTERED)

MR. HAYNSWORTH: So 6 to Jonathan will be 4 here; right?

REPORTER: Right.

MR. HAYNSWORTH: From Jonathan, Subject: Re: night nurses, March 2nd, 2018.

Q. So this is in early March. And you make two points to Jonathan, you know, "Seems like checking in on them is

warranted..." And I take it from your earlier testimony that we're getting to a point in March where you might need to be more involved in their care.

A. Sure. Yeah.

Q. And you mentioned, "...sounds like things are getting a little whacky (sic) there..." Tell me what you mean by that, please.

A. Well, Mom had a hospitalization in there somewhere, and surgery for gallbladder removal or something, I think? And what became increasingly clear over time is that Mom, when she was having some sort of medical problem, one of the manifestations, or signs, of that was her cognition. I'm not sure if that's the right word or not, it sounds too clinical. But when her chemistry, her blood chemistry, got off because she was dehydrated, or had a gallbladder issue, or had fallen, or wasn't taking care of herself, she had trouble. Trouble tracking. And, you know, in reviewing the exhibits this morning, there's talk of dementia. But over time it became increasingly clear that us amateur diagnosticians might not have penned that correctly. It seemed like much of her mental clarity problems could often be attributed to her blood chemistry being off, due to dehydration, or gallbladder problems, or whatever, which would sort of cascade into meds mismanagement, which further cascades into more confusion. But when she didn't have an underlying medical condition, you know,

more acute, like gallbladder, or hadn't just fallen and was, you know, in and out of the hospital, and on pain meds, or whatever, and when things were stable and she was taking care of herself and stayed hydrated, she was good.

Q. I see.

A. But this particular period of time...(audio/video frozen)

Q. Uh oh.

REPORTER: You froze, Sloan. "But this particular period of time..." and then you froze.

Q. Sloan, you froze. So if there's something important in that last answer, would you repeat it.

A. Yeah. Well, the take-home is that there's a lot of conversation in our e-mail exchanges back and forth about Mom seeming to have early-onset dementia, or whatever it was. And the take-home is: we're not doctors, and there's not a lot of credibility to that kind of diagnosis from me and Dad. And what I noticed over time, though, is that often her periods of confusion or lack of clarity were associated with an underlying medical condition, like her gallbladder. Or, you know, she had these falls, one where she damaged her eye quite badly and was hospitalized for a while. And it took her a long time to recover from that ---you know, weeks if not months--- to get her body stabilized again so her mental clarity returned. And so my point is that when she didn't have one of the underlying

otherwise medical conditions, she was fine.

Q. Yeah. If you look at the second page of your Exhibit 4, Jonathan's 6, you mention, "The doctor's nurse called me trying to reach Mom yesterday. I called Dad to pass the message." Is that what you're referring to when you say that she was not on her game with regard to her cognition? Or do you remember what was going on?

A. So Jonathan's the one that said the doctor's nurse called him. But, yeah, it's during this period of time where she showed jaundice but I think it wasn't real clear yet that she had an underlying gallbladder problem going.

Q. Okay. But it would be in a period of time like there, where perhaps your mom's not reliable in relaying messages from a nurse and so forth?

A. Yeah, right.

Q. Okay. And you mentioned to Jonathan, just below that, that you had a discussion with Debbie, the housekeeper, and "we don't wanna get her in trouble with Dad." What did you mean by that?

A. What I mean by that is, Mom and Dad were sometimes pretty stingy with information, and it was hard, from afar, to get a good sense of what was going on. And, you know, I think that's a generational thing. They're very private people and weren't, you know, real forthcoming and revealing about things that were personal or uncomfortable for them. And Debbie was a

very helpful conveyor of information, because she was there every day. So I was in pretty close touch with Debbie the last, what?, five to eight years or something like that. Because she was eyes on the ground that shared information that we couldn't get otherwise. And I didn't wanna jeopardize that by, you know, letting Dad know that Debbie was sharing information in ways that he might not appreciate. And, clearly, it's an awkward, uncomfortable position: he's the employer but, you know, we were trying to do the best thing for our parents. And her providing information was a key component for that.

Q. Let's go to...this is Jonathan's 7, and it'll be the next number exhibit for you. And this is an e-mail from the financial advisor, Mr. Clauss.

(PETITIONER'S EXHIBIT NO. 5 MARKED AND ENTERED)

Q. You with me?

A. Yes.

Q. And I believe you've --- well, maybe not. Tell me what is going on. So this is in April of '18. What prompted this e-mail from him to you and your brother?

A. (Reviewing document) I'm scrolling through to re-create the sequence of events here. I mean, I think it's pretty clear in Ben's e-mail that he's just filling us in, that he's filled out the 529 accounts that Dad set up for our kids.

Q. Again, from Jonathan's deposition, I believe

Marshall's children were older and would have been out of school by 2018?

A. Well, that's when Peter's graduating, that spring, yeah. And Mary was out. Right.

Q. Mary is a touch older than Peter.

A. That's correct.

Q. Okay. Do you know if your dad helped with the finances of Marshall's children's education?

A. I have no knowledge of that one way or the other.

Q. So this is not related to the earlier "Let's sit down and talk about your dad's estate plan," this is a funding of these 529 accounts; right?

A. Yeah. Hang on a second. April 11th...April 14th... Well, actually, it looks like that thread starts on April 11th with me, at the bottom there, e-mailing Jonathan. And Ben was just doing his due diligence, part of which I think was self-serving, because he wanted to keep our business, you know, after the estate changed hands. But he was just trying to get us to think ahead a little bit about how, once the estate transferred, our financial situation would be significantly different than it is currently. And he wanted us to think ahead about that, and some tax implications that would ensue.

Q. And I understand that you have sat down with him about your dad's plan. Have you had any other in-person or phone meetings with him?

A. Yeah. Yeah. I'm in regular touch with him.
Q. And tell me about that, please.
A. Well, he's just --- he'll say, "Hey, I was thinking about this, and the investment...your portfolio looks like it's heavy on this, and it could do better if you do this," and, "What do you think? Wanna make a change?" And, "Are you considering the tax implications if there's a change of administration?" and, "The estate tax rate changes significantly." Conversations like that.
Q. I gotcha. And is that in connection with your dad's trust, or both parents' trusts?
A. It's Dad's. And I frankly get confused about this. And I think it's the IRA. Lesley could help clarify. Yeah. I mean, there are some things that are bound up in this process that we can't do anything about, and other parts are free. And I think it's the IRA that's free, and so we're having conversations about that. It's in trust for me. Lesley's the manager of it.
Q. All right. I'm looking at No. 8, which will be the next numbered exhibit to your deposition.
REPORTER: Number 6.
(PETITIONER'S EXHIBIT NO. 6 MARKED AND ENTERED)
Q. It's a one-page... Yeah. So what documents --- it mentions that you had a Living Will. How did you come to have that?

A. Well, I was in conversation with Dad about that, and, you know, asked him what his wishes were. And he said, "Oh, I've got it all spelled out in this Living Will here," and he sent it to me. I read it.

Q. He e-mailed you that Living Will.

A. E-mail or post, I can't remember. But, yes, I got a copy of it, and read it, and that's when it became clear to me that it was --- it didn't really address the in-between, where the hard decisions needed to be made. And that's when we started having conversations about a DNR.

Q. And that led to the DNR order in early May.

A. Yeah. Right.

Q. Let's look, please, at Jonathan's No. 9, which will be the next numbered exhibit to your deposition.

(PETITIONER'S EXHIBIT NO. 7 MARKED AND ENTERED)

Q. All right. So I think it makes some sense. This is an e-mail that your aunt sent to you, I believe. And then you sent everything on to Jonathan. Is that accurate?

A. It is confusing, you're right. It looks like... Well, it's initiated by Katya on May 14th.

Q. And she'd been in Greenville for a visit with both parents.

A. Yeah.

Q. And she says what she says about your mom being wobbly, and so on and so on. And big discussion about the fact

that perhaps neither of your parents should be driving.

A. Right.

Q. This is your e-mail the middle of May, sort of saying, "Here's my take on it."

A. Yeah, exactly. And Katya, bless her heart, she's a big personality, and has a lot of strong opinions, and isn't constrained by her lack of full understanding of a situation when she expresses those opinions. And so I just wanted to give her a little more background: yeah, Mom is wobbly, but that's nothing new, she's been wobbly for a decade. And, you know, Katya parachuted in for a 12-hour visit and then left. And she drew a bunch of conclusions from a snapshot she had. And I just wanted to make sure she had the rest of the context.

Q. And you say your mom has trouble tracking conversations.

A. Because her hearing was terrible and she didn't like to wearing her hearing aids. But I acknowledged in there that it wasn't just hearing; she'd always seemed to be not fully engaged in the larger conversations going on around her.

Q. I'm gonna switch gears. I wanna back up a little bit and make sure I'm understanding your testimony.

You mentioned Mary, your niece's graduation, and it had been a happy family time until the last day. Something like that?

A. Yeah.

Q. Tell me about what happened on the last day when things got sideways.

A. I was staying in the same hotel as Mom and Dad. I think. I think so. But, anyway, we met for breakfast on a Sunday morning. The brunch. And something happens, there was some comment made by Mom or Dad that was insensitive to something that Marshall was sensitive to and he exploded and was raging at my dad in this restaurant.

Q. Do you recall what triggered it? Do you remember?

A. No. And I didn't care to, really. Because it's just another --- it's just like he's got buttons all over him, waiting, looking for an opportunity to get pushed. And I don't key in to the particulars of each one anymore. Or stopped caring, really.

Q. And did your parents get up and leave?

A. No, Marshall's the one that stormed out.

Q. Did it have to do with Marshall's divorce, do you know?

A. You know, the clouds are clearing a little bit. There was some comment about his divorce. He didn't wanna talk about it. Yeah, I mean... Sure. I don't know. Maybe it was his divorce, maybe it was something else.

Q. You mentioned that your dad would be short of breath, you know, getting dressed, maybe taking his meals, and that kinda thing. And I believe you mentioned panting. Tell

me what you can recall about that.

A. Well, you know, as his lung capacity declined and the regulator on his oxygen was getting turned up from two to six, to eight, whatever it was, ultimately ---to max flow--- he wasn't getting enough oxygen when he was not at rest. So, moving across the house, getting dressed, going to the bathroom, taking a shower, eating a meal ---all of that--- caused exertion. Any output of energy, he quickly got an oxygen deficit. And I think it was extremely --- I think it was really scary for him. I know it would be scary for me. And really uncomfortable. And really frustrating, too. I think it may have been in May ---maybe April, maybe March, I don't remember, I was there so much--- but I remember having a meal and him moving from his den chair to the dining room chair, and trying to manage his oxygen cord, and tripping over it and sort of crashing into the refrigerator or something. And I remember him saying, "God, I'm so sick of this, I just wish it was over." And so at some point he was kinda like, "I'm done. I'm done with this. I'm done with the hassle. I'm done with the panic and the fear, and the discomfort and the humiliation of it all."

Q. How long would it take to --- you know, say he got up in the morning and got dressed. Something like that. Or moved from bed to chair. How long would it take for him to recover and get back to his baseline?

A. A few minutes. Couple of minutes. And it changed. It was a dynamic situation, so I can't --- there's no number.

Q. You mentioned "I'm tired of this, I've been at it a while and I'm sick of it." Was the normal routine to get up and get in a chair, or did there just come a time when he said, "To hell with it, I'm gonna stay in bed."?

A. No. You know, he was an old-school, formal guy. He got up and got dressed every day. And has his routine.

Q. I'm pretty sure that would include khakis and a Rush Wilson button-down; right?

A. You got it. Got the uniform on. What are you wearing, are you wearing khakis?

Q. (Indicating)

A. Yep, there you go. You look like dad. Yeah, he'd get up and get dressed and have his breakfast. And if he went to the office, still, he would do that. Doctor's appointments. Help Mom with her stuff. Whatever.

Q. But, obviously, you mentioned it was dynamic and it would depend on the stress. But once he got in a chair and got the oxygen flowing and so forth, the recovery time would be how long, before he was back to baseline?

A. A minute or two. Not long.

Q. Okay. Were you ever able to --- you mentioned this miscommunication, or poor communication, from Uncle Ned's perspective there, you know, at the end. Were you ever able to

--- and, obviously, people have different perspectives, but were you ever able to put your finger on what was causing that, what was causing the difficulty in that relationship?

A. I mean, I know of one particular thing, but I think it was an accumulation of things. But there was one particular thing, where there is a cemetery plot at Christ Church, that my grandparents are buried in, that was willed to Mom and Ned. And then at some point, Ned did a quiet, sort of...what's the right...I don't know the term of art here, but gave it to Mom. And then she became the decider on what happens with the plot. And something happened with Courtney, my cousin Courtney who died young, being...and I don't know the details here, I think Jonathan might know it better. But I think something happened with regards to Courtney being buried --- he was in an urn, he was cremated--- in a place that Mom hadn't approved, or there hadn't been clear communication or agreement on, or whatever, and Ned just did it anyway. And I think that made Mom and Dad really angry.

But Dad, you know, would routinely tell me how disappointed he was in Ned's outreach and concern over Mom's condition. And Mom had multiple falls, multiple hospitalizations for one thing or another over the years, and it was just crickets from Ned. And I think Dad was upset by that and kinda wrote Ned off.

Q. In a perfect world, were your mom and her brother

Ned close, or not so much?

A. In a very reserved, Victorian kind of way, maybe.

Q. I get it.

A. Yeah. I mean, I think there was love, but it just wasn't expressed.

Q. Did your dad ever faint as a result of this pulmonary business?

A. I never witnessed him faint. And I'm not aware of him fainting. I do know there was an instance ---maybe more than one--- where he got out of bed too quickly, in the morning, and lost his balance and fell over. And in one instance he fell into a bedside table and it, you know, blew apart into matchsticks, because he's a big dude.

Q. Right.

A. And then, eventually, they figured out a management for that, which was to put a chair that he could fall into, if he got out of bed too quickly, rather than hard furniture or the floor.

Q. Tell me what you know of this...well, there's an emergency and they need to wire some money down to Honduras, or something. What do you know and how did you come to find out about it?

A. I didn't know anything about it in real time. I think I found about it months later when... I don't remember who told me. I don't remember if it was a conversation with

Mom and Dad, or Debbie mentioned something, or Jonathan filled me in. Frankly, I don't remember. I wasn't part of that loop at the time.

Q. Okay. What happened, though, is, you know, they did get in the car and go and take some money out and send it somewhere.

A. The details of that, or all that I know, are in that...in one of those exhibits that you shared. And, truly, I haven't --- that's the only place I've heard the details articulated.

Q. I gotcha. As I recall, and we can look at it, it's No. 11 to Jonathan's. It'll be the next numbered one for yours.

(PETITIONER'S EXHIBIT NO. 8 MARKED AND ENTERED)

Q. But Marshall sent an e-mail to the law enforcement; correct?

A. I don't know exactly how it unfolded. I'm surmising from the e-mail that there was a conversation with the detective first, followed up by an e-mail that you have there in the exhibit.

Q. Right. And then I think, as I read it, Jonathan weighed in to the detective; you did not.

A. I did.

Q. Oh, you did?

A. Yeah. And that was in the disclosure that I

provided to Knox. But I simply said --- first of all, Jonathan copied me there, or blind copied me on it, maybe. And I said, "Hey, what's that?" And then I sent the detective a note, saying, you know, "I'm sorry you're getting dragged into the middle of this family drama. But just so you know who you're dealing with, this is a brother who just issued a death threat to me because of a misunderstanding about a bedroom over a graduation." And I never heard back from the detective.

Q. All right. Have you seen that e-mail?

A. What?

Q. Where you weighed in with the detective.

A. Have I seen it?

Q. Yes.

A. I wrote it. I don't understand your question, sorry.

Q. No, no, that's all right. I'm probably confusing myself. Is it in this...

A. I don't think so. I thought it was in the packet of stuff I provided to Knox. If I overlooked it, I'll dig it up and share it with you.

Q. Would you mind sending it to Knox, please, if you don't mind?

A. No, I don't mind.

THE WITNESS: Knox, will you make a note of that and remind me, please?

MR. HAYNSWORTH: I will. And this is your e-mail back to Drew Palmer?

THE WITNESS: The detective, yeah.

MR. HAYNSWORTH: Who has a landscaping business now, in case anyone wants to know what Detective Palmer's up to recently. Lots less dangerous than being a detective.

Q. Do you know anything about any other situations where someone tried to defraud your parents?

A. I don't have any firsthand information about that. All I know is, and I think it's in the record here, that it happened again but that time they didn't fall for it.

Q. Now, I have seen that.

MR. BLINCOW: All right. Give me one... Hold on a second. (Reviewing notes)

All right. Let me --- we're gonna go off the record for a minute and I'm gonna shuffle my notes and finish up. All right? Give me five minutes, please.

THE WITNESS: Sure. In the meantime, I'll look for that e-mail.

(BREAK)

Mr. Blincow Resuming:

Q. So I understand you were there, you know, sometimes for weeks at a time: Has any hospice nurse, or any hospice

person, besides Debbie the housekeeper, that was there a good bit of the time, that sticks out in your mind?

A. Let's see. There was this wonderful woman who was there when dad died. So who was employed by the last hospice business that we contracted with. I can't remember her name. Jonathan's got a good memory, maybe he knows, but I don't know. But, yeah, she was there that last week.

Q. And you would say she was sharp and had a good handle on things.

A. Yeah. Yeah, absolutely.

Q. Okay.

A. And prior to that, I mean, I think the first hospice people we engaged with, they just...they didn't feel good, for some reason or another. And then the second one had kind of a rotating personnel, so I didn't get to know any of them really well. And I didn't spend that much time with them there, personally, either. And it was the last group, the last week, that one particular woman who I connected with the most.

Q. Got it. Okay. Jonathan's Exhibit 12, which will be the next exhibit to your deposition...

(PETITIONER'S EXHIBIT NO. 9 MARKED AND ENTERED)

Q. And I wanna zero in...the fourth page of that is an e-mail that you sent to your brother. And now we're into January. So this is six months or so before your dad passed away. Right?

A. Yeah.

Q. To use the vernacular, "situation is normal, all fucked up." What's going on in late January at the Cascades?

A. (Laughing)

Q. Those are your words, not mine.

A. Yeah, I know. I know. You know, I think that everybody was struggling to figure out how to manage this situation that was fluid, with dad on a decline. I mean, he'd been stable for a long time during this three-to-five-year sentence that he was given. And it wasn't until really the last year that the decline really sort of...the curve got a lot steeper. And everybody was sort of reacting. And I also think that there was some medical issue with Mom that winter, in January, and I can't remember what it was. I probably can reconstruct it, looking back. But there was a medical issue, I think, that had her sort of a little less than clear-headed. And so she wasn't able to really and constructively engage in Dad's care. And, you know, I'll acknowledge that my colorful language there was a little dramatic.

Q. Well, you are sending it to your brother, so I get it.

A. Yeah, but also --- because I was struggling to understand, too. And, you know, I'm, like, trying to understand it is that Cascades actually did, if anything, to help out these people in need. And I assume that since they

bought into this full-service care facility that they would get full service. And I was just flummoxed by the fact that they wouldn't show up when one of my parents was on the floor and can't get up. And Mom and Dad never gave me a clear explanation for that. And I finally figured out, when I talked to someone at Cascades, that it's this liability issue with, if they're not in the care unit, then they can't touch 'em. And independent means independent, there's no gray area there. So, anyway, I'm figuring that out. Dad's figuring out how to manage his life attached to an oxygen cord and, you know, turning the dial up on it on a monthly basis. Mom was a little loopy because of some medical issue that was going on there. And they just weren't...they weren't their best selves at that period of time.

Q. You would acknowledge, in this period of time, that if your dad did take a fall he wouldn't be able to get up.

A. Yeah. Exactly. And there'd been instances where that had happened. He just didn't have the strength to get himself up off the floor.

Q. Yeah. And then you ---

A. Let me clarify that.

Q. Sure.

A. He didn't have the strength, but also it was a technique thing. And he learned, somebody taught him, about rolling over on his hands and knees first and then raising

himself up slowly, using the four-poster bed, or something like that. And so he was in a learning curve as well.

Q. I got you. And you mention here at the bottom that you had dinner, and then Uncle Ned wanted to have breakfast the next morning. You've told us about that.

A. Yeah.

Q. Do you think ---and I get it, and I get that these places are expensive--- do you think back in this period of time your parents needed a higher level of care than the independent living business?

A. You know, it's hard to know when that moment was, John. You know. They're on a spectrum, and there's a lot of gray area, and the nursing needs weren't consistent. Clearly, we identified --- I identified in here that the need is gonna be increasing over time. Were we there at that moment? I think that I had a sense that that was the case. But they didn't want anybody, they thought Debbie was fine. So that's where we ended up at that moment.

Q. I get it. All right.

MR. BLINCOW: Knox, have you sent that e-mail? I don't wanna jeopardize this link.

MR. HAYNSWORTH: I have. You should have it.

MR. BLINCOW: Well, hold on a minute.

MR. HAYNSWORTH: Take a peak.

(Pause)

MR. BLINCOW: All right, hold on, here it is.

MR. HAYNSWORTH: And I was gonna say, John, I think another option ---although I don't know how to do it, Irveta might--- if I sent it to Irveta, I think there's a way she can throw it up on the screen.

MR. BLINCOW: Hold on.

MR. HAYNSWORTH: But if you've got it and Sloan's got it, that'll be good enough.

MR. BLINCOW: And I don't know that we need --- well, maybe since we've referred to it, we should mark it some kinda way.

MR. HAYNSWORTH: I'm gonna send it to you, Irveta.

MR. BLINCOW: And you can make it No. 10.

(PETITIONER'S EXHIBIT NO. 10 MARKED AND ENTERED)

Mr. Blincow Resuming:

Q. Sloan, the take-away is: You are weighing in, after finding out about this scan, for lack of a better word, just as you described a bit ago, and giving your two cents worth to the police detective.

A. Well, I told him I'd be happy to talk to him about it. And I just wanted him to know who he's dealing with. I mean, Marshall's e-mail to the detective is full of this

fanaticized conspiracy, that somehow Debbie Wine is involved in an international conspiracy to defraud my parents. And it's just paranoid delusion in my mind. And I wanted this detective to know who he's getting involved with, if he's gonna follow up on this. You know. And this was very soon after Marshall's death threat to me and I was pretty...you know, I was still kinda fired up about that. And I wanted to make sure that the detective went in eyes wide open. And, clearly, he --- because we never heard --- nobody ever heard from him again. He saw that shit show coming and opted out of it.

Q. Right. There was no follow-up by the cop.

A. Nope. There was no follow-up.

Q. And you mentioned that you were fired up at the time with this e-mail about the graduation. Fair to say you're less fired up about that now?

A. Sure.

MR. BLINCOW: Okay. I believe those are all my questions. Thank you very much.

MR. HAYNSWORTH: I have no questions. We'll read and sign.

(Deposition concluded at 1:15 p.m.)

STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF GREENVILLE)

Be it known that I took the deposition of EDWARD SLOAN SHOEMAKER;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of pages 4 through 60 is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 13th day of December, 2020.

Irveta J. Shouse
Notary Public for South Carolina
My Commission Expires: 07/24/2022

RECEIVED
Jun 05 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Judge

Case No. 2022-001655

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

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Second Supplemental Record on Appeal complies with Rule 211(b), SCACR.

June 5, 2024

William R. McKibbon, III
S.C. Bar No.: 68454
601 East McBee Avenue, Ste 104
Greenville, SC 29601
864.235.0071, 864.235.0072 (f)
will@legalcarolina.com
Attorney for Appellant