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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas

R. Lawton McIntosh, Circuit Judge

Case No. 2023-CP-37-00794
Appellate Case No. 2024-000455

Dorothy Pierce,

Appellant,

v.

Donna Carol Moore, Gregory Allan Pierce,
and Jared Adam Pierce,

Respondents.

RETURN TO THE APPELLANT'S MOTION TO AMEND
NOTICE OF APPEAL

/s/ Richard Hunt McDuff

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*Attorney for Respondents Gregory Allan Pierce
and Jared Adam Pierce*

COMES NOW the Respondents, Jared Adam Pierce and Gregory Allen Pierce, by and through their undersigned counsel and pursuant to Rule 240, South Carolina Rules of Appellate Procedure, and hereby file their Return to the Appellant's Motion to Amend Notice of Appeal. In opposition thereto, the Respondent would show unto the Court following:

I. BACKGROUND AND PROCEDURAL HISTORY

Appellant, Dorothy Pierce, was appointed by the Oconee County Probate Court to serve as Personal Representative of the Estate of Doyle Elton Pierce ("the Decedent"). Her appointment was based upon the nomination contained in the purported Last Will and Testament of the Decedent dated July 7, 2020. On August 2, 2021, an evidentiary hearing was held before the Oconee County Probate Court on the issue of the validity of the Decedent's purported Last Will and Testament. By Order dated August 18, 2021, the Probate Court ruled that the purported Last Will and Testament of the Decedent was invalid as a forgery and removed the Appellant as the Personal Representative. The judgment of the Probate Court was affirmed by the Circuit Court on December 29, 2021. The Appellant has appealed the judgment to this Court where the matter remains pending (Case No. 2021-001552).

On October 11, 2023, a status conference was held before the Oconee County Probate Court Judge Danny Singleton to address the resignation of the Special Administrator, Adam Lee, Esquire. After the status conference concluded, the Respondents and the Appellant engaged in discussions about settling all probate matters. An agreement was reached between the Respondents and the Appellant

whereby all probate matters would be resolved, and the Appellant would dismiss her pending appeals. By agreement of all parties, the settlement agreement was placed on the record pursuant to Rule 43(k), SCRCP, with the understanding that the terms of the settlement agreement would be confirmed by an Order affirming the Private Family Agreement pursuant to *S.C. Code Ann.* § 62-3-912. The agreement was placed on the record and all parties acknowledged their assent to the terms and that it was a binding agreement pursuant to Rule 43(k), SCRCP.

On October 12, 2023, and in accordance with the terms of the settlement placed on the record on October 11, 2023, and pursuant to Rule 43(k), SCRCP, the Probate Court entered an Order Affirming Private Family Agreement which set forth all the terms of the settlement and division of estate assets. On October 12, 2023, by email to Judge Singleton, the Appellant began voicing objections to the October 12, 2023, Order Affirming Private Family Agreement. On October 13, 2023, the Appellant filed a Notice of Appeal of the Order Affirming Private Family Agreement with the Circuit Court. To address the Appellant's objections, Judge Singleton held a telephone conference with the parties on October 17, 2023. During the telephone conference, the Appellant stated that she was unable to meet the deadlines to which she had agreed in the agreement placed on the record on October 11, 2023. All parties agreed to the extension of certain deadlines sought by the Appellant and the Appellant agreed that she would dismiss her appeals. Pursuant to the revised agreement of the parties, the Probate Court entered and Amended Order Affirming Private Family Agreement containing the revised deadlines.

On October 19, 2023, pursuant to the provisions of the parties' settlement agreement, Judge Singleton reappointed the Appellant as the Personal Representative of the Estate of Doyle Elton Pierce. The Certificate of Appointment stated, "Restrictions: None at this time of Appointment except those required by law and the Personal Representative must abide by the Amended Order Affirming Private Family Agreement dated October 17, 2023."

On October 24, 2023, the Appellant filed an Amended Notice of Appeal with the Circuit Court as to the October 17, 2023, Amended Order Affirming Private Family Agreement. On that same day, the Appellant sent an email to Judge Singleton wherein she stated:

"[o]ur last conversation was the best I have ever had in a long time. I didn't want to think about going against the agreement. Above all, it was that moment in your office that I didn't want to betray. It still kills me to think that I'm going against it. It's your trust that matters to me. Not an order. Nothing else matters as long as you trust me. The parties left me no choice. . . . Hear me out first, as a father. Not as a judge."

(See email attached here to as **Exhibit "A."**)

On November 1, 2023, Judge Singleton conducted an emergency hearing to determine whether the Appellant should be removed as Personal Representative for violating the Amended Order Affirming Private Family Agreement. On November 1, 2023, Judge Singleton terminated the Appellant's appointment as Personal Representative for failing to abide by the Amended Order Affirming Private Family Agreement entered pursuant to the settlement agreement placed on the record on October 11, 2023, pursuant to Rule 43(k), SCRCF.

On November 2, 2023, Judge Singleton held the Appellant in contempt of court due to her conduct during the November 1, 2023, emergency hearing. (Order of Civil Contempt dated November 2, 2023.) On that same date, the Appellant filed her Second Amended Notice of Appeal to the Circuit Court wherein she challenged the Order of Civil Contempt. (Second Amended Notice of Appeal dated November 2, 2023.)

On March 14, 2024, Judge R. Lawton McIntosh heard the appeal of the October 17, 2023, Amended Order Affirming Private Family Agreement. On March 19, 2024, Judge McIntosh issued a Form 4 Order affirming the Probate Court's October 17, 2023, Amended Order Confirming Private Family Agreement, or, in the alternative finding that the Circuit Court was divested of appellate jurisdiction as a result of the Appellant's failure to comply with the strict requirements of *S.C. Code Ann.* § 62-1-308. The Circuit Court's Form 4 Order directed counsel for the Respondents to "file a formal order." The Appellant filed her Notice of Intent to Appeal the March 19, 2024, Order on that same day.

On April 2, 2024, the Judge McIntosh entered the formal Order affirming the Probate Court's October 17, 2023, Amended Order Affirming Private Family Agreement and further finding that the court was divested of appellate jurisdiction because the Appellant failed to abide by the procedural requirements set forth in *S.C. Code Ann.* § 62-1-308.

II. ARGUMENT

A. This Court Should First Determine Whether the Appeal Should Be Dismissed Because the Parties Entered into a Binding Settlement of all Issues.

The Appellant challenges the Circuit Court's ruling that she entered into a binding settlement agreement on October 11, 2023, in accordance with Rule 43(k), SCRPC, to settle all issues involving the Estate of Doyle Elton Pierce. Without record evidence or support, the Appellant argues that the agreement was not made in "open court" because Judge Singleton had not formally convened the Probate Court and that he was acting in the capacity of a mediator rather than judge.

Rule 43(k), SCRPC, provides that enforceable agreements may be made between the parties to litigation when made in open court and noted upon the record. Rule 43(k) is applicable to settlement agreements. Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 494, 458 S.E. 2d 533, 534 (1995). A settlement agreement read into the record in open court is enforceable under Rule 43(k) when the material terms of the agreement are present. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 603-604, 567 S.E. 2d 514, (Ct. App. 2002).

The record in the present case clearly establishes that the Appellant entered into a binding settlement agreement on October 11, 2023, pursuant to Rule 43(k), SCRPC, when the Appellant and the Respondents read an agreement into the record before Judge Danny Singleton in his capacity as Oconee County Probate Judge. It is beyond cavil that all material terms related to the division of the estate property between the heirs, the responsibility for the payment of any estate obligations, and

the dismissal of all probate-related appeals was placed onto the record. The parties clearly and unequivocally agreed upon the division of real property, personal property, vehicles, firearms, farm implements, and the payment of estate creditors. It was plainly expressed on the record that the settlement was be placed onto the record pursuant to Rule 43(k), and the Appellant expressed her assent to the terms. During the October 11, 2023, proceeding, Judge Singleton directly asked the Appellant the following question and the Appellant gave the following response:

Judge Singleton: We've already established that your brother [*sic*], by video, was in agreement. Ms. Pierce, are you in agreement?

Appellant: Yes, I am.

(GoTranscript of October 11, 2023, pp. 1-15, attached hereto as **Exhibit "B."**)¹

As a result, the settlement agreement placed onto the record on October 11, 2023, is binding an enforceable, the litigation has ended, and the Appellant's issues on appeal are moot and the appeal should be dismissed. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. at 603.

B. This Court Should First Determine Whether Appellate Jurisdiction Has Been Divested Due to the Appellant's Failure to Comply with the Procedural Requirements of S.C. Code Ann. § 62-1-308.

Appeals from an order of the Probate Court are governed by *S.C. Code Ann.* § 62-1-308(a). Pursuant to section 62-1-308(b), the Appellant was required to file a Statement of Issues on Appeal with the clerk of the circuit court within forty-five (45) days of receipt of the order from which an appeal is taken. In her Notice of Appeal to the Circuit Court, the Appellant stated that she received the order from which she

¹ The "GoTranscript" was provided by the Appellant to the Circuit Court as part of her appeal.

appealed on October 12, 2023. Consequently, she was required to file her Statement of Issues on Appeal by November 27, 2024, but failed to do so. Instead, she filed her Appeal Brief with the Circuit Court on November 29, 2023.

Section 62-1-308(d) required the Appellant, within thirty (30) days after service of her Statement of Issues on Appeal, to serve upon all other parties a Designation of Matter to be Included in the Record on Appeal. The Appellant did file a Designation on December 11, 2023, but did so without having first complied with the mandates of section 62-1-308(b). Likewise, the Appellant failed to make “satisfactory arrangements” for the furnishing of the transcript of the October 11, 2023, proceeding within ten (10) days of service of her Notice of Appeal as required by section 62-1-308(c). Instead, on February 2, 2024, the Appellant submitted a “GoTranscript” version of a transcript of proceedings from October 11, 2023, to the Circuit Court.

The mandatory language contained in section 62-1-308 is clear and unequivocal. Each provision in the statute states the appellant or the parties “must” or shall.” The Appellant’s failure to strictly comply with the procedural requirements set forth in *S.C. Code Ann.* §§ 62-1-308(b), (c), and (d) divested the Circuit Court of appellate jurisdiction. In re Estate of Cretzmeyer, 365 S.C. 12, 615 S.E. 2d 116 (2005) (appellant’s failure to comply with the procedural requirements for an appeal under *S.C. Code Ann.* § 62-1-308 divested the court of appellate jurisdiction). Consequently, the matters now before this Court have not been properly preserved for review and

the appeal should be dismissed. Ulmer v. Ulmer, 369 S.C. 486, 632 S.E. 2d 858, 861 (2006).

C. The Appellant Should Be Prohibited from Proceeding Pro Se.

In this appeal, the Appellant challenges, *inter alia*, the her termination of reappointment as Personal Representative of the Estate of Doyle Elton Pierce on November 1, 2023.² In Brown v. Coe, 365 S.C. 137, 616 S.E. 2d 705 (2005), the South Carolina Supreme Court squarely addressed the issue of whether the personal representative of an estate, who is not a lawyer, may represent the estate in an appeal before the circuit court or the appellate courts. In answering the question in the negative, the Court stated as follows:

In the case at hand, the filing of a notice of appeal on behalf of the estate and preparation of brief that will be required to further perfect this appeal clearly constitutes the practice of law as defined by this Court. Section 40-5-310 prohibits appellant who, while the administratrix of the estate, is not a lawyer, from taking such actions on behalf of the estate because the estate is a separate legal entity with interests other than [the administratrix's] alone. Moreover, the further reasoning employed by this Court in previous opinions, that such a prohibition is necessary to protect the public from representation by those unlearned in the law, also applies to the situation at hand.

In light of our duty to ensure that parties are represented by people knowledgeable and trained in the law, we cannot say that the unauthorized practice of law simply results in an amendable defect. **Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity.** (Emphasis supplied).

Id. at 616 S.E. 2d 708-709.

² The Appellant was reappointed as Personal Representative pursuant to the October 17, 2023, Amended Order Affirming Private Family Agreement.

The Appellant is not only attempting to represent her own personal interest, but she is also appealing matters that affect the interests of the Respondents. The Appellant's conduct violates the clear mandate of the South Carolina Supreme Court and Section 40-5-310. As a result, the Appellant should be prohibited from proceeding further with this appeal until she retains an attorney licensed to practice in the State of South Carolina.

III. CONCLUSION

For the reasons set forth above, the Respondents respectfully request that this Court dismiss the instant appeal because (a) the parties entered into a binding settlement agreement on October 11, 2023, and (b) the Appellant failed to preserve the issues now raised for appellate review. Alternatively, the Respondents request that this Court enter an order requiring the Appellant to retain licensed legal counsel for the purposes of her appeal.

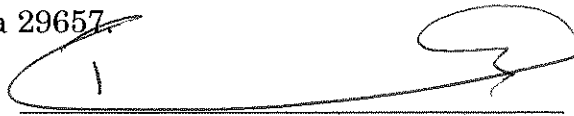
Respectfully submitted this 13th day of August 2024.

/s/ Richard Hunt McDuff
Richard Hunt McDuff, Esq.
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Tel: (864) 882-2466

Attorney for the Respondents

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Return to Motion to Amend Notice of Appeal has been sent this 13th day of August 2024 via Regular U.S. Mail, Postage Prepaid, and electronic mail, to: **DOROTHY PIERCE, APPELLANT *PRO SE***, 750 Mourning Dove Lane, Seneca South Carolina 29678, and **DONNA CAROL MOORE, RESPONDENT *PRO SE***, 149 Flat Rock Church Road, Liberty, South Carolina 29657.



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EXHIBIT “A”

Danny Singleton

From: Dorothy Pierce <dorothypierce84@gmail.com>
Sent: Tuesday, October 24, 2023 2:02 PM
To: Danny Singleton
Subject: Re: Unopposed Order Approving GEICO Settlement- Pierce Estate
Attachments: image002.png

Judge,

Our last conversation was the best I have ever had in a long time. I didn't want to think about going against the agreement. Above all, it was that moment in your office that I didn't want to betray. It still kills me to think that I'm going against it. It's your trust that matters to me. Not an order. Nothing else matters as long as you trust me.

The parties left me no choice.

I have been attempting to accommodate everyone with the deposition schedules I had set prior to settling the probate case. I have politely asked parties about these concerns but no one is addressing the real issues. With them putting a claim on the GEICO settlement, it goes against the order. This settlement is part of the residue. Without this being addressed, everyone will get their inheritance and come back for the residue which the order leaves for me to pay debts.

Furthermore, this morning when I asked Dr. Boyle, my fiancée to deliver a notice of Appeal, I asked him to be RESPECTFUL and to treat you or your stuff with DIGNITY. It kills me to know that he disrespected the court. I'm so sorry. I agree with you completely.

I will be available on Thursday to explain my side and provide you with a detailed explanation.

Hear me out first, as a father. Not as a judge.

Thank you.

Dorothy Pierce

On Tue, Oct 24, 2023, 1:12 PM Danny Singleton <dsingleton@oconeesc.com> wrote:

Aside from any publications being passed out. It is apparent that no one wants to work together. Mrs. Pierce, I was hopeful that our last communication and your appointment as PR would be a way to see this estate to its conclusion. With another recent filing of appeal, that is now not the case.

I am ordering an emergency hearing on this matter to determine your status as PR.

I need someone to choose a date, notify all parties to a scheduled hearing.

EXHIBIT “B”



[00:00:00] McDuff: Maybe you can bring your phone up where you could pick it up on.

[00:00:02] Ms. Moore: Yes. Hold on one second. Okay?

[00:00:04] McDuff: If I may indulge the court.

[00:00:05] Judge: That's fine. Today's date is October 11th, 2023. Again, ~~continuing with the estate of Doyle Pierce~~. Time now is 11:20. I've been informed by each party there's an agreement, Mr. Duff?

[00:00:19] McDuff: Yes, judge. This is based upon what the parties articulate in terms of the terms of settlement between Ms. Pierce, the surviving widow of Doyle P. Pierce, and the three adult children of the estate. As to division, we intend for this to be a binding settlement upon the parties, enforceable by subsequent order of the court, pursuant to Rule 43K at the South Carolina Rules of Civil Procedure.

[00:00:46] Judge: Okay. All right. Now, sir, tell me your name for the record, please.

[00:00:52] Jared Pierce: My name is Jared Adam Pierce.

[00:00:55] Judge: All right. Mr. Pierce, the original agreement you were informed of it, certain acreage, weapons, ammunition, and things of that sort. Today, you're telling the court that you are still in agreement with that. Is that correct?

[00:01:08] Jared Pierce: Yes, Sir. I'm in agreement with that. Yes, sir.

[00:01:10] Judge: All right, sir. The court's going to accept that. I know that you are at work. We'll let you. If you want to remain and listen, you can. If you need to go, at least your portion, provided that the agreement goes through and we get it all on the record today, then that will be your agreement. Then sometime in the near future, those items will be transferred to you, provided that the agreement is followed through, which the agreement will--

[00:01:33] Jared Pierce: Yes. I understand.

[00:01:34] Judge: ~~Today, once the agreement is signed, it would be binding. Do you understand that?~~

[00:01:38] Jared Pierce: Yes, I do understand that.

[00:01:40] Judge: Then the agreement, apparently, ~~you would be mailed an agreement for you to be able to sign and return within a certain amount of time.~~ Would you be able to do that?

[00:01:49] Jared Pierce: Yes.

[00:01:49] Judge: All right. Thank you.



[00:01:52] Jared Pierce: Thank you, sir.

[00:01:52] Ms. Moore: Thanks, Adam.

[00:01:54] Judge: All right. ~~Mr. McDuff, you believe that satisfies the record that the US is in agreement?~~

[00:02:00] McDuff: ~~(no)~~ Judge. I believe so.

[00:02:00] Judge: All right. Who would like to propose what's going to be agreed to?

[00:02:05] McDuff: Well, I think what we need to talk about, if I can propose to some orderly process here, break it down by beneficiary, and first start with the children. Gregory Allen Pierce to receive-- How many acres is it, Donna?

[00:02:20] Ms. Moore: Let me pull it back, sir.

[00:02:27] Ms. Pierce: The judge has it. Last page.

[00:02:33] Judge: You're more familiar with this, I've got a copy of the grievance.

[00:02:36] ~~McDuff~~ ^{Donna}: If you can have it, I'll read it in the record.

[00:02:37] Judge: Yes, ma'am.

[00:02:38] McDuff: Thank you, Judge.

[00:02:39] Ms. Moore: [unintelligible 00:02:39] back up here.

[00:02:41] Ms. Pierce: We corrected some things. You'll take that.

[00:02:42] McDuff: Gregory Allen Pierce to receive the following. 16.07 acres of land, which is a part of Cedar Hill Farm, a Ford F350 truck, year 1970.

[00:03:07] Ms. Moore: A Ford?

[00:03:08] Judge: F350 is a Ford?

[00:03:11] McDuff: Yes. 0.04 acres on Simmons Road.

[00:03:19] Ms. Moore: It's called Simmons. That's that upper road that leads in onto Cedar Hill.

[00:03:26] McDuff: All right. A Belarus tractor, which is beside the silver shed. Four [unintelligible 00:03:36] body pieces, two old acetylene torches. An old electric welder.

[00:03:57] Judge: All right.



[00:03:58] McDuff: An old, small wood heater and a red toolbox.

[00:04:08] Judge: Is it with contents?

[00:04:10] McDuff: With contents.

[00:04:13] Judge: That's fine. That means that the content's not going to be taken out of the red toolbox until you receive it.

[00:04:21] McDuff: Thank you.

[00:04:22] Judge: All right.

[00:04:23] McDuff: All right. Now, for Jared Adam Pierce, to which he's already expressed his assent, would be 8.86 acres of land, which is a part of Cedar Hill Farm. Just for the record, I believe all these things were aggregated as a part of a larger parcel of property, but by separate deeds and conveyances, which these can be readily identified. In addition to the 8.86 acres of land, two guitars and amplifiers. 20 guns. I think they're long guns and pistols, if I recall.

[00:05:08] Ms. Moore: It's a multiple.

[00:05:09] McDuff: With ammunition. Do y'all have a list of those guns by make, caliber, and things like that?

[00:05:20] Ms. Moore: No. I don't [crosstalk].

[00:05:20] Judge: It should have been in an inventory.

[00:05:22] McDuff: It should have been.

[00:05:23] Ms. Moore: I don't know that they get [crosstalk].

[00:05:24] Ms. Pierce: We didn't list them by gun.

[00:05:26] Ms. Moore: Yes. I don't think we ever listed the make and model by--

[00:05:29] Judge: Just work it out. Work it out.

[00:05:31] Ms. Moore: It's really all the guns. Except I'm going to keep to small [crosstalk].

[00:05:35] Judge: Work it out.

[00:05:36] McDuff: We'll address that here in this. All right, so that's everything for Jared Adam Pierce. Now, for Donna Carol Moore, the daughter of the decedent.

[00:05:47] Ms. Pierce: They've made changes there.



[00:05:48] McDuff: Yes. They've made changes there. First, she will be reimbursed, was it \$13,000? What's the amount?

[00:05:54] Ms. Moore: It was \$13,120.36.

[00:05:59] McDuff: For pay off of the Oconee Federal. Would that the Blue Ridge Bank mortgage?

[00:06:02] Ms. Moore: That's correct.

[00:06:03] Judge: \$13,000 what?

[00:06:04] Ms. Moore: \$120.36.

[00:06:08] Judge: You're in agreement with that?

[00:06:10] Ms. Pierce: Yes.

[00:06:10] McDuff: That payment is to be made by Ms. Pierce, too. ~~(Is that payment being made directly by you, Ms. Pierce?)~~

[00:06:16] Ms. Pierce: ~~No, from the estate auction.~~

[00:06:19] McDuff: From the estate auction.

[00:06:20] Ms. Pierce: Yes. That's what we agreed upon.

[00:06:21] McDuff: Okay, From--

[00:06:22] Ms. Pierce: From the items I am inheriting.

[00:06:24] McDuff: From your items, you'll sell and satisfy. How much time do you want to have to provide that?

[00:06:30] Ms. Pierce: Well, I wanted to have at least 60 days.

[00:06:33] McDuff: Within 60 days?

[00:06:34] Ms. Pierce: Yes

[00:06:38] McDuff: All right. Then next would be \$10,000 in cash.

[00:06:42] Ms. Moore: Yes.

[00:06:43] McDuff: An additional \$10,000 payable also within 60 days?

[00:06:46] Ms. Pierce: That's right.

[00:06:51] McDuff: From Ms. Pierce to Ms. Moore. A 1953 Jubilee Ford Tractor with



Bush Hog, Cutaway heroes, [unintelligible 00:07:18], a disc plow-

[00:07:25] Judge: All right.

[00:07:26] McDuff: -and a small backhoe. To distinguish it, it's different from the bigger backhoe that is used with a Ford 3236 tractor.

[00:07:41] Ms. Moore: Yes, it's small.

[00:07:41] Judge: There are two backhoes, and it's the smaller one.

[00:07:43] Ms. Moore: It's the smaller one. Yes, sir.

[00:07:44] McDuff: All right.

[00:07:45] Judge: All right.

[00:07:46] Ms. Pierce: Then here is the 3.3-point-something acres.

[00:07:50] McDuff: Then 3.9 acres, which is bottom lands, which is also part of Cedar Hill Farm, correct? Is that--

[00:07:56] Ms. Moore: Oh, no, it's not part of Cedar Hill, but it's two separate deeds.

[00:07:59] McDuff: Adjacent to it.

[00:08:01] Ms. Moore: Yes, it's adjacent to it.

[00:08:02] Speaker 6: Rock B side

[00:08:03] Judge: All right, that's fine. Ms. Pierce, you're in agreement with the separate, different 3.9 acres that she was talking about. You're basically just switching the plot, is that correct?

[00:08:13] Ms. Pierce: Yes. It's 3.3 and then--

[00:08:17] Ms. Moore: A 0.6.

[00:08:17] Ms. Pierce: Then a 0.6.

[00:08:19] Judge: A 3.3-acre parcel and a 0.6-acre parcel, which are adjacent to Cedar Hill Farm. Again, I think they're readily identifiable by way of prior conveyances and deeds.

[00:08:30] Ms. Moore: Yes, sir.

[00:08:31] Judge: All right.

[00:08:32] Ms. Pierce: I wanted to clarify something. The 16 acres that Greg is

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receiving, I did my research, that is not specified as Cedar Hill.

[00:08:43] McDuff: Well, on Exhibit A, it says 16.078.

[00:08:45] Ms. Pierce: Can we just fix that because it doesn't specify as Cedar Hill anyway?

[00:08:49] Ms. Moore: Because originally, the 8.86 and the 16.07 and the 0.04 that was the Simmons Road, that was originally one parcel that he had put together that created 25.1 and all of that was considered Cedar Hill Farm. He bought it from Mildred Pierce, and then he bought the other from David Pierce.

[00:09:13] Ms. Pierce: Cedar Hill only has 743 and then 705.

[00:09:19] Ms. Moore: That was on the surveys you did.

[00:09:22] Ms. Pierce: No. Previously. On the previous [crosstalk]

[00:09:24] Judge: All right, let's see. I want to make sure we're not going backwards.

[00:09:28] Ms. Moore: I follow [crosstalk]

[00:09:28] Judge: You've listed the 3.9. It is 3.3 plus 6 acres.

[00:09:34] McDuff: Point 6 acres.

[00:09:34] Judge: Now you're talking about the 16 acres.

[00:09:37] McDuff: That covers everything for Ms. Moore.

[00:09:40] Ms. Pierce: Yes.

[00:09:40] McDuff: All right.

[00:09:41] Judge: All right.

[00:09:42] McDuff: Now, for Ms. Pierce, the following items. The three-bedroom brick home located at 750 Morning Dub Lane. Land measuring approximately 33.36 acres of land from the main farm.

[00:10:01] Ms. Pierce: That's now going to be 29.

[00:10:03] Ms. Moore: Yes, that'll be less now.

[00:10:04] McDuff: It'll be less now.

[00:10:05] Ms. Moore: Yes.



[00:10:05] Ms. Pierce: Yes.

[00:10:06] McDuff: It's going to be 33.86 minus 3.9 acres.

[00:10:14] Judge: I'll go ahead and figure that out.

[00:10:15] Ms. Moore: 29.46.

[00:10:17] Judge: 29.46.

[00:10:18] McDuff: .46 acres for the main farm. All right. Then wood slots numbers 7, 8, 10 and 15 on Oak Ridge Road.

[00:10:32] Ms. Moore: Could you repeat those again?

[00:10:34] McDuff: Yes. 7, 8, 10 and 15. Then 1.66 acres of Oak Ridge Road. I think that's all roadway.

[00:10:47] Ms. Moore: It is. It's roadway that leads into the lots.

[00:10:50] McDuff: The road right of way.

[00:10:51] Ms. Moore: Yes.

[00:10:53] McDuff: All right.

[00:10:53] Ms. Pierce: That [crosstalk] be a 3-point-something acres, or it also leads to part of my land.

[00:10:58] Ms. Moore: What?

[00:10:58] Ms. Pierce: The road. Does it lead to your 3.9 acres or it leads to part of mine too?

[00:11:06] Ms. Moore: I would have to look, actually, to see where lot 15-- Lot 15 backs up to that land. I don't know exactly where the cutoff is in there. Without a survey, I wouldn't know exactly where the cutoff is.

[00:11:26] McDuff: Is there an issue about road right of way access to one of these lots?

[00:11:28] Ms. Pierce: Yes. I think there's a possibility that Ms. Moore's 3-point-something acres blocks me completely from accessing the property from that road.

[00:11:40] Judge: Why don't we make an exclusion that each separate piece of property must have an easement. That way, everybody can have access to their own property. My understanding, it's there, but if it's not, then easement's going to have to be provided.



[00:11:54] Ms. Moore: Yes, that's fine with me.

[00:11:56] McDuff: There won't be any landlocked parcels of property. Any party by implication will grant an ingress egress easement.

[00:12:04] Judge: By the most direct route to the nearest roadway.

[00:12:07] McDuff: Yes.

[00:12:08] Judge: That way, it's not infringing on anybody else's property. You can't claim I'm going to come up on this upper 40 and come straight across this way. It has to be to the nearest roadway.

[00:12:18] McDuff: Least intrusive access to the nearest roadway.

[00:12:22] Judge: Correct. You can keep that copy. I've got mine in email if you need to make any notes on it. Everybody's in agreement to that.

[00:12:29] McDuff: Yes. Next is the 3,200 square foot warehouse with an address of 708 Morning Dove Lane.

[00:12:42] Judge: 708?

[00:12:43] McDuff: Yes.

[00:12:44] Judge: I'm sorry, what's the street?

[00:12:45] McDuff: Morning Dove Lane.

[00:12:46] Judge: Morning Dove Lane.

[00:12:48] Ms. Moore: Morning like sadness.

[00:12:52] Judge: All right.

[00:12:54] McDuff: The mobile home located at 745 Morning Dove Lane.

[silence]

[00:13:06] Judge: Okay.

[00:13:08] McDuff: Next is for Ms. Pierce. It says, two small guns with ammunition. Do you know what caliber and make those are?

[00:13:15] Ms. Pierce: Yes, they're only two small guns anyway.

[00:13:17] McDuff: The handguns?

[00:13:18] Ms. Pierce: Yes. There are only two.

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[00:13:20] McDuff: Two handguns and the ammunition.

[00:13:20] Ms. Pierce: The rest of the big guns are going to Adam.

[00:13:28] McDuff: Any motor vehicle not taken by any other heir or devisee.

[00:13:38] Judge: Okay.

[00:13:40] McDuff: Next, and I think this is it. ~~All of the residue of the estate of Doyle Elton Pierce not otherwise taken or given to any devisee or heir of the estate to be auctioned as necessary to pay estate obligations.~~ That would include just right now, because we've dealt with the-- except the funeral home has to be paid off. Is that Davenport or Sandifer?

[00:14:10] Ms. Moore: Davenport.

[00:14:11] McDuff: Davenport.

[00:14:11] Ms. Moore: Yes. \$10,599.20.

[00:14:16] McDuff: ~~The problem is that's got to be paid before we can divide anything else up, because that's a priority claim.~~ That's everything. Now, we have to figure out the mechanics because somebody's going to have to do these multiple quick claim deeds between everybody because this is really-- I envision this is in the form on the side of a 9-12 private agreement. We have to have somebody who's going to be willing to-- Number one, a lawyer is going to have to do them and lawyers are going to have to get paid for them and they're going to be recording fees.

[00:14:52] Judge: With that-- Also, in agreement, I think we do need to add if it's not in there already, Mr. Lee, the special administrator, just resigned. There had been a reimbursement.

[00:15:06] Ms. Moore: Of his \$3,000 for taxes.

[00:15:08] McDuff: Roughly \$3,000 for property taxes.

[00:15:12] Judge: That would come from the estate.

[00:15:13] McDuff: That comes from the-- Ms. Pierce will pay that.

[00:15:15] Ms. Pierce: That comes from my part. Also, I think it would be important to note that then my debt, because I am having expenses that I'm claiming the estate to refund me, reimburse me. I think maybe we can include too that on my share, the debt, and then reimbursement of my own expenses.

[00:15:36] McDuff: The thing is you're getting everything else, so you take--

[00:15:41] Judge: ~~You ought to wipe out your debt because you're getting the value from the land.~~



[00:15:45] **Ms. Pierce:** Yes, that's what I'm saying. You can put that on the record.

[00:15:47] **McDuff:** I think what then is upon payment of all the obligations to the estate including reimbursement of Adam Lee and payment to Davenport Funeral Home for funeral expenses.

[00:15:59] **Judge:** I would say the first debt would be the funeral home, second debt would be Mr. Lee.

[00:16:02] **McDuff:** Right.

[00:16:03] **Judge:** All right.

[00:16:04] **McDuff:** Then if everybody waives any other claims, entitlements, attorneys fees, each party bears their own. Anybody gets whatever they're entitled to for reimbursement out of their share.

[00:16:14] **Judge:** Once we do this agreement, that's generally through a-- Well, the special administrator has the same authority. Once a new special administrator is appointed, we may just have to adjust what the special administrator may be able to do. I'm assuming we would give him the authority the same as the personal representative, and that would allow him or her to seek an attorney to do the quick claim deeds and do the transfers and things of that sort.

[00:16:42] **Ms. Pierce:** Then just because someone still has-- I am the one going to pay the debt and do all of these things. That means I still have to be unrestrained, so then I can close the estate and pay everybody.

[00:16:56] **McDuff:** First thing, I think we were in agreement before, that upon dismissal of the appeal. Withdraw the appeal, dismiss the appeal with prejudice with the court of appeals.

[00:17:08] **Judge:** Now, the appeal in circuit court.

[00:17:11] **McDuff:** All the appeals.

[00:17:13] **Judge:** Right. Because you've not officially filed the appeal, you filed a notice.

[00:17:18] **Ms. Pierce:** Yes. I have-- There's a process after that.

[00:17:20] **Judge:** ~~Right. You filed the notice but that would need to be withdrawn, too, because until that's withdrawn, the court can't do anything. You guys go ahead and sign the agreement. When those things take place, then you have those removed.~~

[00:17:34] **McDuff:** I'm going to suggest this, Judge, is that we talked about this before, because the intent under Rule 43k. What we put on the record here today is



binding. Without any need for any further written agreement, we can reduce it if we need to a written agreement. It's binding today that within 10 days of the date of today, at the conclusion of this proceeding, Ms. Pierce dismissed with prejudice her appeals. At that point, she then would be entitled to-- because the appeal goes away, then the court's got to decide, technically, there's no personal representative because the prior ruling of the probate court stands.

We talked about reinstating her to the position of personal representative for the sole purpose of executing documents necessary to distribute real property and to sell assets of the residuary estate to satisfy estate obligation.

[00:18:30] Judge: That's fine. I don't have a problem with that, but this is something new that I'm starting. I understand, any personal representative, if anything is misappropriated, anyone can be referred for a criminal action. I'm just saying, I'm making it part of the record and in the future, I'm going to start making these. We just came back from training and there's something specific that we got from the Chief Justice of the Supreme Court for us to make these. We've got other issues on other estates. I'm not saying anything wrong with this estate, I'm giving people notice now, that if you don't use your fiduciary responsibility in a timely manner, in a correct manner, they are sanctions that can be had.

Just be cognizant of that and understand, when you get this agreement, please go by the agreement. If you have questions about it, contact the court. We'll get each party involved and make sure that there's a clear understanding. That's the only thing that I want the state and make that part of the record. All right, is there anything else?

[00:19:38] Ms. Pierce: Is everything going to be put in an order or we need to make a separate agreement like that one?

[00:19:44] McDuff: As far as I'm concerned, if everybody acknowledges their assent to this agreement today on the record, it's done. We can put it in writing if we want to, just to reflect what's agreed to today. My big concern as a lawyer is that we need a plan because we can't-- If you're going to be empowered to sign deeds as personal representative of Doyle's estate--

[00:20:12] Ms. Pierce: No, I think we should need a lawyer first of all.

[00:20:14] McDuff: The lawyer can prepare the deeds, but a lawyer can't sign the deeds. Somebody needs to be empowered to sign the deeds. First, before we sign any deeds, the funeral home has to be paid off and Adam Lee has to be paid off. The question I have, are you in a position where you can pay those off, and you can propose a lawyer if you want to prepare all these things?

[00:20:39] Ms. Pierce: Yes, I think I can. Let's just put it-- Okay, I'll withdraw my appeal, right?

[00:20:45] McDuff: What you're going to do, you've agreed to do it within 10 days,
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the appeal's within 10 days of today, correct?

[00:20:50] Ms. Pierce: Yes.

[00:20:51] McDuff: All right, so, but next step has to be, these claims have to be paid off. My question--

[00:20:57] Ms. Pierce: I will take of them.

[00:21:00] McDuff: Within 15 days, can those be paid off?

[00:21:04] Ms. Pierce: Yes, after withdrawing the appeal, I can.

[00:21:06] McDuff: Within five days of withdrawing your appeals, and dismissing your appeals, you'll pay off--

[00:21:12] Ms. Pierce: Let's say within 30 days from the time the judge does that, I'll do all of those things.

[00:21:17] McDuff: 30 days from today?

[00:21:19] Ms. Pierce: Yes.

[00:21:19] McDuff: You'll dismiss your appeals in 10 days, and then within 30 days, pay off the funeral home and Adam Lee, out of your funds, and pay off--

[00:21:27] Ms. Moore: [unintelligible 00:21:27] for the mortgage.

[00:21:29] Ms. Pierce: ~~No, I'm not going to go into paying everybody else, because remember, I have to auction the rest of it~~

[00:21:35] McDuff: She's got 60 days to pay you off.

[00:21:38] Ms. Moore: For the mortgage?

[00:21:39] McDuff: For the mortgage, and for the \$10,000.

[00:21:42] Ms. Moore: Oh, okay.

[00:21:42] McDuff: All right?

[00:21:43] Ms. Pierce: Then 30 days to pay the funeral home, and [crosstalk]

[00:21:47] McDuff: 30 days from today to pay the funeral home to pay Adam Lee.

[00:21:49] Ms. Pierce: Yes.

[00:21:49] Judge: Okay. All right.



[00:21:51] McDuff: Provide proof with the court of discharge of those obligations.

[00:21:57] Judge: Okay. All right. Ms. Moore, are you in agreement with the terms set out today?

[00:22:02] Ms. Moore: Yes.

[00:22:03] Judge: Ma'am?

[00:22:04] Ms. Moore: Yes.

[00:22:04] Judge: All right. We've already established that your brother, by video, was in agreement. Ms. Pierce, are you in agreement?

[00:22:14] Ms. Pierce: Yes, I am.

[00:22:15] Judge: Okay. Mr. McDuff, your client's in agreement. Both your clients are now in agreement, correct?

[00:22:20] McDuff: Yes.

[00:22:21] Judge: Okay. All right. Mr. McDuff, will I receive an updated order on that to sign?

[00:22:26] McDuff: Yes.

[00:22:27] Judge: ~~Being that it came under Rule--~~

[00:22:30] McDuff: ~~43K~~

[00:22:30] Judge: 43K, that order can be-- If I receive it in the next five days or so, it can be backdated to today's date. Okay?

[00:22:38] McDuff: All right.

[00:22:39] Judge: All right? Ms. Pierce--

[00:22:40] Ms. Pierce: What if you don't receive it in the next 30 days? I don't think we can do that.

[00:22:44] Ms. Moore: No, he just said if he would receive the order within the next five days.

[00:22:48] Judge: If I received it within the next few days, the written order that what we just agreed on, that I sign off on it, I can backdate it until today's date. Better yet, I can sign it--

[00:22:57] Ms. Pierce: That's on the day you signed the order.



[00:22:59] **Judge:** Hold on. ~~All sign it on the date that it's received~~, but if the order in there has, the agreement was done on this day, and by this date, certain things have to take place. Okay?

[00:23:11] **Ms. Pierce:** My problem with that is that Mr. McDuff would take forever to send you the agreement.

[00:23:16] **Judge:** You probably already got the majority of that saved anyway.

[00:23:20] **McDuff:** Yes, I can pull this up. I got a Word document. I just did it at the Word document.

[00:23:23] **Judge:** Yes, there's just a few changes already.

[00:23:25] **Ms. Pierce:** When do you think you can have that to the court?

[00:23:27] **McDuff:** I'm hoping by the end of the week.

[00:23:30] **Ms. Pierce:** Today is Wednesday. That means by Friday.

[00:23:34] **McDuff:** That's my intent. I'll be out of town Friday, though.

[00:23:35] **Ms. Pierce:** If he gets it in by Friday, we can back it down.

[00:23:37] **Judge:** I'm not worried about it. If I get it Friday, I'll date it on Friday. Being that this is now binding because everyone's agreed, so the order is not going to be sent out to everybody saying, are you in agreement with it? Because what we discussed is what's going to be in the order. Okay? All right. I'm glad that everybody finally came to a conclusion and that this will be settled. Remember, the order will have to be followed. Everything will have to be completed for the estate to be resolved. Okay? All right, is there anything else?

[00:24:09] **McDuff:** I think the other thing, too, is that I guess to tie up the probate, somebody's going to have to prepare waivers of accounting and all those final disbursement and waiver of accounting. I'm going to assume that would be Ms. Pierce as the personal representative. That would be her responsibility as personal representative.

[00:24:26] **Ms. Pierce:** Yes, I will.

[00:24:27] **Judge:** Okay. All right. Ms. Pierce, the only legal advice I can give you is for you to seek the advice of counsel, in particular on transferring deeds. If you need the assistance of an attorney to administer the estate, then by all means, please do so.

[00:24:46] **Ms. Pierce:** All right.

[00:24:46] **Judge:** Okay?



[00:24:47] Ms. Pierce: Thank you.

[00:24:48] Judge: All right. Very good.

[00:24:49] McDuff: All right. Do we have a plat that shows the original, because your real estate lawyer is going to need a plat showing the original parcels?

[00:24:57] Ms. Moore: Yes, sir. I have all of the plats.

[00:24:58] McDuff: Okay, good.

[00:24:59] Ms. Moore: Do I need to give that to you or just--

[00:25:05] McDuff: Once we identify-- What real estate attorney would you use though?

[00:25:09] Ms. Moore: Or I can give it to whatever.

[00:25:10] Ms. Pierce: No, we're going to see through, but my previous attorney was really good, Carol Johnson.

[00:25:17] McDuff: Okay, Carol, yes.

[00:25:18] Ms. Pierce: She only had to leave because she was having a transplant.

[00:25:22] McDuff: Yes, Carol's fine. She's great.

[00:25:26] Ms. Pierce: Just provide her with the original plats.

[00:25:28] McDuff: We'll give it to-- plats to Ms. Pierce so she can give it to Carol.

[00:25:33] Ms. Pierce: Yes, I'll cut an egg with everybody to make sure that
[crosstalk]

[00:25:37] McDuff: Yes, Carol's great.

[00:25:39] Judge: Best thing to do, just communicate. Okay?

[00:25:41] Ms. Pierce: Yes.

[00:25:42] Judge: Be polite to one another. Okay, all right. Thank you.

[00:25:46] [END OF AUDIO]