

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY
District Court

SC Court of Appeals

Honorable Daniel Coble, Circuit Court Judge

Court of Appeals Case No. 2024-001152

In Re: Estate of M.K. Jennings 2010ES2800169

Beverly Hennager.....Appellant

Mary E. Dearden, Personal Representative of the Estate of M.K.Jennings...Respondent

FINAL BRIEF OF APPELLANT

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Issues on Appeal

- I. Whether the June 19, 2024 Order is void because Moultrie Burns acted without authority, intentionally falsified the record and failed to respond to discovery requests.**
- II. Whether the Court's October 27, 2016 Order is an Interlocutory Order subject to review and amendment.**
- III. Whether the Court deprived the Appellant of Due Process, when it improperly excluded relevant evidence Appellant sought in discovery for five years, resulting in a miscarriage of justice.**
- IV. Whether it is in the best interests of the estate to remove Mary Dearden as the Personal Representative pursuant Section 62-3-611(b) and appoint a special administrator pursuant Section 62-3-614.**

JURISDICTION

Section 18-9-20. Appeals in probate matters. The Supreme Court and the Court of Appeals shall have jurisdiction of all questions of law arising in the course of the proceedings of the circuit court in probate matters in the same manner as provided by law in other cases.

Appeals from the Probate Court are governed by **S.C. Code Ann. 62-1-308** and the S.C. Appellate Court Rules

STANDARD OF REVIEW

An action to remove a Personal Representative is equitable in nature. **Dean v. Kilgore, 313 S.C. 257, 259, 437 S.E. 2d 154, (Ct. App. 1993).**

Appellate reviews of cases in equity are by the findings of fact in accordance with the court's own view of the preponderance of the evidence. **Townes Assoc. Etc v. City of Greenville, 266 SC 81,86, 221 S.F.2d 773,775 (1976).**

In equity cases the appellate court reviews findings of fact as well as conclusions of law. When evidence referenced was orally taken during hearings, the appellate court is not bound by the Court's findings on the issues of fact. The function of an appellate court in reviewing equity cases is not to search the record for errors of law, but to examine the results in the light of the evidence to see if justice has been done. **L.B. Orfield 1942**

When a claim for fraud on the court is made, it is an action in equity that must be plead with specificity as required by **Rule 9(c) SCRPC.**

Rule 60(b)(3) allows for relief from Judgment or order for fraud, misrepresentation or other misconduct of an adverse party. Leave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually before the appellate court.

Rule 60(d)(3) allows the court to set aside judgment for fraud on the court. There is no statute of limitations and it need not be brought in the court in which the action took place. Affirming the order does not prohibit this action.

SCRPC 9(b) creates a heightened pleading standard for fraud claims, and requires lawyers plead circumstances of fraud with particularity.

**The Estate of M.K.Jennings
Estate No: 2010 ES28 00169**

STATEMENT OF THE CASE

Minnie Kay Jennings (“Decedent”) died March 31, 2010 In Warrenton, Virginia. Her will designated her estate be divided between her five children; Katherine Dauphin, Beverly Hennager (myself) Louis Jennings (now deceased), Mary Dearden, and Michael Jennings. On April 21, 2010 Mary Dearden was appointed the Personal Representative of the Estate. On December 12, 2011, Louis Jennings and I filed a Petition for the removal of Dearden as Personal Representative. The matter was heard by the Probate Court on November 29, 2012. Based upon the testimony and evidence heard, on June 13, 2013 Judge Pierce, found that it would be in the best interests of the estate to remove Mary Dearden as Personal Representative pursuant Section 62-3-611(b) and appoint Angela M. Kirby, Esquire, as Special administrator. The court directed the Special Administrator to *“secure the assets of the Estate, review the inventory and appraisal for proper inclusion of assets belonging to the decedent at the date of her death, review the accounting submitted by Mary E. Dearden, and to make recommendations to the Probate Court in the form of a proposal for distribution.”* (R. 7)

**Appeal No: 2013-CP-28-00525
Harriet S. Pierce, Probate Judge**

Mary DeardenAppellant
v.
Louis Jennings & Beverly Hennager.....Respondents

Dearden appealed this Order by notice filed June 20, 2013. Arguments on the Appeal were heard by Judge Manning on May 20, 2014 and an Order of Remand was

entered on September 17, 2015, requiring the lower Court to provide “*more specific findings of fact and conclusions of law*” (R. P. 9-10).

The hearing on remand was held July 20 & 21, 2016 by Judge Branham, the new Kershaw County probate judge. The issues addressed in the October 27, 2016 Order were: “*Contractual Capacity of Decedent; Joint Accounts; Power of Attorney; Removal of PR; Certificates of Deposit, Shipping Costs and Appraisal of Jewelry*”. (R. p. 12-20) Other than ordering amended accounting, the court did not address reviewing the accounting or the inventory for proper inclusion of assets. Both sides appealed.

Appeal No: 2016-CP-28-00979
Debra B. Branham, Probate Judge

Mary Dearden.....Appellant/Respondent

v.

Louis Jennings & Beverly Hennager....Appellants/Respondents

The Claims appealed and affirmed, in Judge Lee’s July 10, 2020 Order were:

“allowed Mary Dearden to remain PR of the Estate; required Dearden and others to reimburse the Estate for funds improperly removed from various joint accounts held with the Decedent; required Dearden to provide an Amended Accounting; assessed certain costs and fees against the Estate; and denied taxation of other fees against the Estate. Additionally, the Probate Court made specific findings of fact regarding the capacity of the Decedent”. (R. P2)

AMENDED ACCOUNTING AND CLOSING DOCUMENTS

When the 2016 order was affirmed by Judge Lee, Judge Branham ordered Dearden to produce the amended accounting, which was submitted on September 22, 2020. I demanded a hearing.

The Probate Court held a hearing on March 16, 2021 with a continuance on June 2, 2021 (not recorded - no transcript). The court would not address accounting and inventory omissions and inaccuracies, finding those issues were previously

appealed and affirmed in the 2016 order. The Court and Moultrie Burns agreed the issue of the promissory note owed to the Decedent by Michael Jennings was never addressed, and agreed to hear evidence regarding whether it was fully paid (R. P. 180)

When Burns introduced partial tax documents showing only the principal was paid, I asked for complete documents to show whether the interest was paid. When there was no response I re-opened discovery pursuant Rule 26(e) (R. P. 207). When there was no response I filed two motions to compel production (R.P. 105-109 & 110). Both motions were returned to me by Judge Branham in letters stating they couldn't be accepted because there was "*no pending litigation*" (R. P. 38 & 41).

The Court found:

September 3, 2021 Order. (R. P. 42-43)

"Ms. Hennager made issue with the accounting, particularly the absence of a promissory note from Michael Jennings to the decedent, as well as other allegations, including omissions of transaction of stopped payments and questions as to value of personal property.

Based upon arguments and the prior record and the zoom proceeding, I find and conclude the following:

Findings of Fact

- 1) *The promissory note of Michael Jennings was satisfied before the decedent's death and the Inventory is correct in not listing such debt as an asset.*
- 2) *The PR's Amended Final Accounting as submitted to this Court is approved, as being accurate, complete and in compliance with the 2016 Order."*

Appellant filed notice of appeal on September 14, 2021.

[Louis Jennings, who appealed separately, died January 5, 2023]

Appeal No: 2021-CP-28-00795

Beverly Hennager.....Appellant

v.

Mary Dearden.....Respondent

Hearing for oral arguments by remote technology, was held on May 29, 2024 before Judge Coble. I argued the October 27, 2016 order was Interlocutory because it did not decide all the claims of the case, in particular the promissory note owed to the Decedent by Michael Jennings and the need for supplementary inventory to record all the South Carolina assets that the PR testified she disbursed without appraisals or filing in the inventory. I argued Moultrie Burns and the Court agreed to hear evidence regarding the note; therefore the 2016 Order was not the final Order. It was Interlocutory and subject to review. I argued the court denied me due process of the law when it disallowed the presentation of relevant documents that would prove my claim that the interest on the note was not paid, as required. I argued the PR should be removed for all the causes provided in Section 62-3-611(b). I addressed many conflicts in the PR's and her witnesses' testimony with each other and medical reports.

Respondent's attorney, Moultrie Burns, apologized to the court that he did not know how to increase the volume on his computer. (R. P. 139; P 4; L10-12). I told the Court it was so low it was impossible to hear most of what he was saying (R. 141; P 22; L24-25).

The Respondent was found the prevailing party and Moultrie Burns was ordered to produce the order. It was at this time that I discovered Burns changed the first finding of fact in the September 3, 2021 Order from:

"1) The promissory note of Michael Jennings was satisfied before the decedent's death and the Inventory is correct in not listing such debt as an asset."

To:

Ms. Hennager "attempted on this appeal to raise allegations and speculations that should have been investigated during discovery. Both the 2016 Order and the 2020

Order on Appeal confirm that there was ample opportunity to do so. An example is her allegation of unpaid promissory note from Michael Jennings to decedent”.

The Proposed Order was signed June 19, 2024, without responding to my objections pursuant Rule 46. I filed notice of appeal on July 12, 2024.

STATEMENT OF FACTS
Fourteen years of Evasion and Deceit

Summons May 19, 2011

MK Jennings’ death certificate states she was a resident of Virginia. To establish jurisdiction, Mary Dearden and her attorney, Moultrie Burns, falsely told the Kershaw County Probate Court the Decedent was a resident of Camden. Dearden was appointed the Personal Representative (“PR”) of the Estate on April 21, 2010.

On May 19, 2011 Dearden was summoned to appear,

“TO SHOW CAUSE why you should not be REMOVED as the Personal Representative of this Estate and/or HELD IN CONTEMPT of this Court because of your dereliction of duties in not filing the above according to law, or in responding to the requests hereinfor made of you” (Inventory, Appraisalment and Accounting). (R. 3)

The Court accepted Moultrie Burns proposed order.

“The Personal Representative has neglected to respond to various correspondence from this Court, which is a serious matter. However, the Personal Representative has tried to administer the estate, apparently under a mistaken understanding as to the importance of various formalities, and this Court will grant her another opportunity to comply with the requirements of the Probate Code”.

“..she is ordered to file an Amended Inventory and an up-to-date Accounting with the assistance of Moultrie Burns, Jr., attorney, on or before June 20, 2011...” (R. 4-5)

November 29, 2012 Hearing

On October 10, 2011 Dearden submitted proposed documents to close administration of the estate. On December 12, 2011, Louis Jennings and I filed a

Petition for the removal of Dearden as Personal Representative. The matter was heard by the Probate Court on November 29, 2012.

Prior to the hearing Judge Pierce ordered the PR to produce medical records requested in discovery. In her opening statements, Judge Pierce said: (CORRECTION - packet given to Ken Wingate and he said):

"... I was given right at the start of this hearing a packet, which I have not looked through yet, which contains medical records which are I presume responsive to my Motion to Compel the production of medical records. ... And so the hearing today will not be a final hearing as to the closing of the estate by agreement because of this time to go through the medical records, but rather goes solely to the petition for appointment of a special administrator. Does that accurately state our agreement?"

Mr. Burns: "Yes, it does, Judge" (R. p. 126-127; 2012 T; P 5 L17-25; P6 L1-8).

Moultrie Burns did not correct Judge Pierce's erroneous assumption that the packet he had given her contained the medical records she had ordered. It was not until after the hearing that Judge Pierce discovered the packet only contained unrequested bills. Dearden and Burns never produced one medical record.

Dearden testified she disbursed all the S.C. Assets without appraisals and without listing any of it in the Inventory. *" I never had it appraised....I sent it out, and I just put a value of Fifteen Hundred Dollars on everybody's because I had to put a value on it."* (R.P. 129; 2012 T. P76 L8-11)

Louis Jennings testified:

" We asked ...for the tax records, and we asked for the medical records and we asked for the bank statement, complete set of bank statements and we haven't gotten them and that's why we're here today." (R.P. 128; P 57.L 22-25 & P 58 L 1)

Judge Pierce's June 13, 2013 Order:

"Certain discovery requests by Petitioners were not answered in a timely manner, requiring Petitioners to file a Motion to Compel Production." (R. P. 7).

A Virginia promissory note owed to the Decedent by Michael Jennings was introduced. The note required monthly payments *“until the principal and accrued interest is fully repaid to the Shareholder”*. The note waived notice of default and required the *“Maker agrees to be obligated for principal and interest due and to pay all collection costs, attorney’s fees and interest from date of default at a rate of EIGHT (8%) percent per annum”*. (R. P.147-148).

As noted by Judge Pierce’ Order, Louis and I alleged *“assets were omitted from the inventory and appraisal”* (promissory note owed to Decedent by Michael Jennings and all the S.C. property); *“tangible property was not properly valued for distribution purposes; joint accounts established, power of attorney, and transfer on death accounts occurred when the decedent lacked capacity; Personal Representative and Katherine Dauphin made cash payments to themselves from decedent’s accounts”*; and, *“discovery requests were not answered requiring an Order to Compel Production”* (R. P. 6-7).

When Judge Pierce removed Dearden as PR she appointed Angela M. Kirby, Esquire, as Special administrator pursuant Section 62-3-614. Kirby was ordered to *secure the assets of the estate, review the inventory and appraisal for the proper inclusion of assets belonging to the decedent at the date of her death, and review the accounting submitted by the PR (R. P. 7)* . Prior to Dearden filing notice of appeal, Kirby was able to procure over 800 pages of medical records.

Appeal No: 2013-CP-28-00525

The hearing on remand was held July 20 & 21, 2016 by Judge Branham, the new Kershaw County probate judge. The issues addressed in the October 27, 2016 Order

were: *“Contractual Capacity of Decedent; Joint Accounts; Power of Attorney; Removal of PR; Certificates of Deposit, Shipping Costs and Appraisal of Jewelry”* (R. P. 12-20).

The Court did not review evidence or hear arguments or decide the claim *“assets were omitted from the inventory and appraisal”*, which would include the promissory note owed to Decedent by Michael Jennings and all the missing S.C. property.

Prior to the hearing, in January 2016, my attorney filled supplementary discovery requests asking for information regarding loans the Decedent made to her family members. During the hearing, a November 15, 2006 email from Dauphin was stipulated to, making it an accepted finding of fact. Dauphin (who had a master’s degree in business) wrote she had investigated our mother’s financial documents and discovered Michael Jennings had not fully repaid the promissory note (R. P.146).

During the 2016 hearing Dearden admitted she had sworn untruthful oaths that her accounting and inventory was complete and accurate R.P. 137; P457 L16-20). Each time she was confronted with an omission or inaccuracy, she testified she intended to make corrections (R. P.136; P454 L11-25 & P455 L1-25 & P456 L1-9 & P457 L17-18). In addition, Dearden admitted she swore her schedule contained a complete and accurate inventory and appraisal of all real and personal property of the estate (R. P.133; P 415 L1-25). This was a contradiction of her previous testimony that she had disbursed all the S.C. assets without recording any of it in the inventory (R. P.129: 2012 T; pg. 76. 6-24; P77 L1-8). She ignored all requests to provide supplementary inventory.

Mr. White was trying to trace what became of a Merrill Lynch investment account for \$248,498.54 (R. P. 208; BH 187).

Mr. White: “*And I’ve requested the 2010 tax return and was not provided it. And that would at least provide some information of whether or not you had a Merrill Lynch account still that provided income and dividends — or interest and dividend. That wasn’t produced*”. (R. P. 134; P432 L 12-17)

The Court found that the Decedent lacked contractual capacity in 2009 but had capacity when the Decedent changed the beneficiaries of various CDs in November of 2007, and when she executed power of attorney in March 2008. ^{FN1}

The Court found that Dearden improperly took the Decedent’s funds from a joint account holder and improperly exercised authority under Power of Attorney to give herself over \$50,000 from her mother’s joint accounts. The Court found Dearden violated the terms of the power of attorney and public policy making gifts to herself, her husband, and her sister Katherine Dauphin, at the expense of the Decedent.

The Court re-instated Dearden as Personal Representative. Dearden was ordered to produce amended accounting, reducing her account and Dauphin’s account for the money inappropriately taken. Both sides Appealed.

Appeal No: 2016-CP-28-00979

The Claims appealed and affirmed, in Judge Lee’s July 10, 2020 Order were:

“allowed Mary Dearden to remain PR of the Estate; required Dearden and others to reimburse the Estate for funds improperly removed from various joint accounts held with the Decedent; required Dearden to provide an Amended Accounting; assessed certain costs and fees against the Estate; and denied taxation of other fees against the Estate. Additionally, the Probate Court made specific findings of fact regarding the capacity of the Decedent”. (R. P. 22)

^{FN1}.The testimony of the PR and her witnesses is conflicted with each other, previous statements, and medical reports. I am not addressing capacity here because doing so requires the 2016 Order to be declared Interlocutory or an action by Rule 60.

Regarding the accounting, Judge Lee simply states, “*required Dearden to provide an Amended Accounting*” (R. P. 22). Although raised in the appellate's brief, (R. P. 58 & 74-76); there is no mention of the promissory note, supplemental inventory, Merrill Lynch account, or over \$50,000 in loan payments, each one added and deleted on the same day.

AMENDED ACCOUNTING AND CLOSING DOCUMENTS

When the 2016 order was affirmed by Judge Lee, Judge Branham ordered Dearden to produce the amended accounting, which was submitted on September 22, 2020. Other than reducing her own account and that of Dauphin for malfeasance, Dearden's September 22, 2020 amended documents are **exactly** the same as her 2011 documents. I demanded a hearing, bringing to the Court attention that the amended documents had the same inaccuracies and omissions that Dearden testified she planned to correct, and even the same untruthful oaths (R. P. 161-179).

The Probate Court held a hearing on March 16, 2021 with a continuance on June 2, 2021 (no transcript). The court would not address accounting and inventory omissions and inaccuracies, finding those issues were previously appealed and affirmed in the 2016 order. The court and Moultrie Burns agreed the issue of the promissory note owed to the Decedent by Michael Jennings was never addressed, and agreed to hear evidence regarding whether it was fully paid.

In his April 7, 2021 post hearing memorandum, Moultrie Burn wrote:

“ The Court decided to consider rescheduling for evidence as to whether a debt to the decedent from Michael Jennings was satisfied prior to his mother's death”. (R. P. 180; Paragraph 1)

In his post-hearing memorandum, Burns attached ten years of Michael Jennings' incomplete tax documents, showing only the principal on the note was paid (R.P. 181-179). I responded on April 13,: *"Mr. Burns' exhibit actually provides evidence to show Michael Jennings did not pay the interest as required."*... *"No document has been provided to show Michael came to an agreement with the Decedent allowing him to not pay her Interest on the note"*. (R.P. 206).

Having received no response, on June 10, 2021, I re-opened discovery requests pursuant Rule 26(e) seeking complete documents.

Disclosure Pursuant Rule 26(e):

Parties are under a duty to supplement or correct the previously provided discovery information when it applies to rule 34 for production of documents and Rule 33 for interrogatories.

*"Production of Documents. Tax forms from 1994 until 2004 showing Michael Jennings paid the **interest due** on the Promissory Noted owed to the Decedent."* (R. p. 207).

When everyone was unresponsive to my requests I sent two motions to compel production to the Court:

July 16, 2021 Motion to Compel Production

" Findings of fact must be produced. The Petitioner moves the Court to Compel the Decedent's entire tax returns (not just certain pages) to determine whether Michael Jennings paid the interest on the promissory note, as the note required." (R.P.105-108)

Signed for by C. Branham and transferred to Judge Branham on July 16 (R. P. 109).

July 19, Judge Branham sent an email saying she decided the note was paid. (R.P. 39-40)

Letter from Judge Branham Dated July 20, 2021

"Your Motion to Compel Production is being returned to you. This filing can not be accepted because there is no pending litigation". (R. P. 38)

July 26, 2021 Motion to Compel Production Pursuant Rule 106

“South Carolina Rules of Evidence 106 Remainder of or Related Writings or Statements. When a writing or statement is introduced by a party, the adverse party may require the introduction of any other part of the document.” Petitioner requires the Decedent’s complete tax returns for the years 1994 through 2004.” (R. P. 110)

Signed for by C. Branham and transferred to Judge Branham on July 26..

Letter from Judge Branham dated July 29, 2021

“Your Motion to Compel Complete Evidence Pursuant Rule 106 is being returned to you. This filing can not be accepted because there is no pending litigation”. (R. P.41)

Seven weeks later the Court found:

September 3, 2021 Order (R. P. 42-43)

“Ms. Hennager made issue with the accounting, particularly the absence of a promissory note from Michael Jennings to the decedent, as well as other allegations, including omissions of transaction of stopped payments and questions as to value of personal property.

Based upon arguments and the prior record and the zoom proceeding, I find and conclude the following:

Findings of Fact

- 1) *The promissory note of Michael Jennings was satisfied before the decedent’s death and the Inventory is correct in not listing such debt as an asset.*
- 2) *The PR’s Amended Final Accounting as submitted to this Court is approved, as being accurate, complete and in compliance with the 2016 Order.”*

Appellant filed notice of appeal on September 14, 2021.

[Louis Jennings, who appealed separately, died January 5, 2023]

Appeal No: 2021-CP-28-00795

Hearing for oral arguments by remote technology was held on May 29, 2024 before Judge Coble.

Regarding Finding of fact 1) I argued the court denied me due process of the law when it denied my right to complete documents that would prove my claim that the interest on the note was not paid, as required.

Regarding finding of fact 2), I argued the October 27, 2016 order was not a final order because it did not decide all the claims of the case. In his post hearing memorandum Moultrie Burns acknowledged the Court scheduled a hearing to present evidence and hear arguments. The Sept. 3, 2021 Order decided those claims. In addition, the PR admitted her accounting and inventory was not accurate or complete and she testified she intended to make corrections. Judge Lee only affirmed the PR “*was ordered to produce amended accounting*”, which allowed Deaden another opportunity to make corrections.

Moultrie Burns, apologized to the court that he did not know how to increase the volume on his computer. (R. P. 139; P4; L10-12). I told the Court it was so low it was impossible to hear most of what he was saying (R. P. 141; P22; L24-25). Being unable to hear what he was saying, I responded to the argument he made in all of his previous filings; that the note was paid prior to the Decedent’s death and all other issues were appealed and affirmed in the 2016 Order, precluding further action.

The Respondent was found the prevailing party and Moultrie Burns was ordered to produce the order. It was at this time that I discovered Burns changed the first finding of fact in the September 3, 2021 Order from:

“1) The promissory note of Michael Jennings was satisfied before the decedent’s death and the Inventory is correct in not listing such debt as an asset.”

To:

Ms. Hennager “attempted on this appeal to raise allegations and speculations that should have been investigated during discovery. Both the 2016 Order and the 2020

Order on Appeal confirm that there was ample opportunity to do so. An example is her allegation of unpaid promissory note from Michael Jennings to decedent”.
(Page 2 of Order)

Renaee Jennings’ sworn affidavit was not accepted after two failed delivery attempts by FedX . The Proposed Order was signed June 19, 2024, without responding to my objections pursuant Rule 46 (R. P. 111-125). I filed notice of appeal on July 12, 2024.

ARGUMENT AND RULE OF LAW

I. Whether the June 19, 2024 Order is void because Moultrie Burns acted without authority, intentionally falsified the record and failed to respond to discovery requests.

A. Burns Changed the Finding of Fact Under Appeal

The contested finding of fact in the September 3, 2021 Order was changed from :

“1) The promissory note of Michael Jennings was satisfied before the decedent’s death and the Inventory is correct in not listing such debt as an asset.”

To:

Ms. Hennager “attempted on this appeal to raise allegations and speculations that should have been investigated during discovery. Both the 2016 Order and the 2020 Order on Appeal confirm that there was ample opportunity to do so. An example is her allegation of unpaid promissory note from Michael Jennings to decedent”.

The substituted false finding of fact that we did not seek payment information in discovery requests was never heard or ruled upon by the probate court; therefore it was not an issue the Appellate court could hear, much less substitute for the actual finding of fact under review.

“To preserve an issue for appellate review, an issue must have been raised to and ruled upon by the trial court”. Whaley v. CSX Transp., Inc., 362 S.C 456, 609 S.E.2d 286, 299 (2005).

Rule 60(b) provides relief to a party when an attorney in the litigation has acted without authority. Cacevic v. City of Hazel Park, 226 F3d 483, 490 (6th Cir. 2000).

B. Falsification of Appellant Record

This falsification of the record is an egregious attempt to defile the workings of the court itself. The issue of Appellant sought proof of payment in years of discovery requests and the Court supported its decision by improper exclusion of that evidence, thus denying the Appellate Due Process, is an appealable issue. If the Appellate never attempted to get the evidence in the first place, and first brought the issue up while under appeal (as falsely alleged in the order), then the issue is unappealable.

An attorney is an officer of the court with a duty of honesty towards the court.

Rule 3.3: Candor Toward the Tribunal

A lawyers shall not knowingly make a false statement of fact or law to a tribunal, or, offer evidence that the lawyer knows to be false.

C. Evidence Burns Knew of the Falsification

The facts of of this case offer conclusive evidence that payment information on the promissory note was sought in multiple discovery requests. It is clear that Burns has a history of ignoring discovery requests that would be detrimental to the outcome he was seeking.

While Burns' proposed June 19, 2024 Order, (accepted by the Court), falsely states I did not seek payment information in discovery, at the same time he referenced questioning me in the 2016 hearing about seeking payment information; a contradiction. Burns asked, *"Are you saying the loan is not paid to this day?"* I responded, ***"We've asked about it. We get no responses. And I am saying it's a possibility"***. (R. P. 130; 2016 T; P266 L17-20).

My attorney and I were waiting on discovery requests for tax returns as well as completion of the Jan. 2016 Interrogatories and Production of Documents asking for the note to be recorded. After my questioning, my attorney explained this to the Court.

Mr. White: *“a 2004 income tax return from Mrs. Jennings magically appeared today showing the loan for Michael Jennings company to Mrs. Jennings. It was not provided to us before, but it magically appeared today. And we still don’t have the 2010 tax return either”. “I’m going to do the calculations to see if it’s actually paid off”.* (R. P. 131; 2016 T. P 284 L 3-13)

After the hearing, Artie White did the calculations and determined the interest had not been paid in 2004 but we could never get the tax returns for the Decedent or Michael Jennings, or any other information requested in discovery to determine whether the remaining years were fully paid (1994-2004).

The First Issues on Appeal in my 2016 brief shows we were seeking complete records.

“ Are there sufficient findings of fact and conclusions of law to conclude that Judge Pierce correctly found that ‘Assets were improperly omitted from the Inventory and Appraisalment, which should have been included in the probate estate?’”

D. Other Falsifications of the Record

From his first hearing before the court to his last, Burns falsified the record and deceived the Court. The first finding of fact in the October 27, 2016 Order is *“Decedent was a resident of Kershaw County”*, which is erroneous (R.P 13 Para. 3). In the first hearing before the court, Burns misrepresented material fact regarding where the Decedent was domiciled at the time of her death. She was a resident of Virginia. ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.***, 322 U.S. 238 (1944) allows the court to set aside judgement for fraud on the Court; falsification of the record.

In his final statement to the court at the May 29, 2024 hearing, Burns said the PR made a final distribution in the form of cashiers checks. "All the beneficiaries accepted theirs except Ms. Hennager." (R. P. 140; P21; L 1-2). Neither Renae Jennings (Louis' wife and sole heir to his estate) nor I received a check. When Burns wrote he made a distribution, I responded; under appeal, Title 62-1-308 provides all proceedings in pursuance of the order shall cease until the judgment of the circuit court.

In the Nov. 2012 hearing with Judge Pierce, Louis testified our discovery requests were ignored; "we haven't gotten them and that's why we're here today" (P57.L22-25). Burns failed to deliver the Decedent's medical reports ordered by Judge Pierce, and then attempted to deceive her that he had complied. (R. P.126-127; 2012 T; P5 L17-25; P6 L1-8).

Numerous jurisdiction hold an attorney's subornation of perjury and or the intentional concealment of documents, or failure to produce documents, constitutes fraud upon the court.

In *Chewning v. Ford Motor Company* (346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001), the SC Supreme Court found the subornation of perjury by an attorney and/or the intentional concealment of documents or failure to produce documents by an attorney are actions which constitute extrinsic fraud. *Id.* At 82, 579 S.E.2d at 610

Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of actions". *Hilton Head Car. Of S.C. v. Public Serv. Comm'*. 294 S.C 9,11, 362 S.E.2d 176, 177 (1987)

Moultrie Burns would not produce any document that would provide evidence contrary to the outcome he was trying to achieve. The medical reports (procured by Angela Kirby, Esquire) are essential to proving perjury and fraud. The taxes would prove

the interest on the promissory note was never paid and trace the Merrill Lynch account. Moultrie Burns' intentional failure to produce documents constitutes fraud upon the court, making all the orders of the Court VOID.

II. Whether the Court's October 27, 2016 Order is an Interlocutory Order subject to review and amendment.

A. Final Judgment Settles All Claims and Ends Litigation

Final judgment is the last decision from the court that removes all issues in dispute and settles the parties' rights with respect to those issues. The September 3, 2021 Order with the finding of fact regarding the disputed but unresolved promissory note is proof, in and of itself, that the October 27, 2016 Order was an Interlocutory order because it did not address all the claims of the case.

If a judgment leaves some further act to be done by the court before the rights of the parties are determined, the judgment is not final. Tommy Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 467, 570 S.E.2d 197, 201 (Ct. App. 2002).

A final probate order is one that addresses all claims of the estate and ends all litigation between the parties. Ballenger v. Bown, 313 S.C. 476, 477-478, 443 S.E.2d 379, 380 (1994)

In his April 7, 2021 post hearing memorandum, Moultrie Burn wrote:

"The Court decided to consider rescheduling for evidence as to whether a debt to the decedent from Michael Jennings was satisfied prior to his mother's death". (R P180)

The September 3, 2021 Order states, ***"Based upon arguments and the prior record and the zoom proceeding, I find and conclude the following:"***

Rule 54(b) of the SCRPC provides, in part, that any order or decision which adjudicates fewer than all of the claims shall not terminate the action as to any of the claims and the order is subject to revision at any time before the entry of final judgment.

Accord Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996) provides the general rule is that only final orders are appealable. A final order of the Probate Court is one that addresses all claims and ends all litigation between the parties.

Section 62-1-308 Appeals to Circuit court must be of final orders, sentences or decrees of probate Court and any person considering himself injured by a Final Order may appeal to the Circuit Court in the same county.

B. Other Unresolved Claims

During the 2016 hearing, Dearden confirmed she had sworn untruthful oaths that her accounting and inventory was complete and accurate (P457 L16-20). She testified she intended to make corrections (R. P. 137; 454 L11-25)(R. P.136; P455 L1-25; P456) (R. P. 137; L1-9 & P457 L17-18). Other than reducing her account and Dauphin's for malfeasance, her 2020 amended accounting is **exactly** the same - same omissions, same inaccuracies and same sworn untruthful oaths.

Regarding the value of jewelry, the Court's order relied upon "*the one appraised value provided by the Personal representative*" (R.P. 19 #38). Dearden testified she paid four hundred dollars to appraise the jewelry (R. P. 132; P311. L16-17) but there is no four hundred dollar payment to anyone in her accounting. And there are no professional appraisals other than the ones that Louis and I provided.

Loan payments for over fifty thousand dollars were entered into the estate accounting and taken out on the same dates, with no way of following where the money went (R.P. 158). Arthur White told the court his requests for the 2010 tax returns were not provided that would help trace a Merrill Lynch account for \$248,498. (R.P. 135; P. 423. L1-17). White complained Dearden did not respond to multiple discovery

requests asking for it even though Dearden was responsible for preparing it (R.P.135; P424 L6-10).

Judge Lee could not affirm documents that the PR herself testified were inaccurate and incomplete. The affirmation order did not address any of the accounting and inventory issues because it provided Dearden another opportunity to make corrections. The PR's Accounting and Inventory must be in conformance with Probate laws, which provide:

Section 62-3-810 directs the PR to keep adequate records of her administration with all incoming and outgoing transactions.

Section 62-3-706 mandates the PR must obtain a date of death value for all estate assets which often requires professional appraisers and accountants. The PR is allowed 90 days to prepare and distribute the estate inventory.

Section 63-3-504 directs the PR not exercise her power to make any distribution of the estate without prior order of the court

Section 62-3-708 Supplementary Inventory. If any property not included in the original inventory and appraisal comes to the knowledge of a PR or if the PR learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall submit a supplementary, amended or corrected inventory of appraisal showing the market value as of the date of the decedent's death of the new item, or the revised market value or descriptions, the appraisers or other data relied upon, if any, and restating the unchanged information from the original inventory.

C. Failure to Provide Supplemental Inventory Voids the Order

The first finding of fact in the Court's 2016 Order is "*The Decedent was a Resident of Kershaw County*", which is erroneous (R.P.13). Decedent's death certificate states she was a resident of Virginia. Dearden testified she disbursed all the S.C. Assets without appraisals and without listing any of it in the Inventory (R.P. 129; 2012 T. P76 L8-24 & P77 L1-8).

Section 62-3-708 requires the PR to file supplementary inventory.

Section 62-3-201 provides venue for first and subsequent estate proceeding; location of property.

(A) Venue for the first informal or formal testacy or appointment proceeding after the decedent's death is (1) in the county where the decedent had his domicile at the time of his death; or (2) if the decedent was not domiciled in this State, in any county where property of the decedent was located at the time of his death.

The Decedent was not domiciled in S.C. and had no property recorded in S.C.

Having failed to remove Dearden as PR and appoint a special administrator to recover the SC assets, the Court failed to establish jurisdiction for probate in South Carolina.

"If it (any court) acts without authority, its judgments and orders are regarded as nullities. They are not voidable but simply void. Elliot et al v. Person et al (1892), 2 Pet. 328, 7 L. Ed. 164.

"An order that exceeds the jurisdiction of the court is void, or avoidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue". Rose v. Himely (1808 4 Cranch 241, 2L Ed 80)

III. Whether the Court deprived the Appellant of Due Process, when it improperly excluded relevant evidence Appellant sought in discovery for five years, resulting in a miscarriage of justice.

A. Promissory Note Owed to Decedent by Michael Jennings

The statement of facts provides clear and convincing evidence that I sought payment information in discovery for over five years. Moultrie Burns' April 7, 2021 statement that the March and June 2021 hearings were brought to address the promissory note, bears repeating:

"The Court decided to consider rescheduling for evidence as to whether a debt to the decedent from Michael Jennings was satisfied prior to his mother's death".

Given there had just been a hearing, it made no sense at the time and makes even less sense now, that the Court returned my motions to compel complete documents stating there was “*no pending litigation*”. Seven weeks later Judge Branham made her September 3, 2021 Order, indicating *there was pending litigation*.

Rule of Evidence 106 provides when a party introduces incomplete documents, the adverse party may require the introduction at that time of any other part which ought in fairness to be considered contemporaneously with it. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The Court denied my right to complete documents to present relevant evidence that would prove my case, and in doing so, the Court denied my right to due process of the law, making its order void. This manifest miscarriage of justice caused substantial injury to the Appellant amounting to millions of dollars. Had the complete tax documents been provided, as requested in discovery for over five years, it is undoubtable there would have been a different outcome.

The Due Process Clause of the Fourteenth Amendment guarantees every litigant the right “to present his case and have its merits fairly judged”.

In Logan v. Zimmerman Brush Co. (1982) the US Supreme Court found every litigant has the right to present their case and have its merits fairly judged and this right must include the right to present evidence necessary to establish their claim.

In Schwartz v. US 976 R.3d 213 (1992) The Fourth Circuit Court found a judgment is void under Rule 60(d) if the court acted in a manner inconsistent with due process of the law”.

An order is void under Rule 60(d)(3) when the court prevents the movant from presenting all of her case. Lightest & Flanagan, supra, at 486.

Moultrie Burns' refusal to respond to years of discovery requests asking for proof of payment is extrinsic fraud, making the court's order VOID.

In Chewning v Ford Motor Company (346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001), the SC Supreme Court found the intentional concealment of documents or failure to produce documents by an attorney are actions which constitute extrinsic fraud. Id. At 82, 579 S.E.2d at 610. Relief is granted on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of actions". Hilton Head Car. Of S.C. v. Public Serv. Comm'. 294 S.C 9,11, 362 S.E.2d 176, 177 (1987)

B. Conflict of Interest

Dearden testified after Decedent's death Michael provided her with income to pay her living expenses (R.P. 138; 2016 T. P464 L11-16). Dearden's loyalty to Michael and dependence upon him was a conflict of interest with her fiduciary duty to the estate.

Section 62-7-802 sets forth the duty of loyalty owed to beneficiaries and states the PR cannot have a conflict between personal and fiduciary interests.

IV. Whether it is in the best interests of the estate to remove Mary Darden as the Personal Representative pursuant Section 62-3-611(b) and appoint a special administrator pursuant Section 62-3-614.

Section 62-3-611 Petition for removal; cause procedure

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it shown that a personal representative or person seeking his appointment intentionally misrepresented material facts in the proceeding leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

A. Intentionally misrepresented material fact in proceeding leading to her appointment

Dearden and Burns falsely told the Court Decedent was a resident of SC.

B. Disregarded Orders of the Court

As found in the 2013 Order, and not overturned by the 2016 Probate Order, Dearden failed to respond to medical reports ordered by the court, and such was a basis for her removal. The medical records were procured by Angela Kirby and are instrumental in proving perjury and fraud.

C. Failed to Perform the Duties of the Office

Dearden herself admitted her 2011 documents were inaccurate and incomplete and then filed it all again in 2020. Her admission that she swore untruthful oaths, and then swore the same untruthful oaths again, is a testament to her dishonesty. The argument accepted by the Court isn't that Dearden is not guilty of all the issues under appeal. It is that the affirmation of the Oct. 2016 Interlocutory Order accepted Dearden's 2011 accounting omissions and inaccuracies, allowing her to re-submit untruthful documents in 2020 with false oaths declaring her documents to be true and accurate, while knowing that they were not. The Court lacks authority to pardon the PR because probate laws protect the beneficiaries.

Section 62-3-608 does not discharge a PR from liability for transactions or omissions occurring before termination or relieve her of the duty to preserve assets subject to her control, to account therefore, and to deliver the assets.

Section 62-7-706(b) provides for removal of a trustee when the trustee has committed a serious breach of trust.

Section 62-3-703 provides a personal representative is a fiduciary who shall observe the standards described by **Section 62-7-804**.

The Supreme Court of South Carolina in **RT Management company v. Tinsley** cite 399, South Carolina, S.C. 322 (2012), found:

“a fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interest of the one imposing the confidence. Therefore to serve and be a fiduciary, one is in a position of trust, must act in good faith, and must act solely for the benefit of the principal, the person who’s appointed you, and you cannot act for your own personal benefit”.

In Blackmon v. Weaver, 366 S.C. 245 251 S.e.2nd 42, 45 (Ct.App. 2005), the Court found a personal representative can be removed when “it is made to appear to be necessary for the protection of the Estate, to prevent injury to it from misappropriation, maladministration or fraud.

D. It is in the Best Interests of the Estate

Dearden and her attorney, Moultrie Burns exhibited a complete disregard of the prevailing probate laws protecting beneficiaries. Mary Dearden has made it clear she will not sue herself to recover missing assets or loans owed to the estate that amount to millions of dollars. She has demonstrated her loyalty is not to the estate but to herself and her allies, including Michael Jennings and Katherine Dauphin. We do not know the full extent of what is unrecorded.

When the Circuit Appellate Court affirmed the Probate Court’s September 3, 2021 Order, it did not apprehend that allowing Dearden’s Amended Accounting and Closing Documents to lie on the record would make the case VOID for lack of Jurisdiction. The Court of Appeals has the final say to determine whether this case, which has languished in the Kershaw County Probate Court for over fourteen years, will be declared VOID.

E. Remand for Review in another Jurisdiction

If a person acts in agreement with at least one other person to commit a fraudulent activity, this qualifies as fraud conspiracy. The reason money was moved away and concealed, was to financially weaken Louis and I in preparation for a lawsuit, to force the reduced value sale of family partnership assets. Although Dearden did not admit being part of this conspiracy (she was not a partner), she acknowledged its existence. During the 2016 hearing she was questioned, *“Did you have any motive or part of any conspiracy to deprive Louis or Beverly of anything that they might be due, with regard to this Estate or family entanglements?”*. Dearden responded, ***“No, I was completely separated from that. I had nothing to do with it.”*** (R.P. 132; 2016 T; P 309 L25 & P310 L1-5).

This case must be remanded to another jurisdiction to review evidence proving the Decedent lacked capacity in 2007 and 2008 and that Moultrie Burns suborned perjury with the witnesses to assure the outcome he was seeking. The alternatives are to VOID this case for lack of jurisdiction, to order the PR and her attorney to restore all the assets; and to remove this case to the FBI Public Integrity Section for an investigation.

OTHER RULES OF LAW

Pro se pleading are to be considered without regard to technicality; pro se pleading are not to be held to the same high standards of perfection as lawyers. Jenkins v McKeithen, 395 U.S. 411, 421 (1959)

“Pleading are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of just judgment”. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

Section 62-1-106. Effect of fraud and evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions of this Code, any person injured thereby may: (i) obtain appropriate relief against the perpetrator of the fraud and (ii) restitution from any person benefiting from the fraud...

18 U.S.C. 1512 It is a crime to prevent the attendance of testimony of any person in an official proceeding, or to prevent the production of a record, document or other object, in an official proceeding.

18 U.S.C. 371. It is a crime when two or more persons conspired to commit an offense against the United States or to defraud the United States or any agency thereof in any manner of for any purpose.

Section 242 of Title 18 makes it a crime for a person acting under the color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

Section 62-3-706(g). If a personal representative neglects or refuses to comply with any provision in Section 62-3-706 she is subject to the contempt power of the court.

Section 62-3-720. Only allows the estate to pay for attorneys fees and expenses if the PRs defense was done in good faith.

Section 62-3-808(b). In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Section 62-3-712 Improper exercise of power; breach of fiduciary duty. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee.

CONCLUSION

WHEREFORE, I respectfully request this Court to find that enforcing the laws that protect beneficiaries is the only way to successfully close this estate and end litigation. I request the Court to find the October 2016 Order is interlocutory because it did not decide all the issues of the case. I request the court to find interlocutory orders remain subject to review and to remand this case to another jurisdiction, to review evidence, including the decedent's mental capacity in 2007 and afterwards.

I request the Court to **AFFIRM** Judge Pierce's 2013 Order removing Mary Dearden as the Personal Representative of MK Jennings estate pursuant **Section 62-3-611(b)**. I request the court to reappoint Angela Kirby, Esquire the special administrator (or someone she recommends) pursuant **Section 62-3-614(2)** to recover and record missing assets of the estate and to perform an accurate and complete accounting of incoming and outgoing expenses as well as debts and investment accounts.

I request the Court to **VOID** the September 3, 2021 Order pursuant Rule 60(d)(3) because the Court denied me Due Process to receive evidence sought in discovery for over five years, and Moultrie Burns failed to produce documents subject to his control that were requested for 14 years. I request the Court to find Michael Jennings and Mary Dearden had sufficient time to produce taxes proving whether the interest on the promissory note was paid; therefore, the interest was not paid, as verified in Katherine Dauphin's 2006 email. I request the Court to Order the special administrator to hire a Virginia Firm to recover the unpaid balance on the promissory note including interest and penalties.

I request the court to VOID the June 2024 Order of the District Court because Moultrie Burns falsified the docket substituting a false finding of fact for the probate court's finding. I request the court to find Moultrie Burns committed fraud upon the court because he falsified the record and concealed/failed to produce documents requested in discovery for over fourteen years. Burns defiled the workings of the court so that it was unable to perform its task impartially, and his dishonest actions resulted in irreparable harm to Appellant(s).

If recovery of any of assets of the estate is not possible, I request the Court to hold Mary Dearden, Moultrie Burns and his firm liable for all the losses suffered to the estate. I move the court to not allow any recovery of assets to pass along to Dearden, Dauphin or Michael Jennings because they participated in defrauding the court.

I request the court to sanction the PR and Moultrie Burns pursuant **Section 62-3-704(g)**. To deter any future exploits like this and restore public trust in the integrity of the court, I request the court to order extensive punitive damages. I request the court to award me attorneys fees and costs pursuant **Section 62-7-1004**. I request the court to award me any other remedy or compensation it finds reasonable and necessary.

HOWEVER, if the Court finds the 2016 Order is a final Order precluding any further action, and affirms the September 3, 2021 Order, then I move the Court to declare this case VOID for lack of jurisdiction because the Decedent was not domiciled in South Carolina and she had no property located there at the time of her death; thus the estate does not meet the requirements for venue for probate pursuant **Section 62-3-201**. I move the Court to order Mary Dearden and Moultrie Burns to pay all of my

legal fees, to restore all of the assets of the estate before it is removed to Virginia, and to recommend an investigation by the FBI Public Integrity Section in Washington D.C.

Respectfully Submitted,

September 24, 2024



_____ date _____

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