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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Circuit Court

The Honorable Carolyn E. Woodruff, Judge of Probate
The Honorable Daniel D. Hall, Circuit Judge

Appellate Case No. 2024-00259

BERNICE CALDWELL,

Appellant,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

of whom PATRICIA MITCHELL,
in her own right and as Personal Representative, is the

Respondent.

RECORD ON APPEAL

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Rock Hill, South Carolina 29731
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Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4603201

Bernice Caldwell
PLAINTIFF(S)

Patricia Mitchell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration, the judgment of the Probate Court is AFFIRMED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/20/2023 .

Dennis Mitchell
Sharon M Culp
Thomas Lamont Davis
Sumter Oneal Caldwell
Latrinda Robinson

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Feb 26 2024

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Nov 20 4:47 PM - YORK - COMMON PLEAS - CASE#2022CP4603201

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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York Common Pleas

Case Caption: Bernice Caldwell VS Patricia Mitchell , defendant, et al
Case Number: 2022CP4603201
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2023-11-20 14:41:36 page 3 of 3

ELECTRONICALLY FILED - 2023 Nov 20 4:47 PM - YORK - COMMON PLEAS - CASE#2022CP4603201

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP4603201

Bernice Caldwell
PLAINTIFF(S)

Patricia Mitchell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration, Appellant's Motion to Alter or Amend Judgment is DENIED.

The parties have provided ample record on which the Court relies to deny the Motion to Alter or Amend.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/26/2024

Dennis Mitchell
Sharon M Culp
Thomas Lamont Davis
Sumter Oneal Caldwell
Latrinda Robinson

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Feb 26 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ELECTRONICALLY FILED - 2024 Jan 26 3:39 PM - YORK - COMMON PLEAS - CASE#2022CP4603201



York Common Pleas

Case Caption: Bernice Caldwell VS Patricia Mitchell , defendant, et al
Case Number: 2022CP4603201
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2024-01-26 15:24:00 page 3 of 3

ELECTRONICALLY FILED - 2024 Jan 26 3:39 PM - YORK - COMMON PLEAS - CASE#2022CP4603201

Petitioner contests the validity of the Will on the grounds of incapacity and undue influence, and alleges that Petitioner is equitably entitled to the Subject Property. Petitioner alleged the Decedent did not have capacity to devise the Subject Property and was subject to undue influence by Respondent Marshall. Petitioner further alleged that she made improvements to the Subject Property with the expectation of receiving ownership.

After hearing the evidence presented, the Court concludes (1) the Decedent's Last Will and Testament executed March 19, 2019 (hereinafter referred to as the 2019 Will) is valid, (2) the Petitioner is not equitably entitled to ownership of the Subject Property, and (3) the Petitioner is entitled to recover from the assets of the Estate the expenses for which she documented payment: the costs of adding decks to the Subject Property in the amount of \$3,717.69 and property taxes in the amount of \$50.79.

Findings of Fact

The 2019 Will was executed March 19, 2019 at the residence of Respondent Marshall. Respondent Marshall testified that Decedent, who was her brother, brought a Will template to her and directed her to write her name in the document's blanks naming her as the devisee of the Decedent's property. Respondent testified that Decedent had no issue of mental incapacity but was illiterate and often relied on her to fill out legal documents. She testified that the process of completing the blanks in the 2019 Will took place over a period of time and the Decedent directed that his real estate be devised to Respondent Marshall with the understanding that his mentally challenged son, Dennis Mitchell, could live in the Subject Property. Respondent testified that after the document was completed she read and explained the 2019 Will to the Decedent; the Decedent approved the terms of the 2019 Will; and the Decedent signed the 2019 Will. She also testified that shortly thereafter in the presence of two witnesses, the Decedent acknowledged his signature and identified the 2019 Will as his Last Will and Testament, and the witnesses signed the document.

Petitioner, who currently occupies the Subject Property pursuant to a lease agreement, testified the Decedent verbally promised her title to the Subject Property by telling her "to move in and not move out."

Although the Petitioner's testimony went back and forth about whether the Decedent was of sound mind: he was of sound mind when he told her to move into the house and not move out, he knew exactly what she was doing when she made repairs, he was clear headed until he was on morphine two weeks before he died, when they talked he seemed to know what he was talking about, and at times he appeared to be declining mentally, she gave no testimony about the Decedent's state of mind at the time he signed the 2019 Will.

She stated she had no proof of the Decedent's mental capacity at the time he signed the 2019 Will. The Petitioner did not dispute the Decedent's signature on the 2019 Will. Petitioner did not produce any testimony that the 2019 Will was improperly witnessed.

Both Petitioner and Respondent Marshall testified that Respondent Dennis Mitchell is "mentally challenged," but there was no evidence presented to the Court that he had been adjudicated to be an incapacitated person. He was not present at the hearing although he was represented by Latrena Reeder as his guardian *ad litem*.

Witness Sharon Culp testified that she did not notice a lack of capacity in the Decedent.

No professional testimony was given.

Conclusions of Law

I. Validity of the Will

The Court concludes the Petitioner did not prove the Decedent was incapacitated at the time he signed the 2019 Will, or that he was unduly influenced by Respondent Marshall. The fact that Decedent was illiterate and Respondent Marshall was the scrivener and devisee does not

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negate Decedent's ability to execute a valid Will and understand its terms. Swiger by and through DeHaven v. Smith, 426 S.C. 408, 827 S.E.2d 200 (2019).

A. *Mental Incapacity*

The test of whether the Decedent had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. Hellams v. Ross, 268 S.C. 284, 233 S.E.2d 98 (1977); In re Washington's Estate, 212 S.C. 379, 46 S.E.2d 287 (1948); Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct.App.1993). "Generally, when the formal execution of a will is admitted or proven, a *prima facie* case in favor of the will is made out." Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982).

Here the evidence supports the conclusion that the Decedent understood the contents of his estate, how the estate was being devised, and to whom the Subject Property was being devised. Respondent Marshall is entitled to rely on the legal presumption that upon proof of due execution by a competent testator, the testator knew the contents of the instrument, which casts the burden on the Petitioner/contestant to prove the testator's lack of knowledge. Pursuant to In Re McNeill's Estate, 259 SC 55, 190 SE2d 754 (1972) and Ex Parte McKie, 107 SC 57, 91 SE 978 (1917), if no further showing is made other than that the will was executed by a capable testator, the proponent has succeeded in establishing the essential fact of knowledge of contents. In this case, there was no disinterested third party or expert witness testimony presented by either the Petitioner or Respondent Marshall that the Decedent did not duly execute and understand the terms of his Will. Respondent Marshall, as a proponent of the Will, may rely on the presumption which, in the absence of other proof, is sufficient to establish the Decedent knew the contents of the 2019 Will.

It is settled law that when the formal execution of a will is admitted or proved, a *prima facie* case in favor of the Will is made out, and as a general rule the burden is then on the

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contestants to prove undue influence, incapacity or other basis of invalidation, and such burden remains upon the contestants throughout. In determining whether the contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants. Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969).

Viewing the evidence in a light most favorable to the Petitioner, the Court concludes the Petitioner did not carry the burden of proof which requires clear and convincing evidence of a lack of capacity and undue influence.

B. Undue Influence

There was no evidence of undue influence in this case. While Respondent helped the Decedent with his affairs due to his illiteracy and was named his agent pursuant to a power of attorney, which indicates the Decedent interposed a special confidence in Respondent Marshall and creates a presumption of undue influence, there was no testimony which established clearly and convincingly that Respondent unduly influenced him to sign the 2019 Will. Any presumption was rebutted.

"General influence is not enough. A contestant must show that the influence was brought directly to bear upon the testamentary act." Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "The influence must be of such a degree that it dominated the testator's will, took away his free agency, and prevented the exercise of judgment and choice by him. If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." In re Last Will and Testament of Smoak, 286 S.C. at 424, 334 S.E.2d at 809.

As pointed out in Howard v. Nasser 364 S.C. 279, 613 S.E.2d 64, 68-69 (Ct. App. 2005):

We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will. See

S.C. Code Ann. § 62-3-407 (Supp. 2004) ("Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof."); *Calhoun*, 277 S.C. at 530, 290 S.E.2d at 417 ("The contestants continue to bear the burden of proof throughout the will contest."); *Smith v. Whetstone*, 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where will is formally executed the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end").

While the Petitioner and Respondents other than Patricia Marshall may be disappointed in the Decedent's 2019 Will, South Carolina case law is very clear that a testator may devise his or her estate to those he chooses regardless of what those omitted may find satisfactory. See *Matheson et al. v. Matheson*, 125 S.C. 165, 118 S.E. 312 (S.C. 1923) and *Lee's Heirs v. Lee's Executors*, 329 S.C. 251, 495 S.E.2d 454 (1997)).

The Court concludes that the 2019 Will is valid. Respondent Marshall is the sole devisee under the 2019 Will.

II. Equitable Ownership

The Court also concludes the Petitioner is not entitled to equitable ownership of the Subject Property. The Petitioner admitted she was a tenant. She signed a lease in order to provide an address so she could obtain food stamps for her son. She and the Decedent did not sign a contract for her to make improvements in exchange for ownership. She testified at one point that she did not have an understanding with the Decedent about what would happen to the Subject Property after his death, and that she didn't know why the Decedent wanted her to stay in the Subject Property. She later testified that she believed the Decedent intended to give her the Subject Property based on his ambiguous and open ended statement that she should move in and not move out, but she had no written or verbal contract that the Decedent intended to give her the Subject Property. She had no knowledge it was mortgaged. She testified that she did not intend for Dennis Mitchell to live there even though he was on the lease, but that he would be welcome, and made the inconsistent statements that the Decedent did not want to hurt her siblings by giving the Subject Property to her, but that he wanted her to have it.

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To avail herself of the equitable remedy of promissory estoppel, the Petitioner must show an unambiguous promise, a reliance on that promise, that the Decedent expected the reliance, and that she sustained injury in reliance on the promise. Petitioner did not prove these elements. The promise to be enforced must be unambiguous with clearly articulated, enforceable terms. See A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 812 S.E.2d 759 (S.C. Ct. App. 2018). The Petitioner did not provide evidence to show that the Decedent made a clear promise or an inconsistent disposition of the Subject Property which was sufficient for the Court to conclude that she is entitled to an equitable ownership interest in the Subject Property.

There was testimony by Respondent Marshall that the Decedent wanted her to preserve the property for the use of his mentally challenged son, Dennis Mitchell. Even the Petitioner acknowledged that Dennis Mitchell was on the lease because the Decedent wanted to ensure him a place to live. Unfortunately, no person alleged a constructive trust of the Subject Property for the benefit of Dennis Mitchell, so that is not an option for the Court to consider.

III. Recovery of Expenses

The Court declines to apply the betterment statutes set forth in S. C. Code Ann. § 27-27-10 as they apply to disputes about title to property and here the relationship is that of landlord and tenant. Case law supports the conclusion, however, that the Petitioner is entitled to reimbursement of some of the funds she spent on improvements. Gheen v. Gheen, 276 S.C. 404, 279 S.E.2 361 (1981). The Petitioner alleged and testified that she made significant improvements to the Subject Property but the only evidence the Court finds probative is that Petitioner and Respondent Marshall agreed that the Petitioner paid for decks added to the house and provided paid receipts in the amount of \$3,717.69. The Court also concludes there was no dispute that the Petitioner paid the 2021 property taxes in the amount of \$50.79. None of the other expenses were credibly substantiated. The other receipts were admitted into evidence to

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show what she "said she paid," but are not receipts marked as paid. The Petitioner had no proof of property taxes paid other than those for 2021.

The Court concludes the witnesses credibly testified the Decedent had knowledge of the improvements being made and the Petitioner testified that at some point she intended to become the owner even though she could not establish a credible basis for that belief. In *Gheen* the Court stated "that a tenant who in good faith makes improvements to the leasehold, with knowledge and consent of the lessor, with the intent of enjoying them in the event he becomes the owner, is entitled to reimbursement for the value of the improvements to the estate." *Gheen*, 276 SC 404, 408.

Attorneys' Fees

Pursuant to S. C. Code Ann. §§62-1-111 and 62-3-720, Respondent Marshall's attorney's fee may be paid from the assets of the Estate to the extent available. The Petitioner is responsible for her attorney's fees.

IT IS ORDERED that:

- a. The Last Will and Testament executed March 19, 2019, by Sumter Mitchell III is valid and Respondent Marshall is the sole devisee;
- b. The Petitioner is not equitably entitled to ownership of the Subject Property; and
- c. The Petitioner is entitled to recover from the assets of the Estate the expenses for which she documented payment: the costs of adding decks to the Subject Property in the amount of \$3,717.69 and 2021 property taxes in the amount of \$50.79.

York, South Carolina
August 15, 2022

Carolyn E. Woodruff
Carolyn E. Woodruff
Judge of Probate

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Cavalyne E. Woodriff

PROBATE JUDGE, YORK COUNTY, SC
IN THE PROBATE COURT

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Case No.: 2021-ES-46-00206

Bernice Caldwell,)

Petitioner,)

vs.)

Patricia Marshall, in her own right and as)
Personal Representative, Dennis Mitchell,)
Sharon M. Culp, Thomas Lemont Davis,)
Sumpter O'Neal Caldwell and Latrenda)
Robinson,)

Respondents.)

**ORDER DENYING MOTION
TO AMEND OR RECONSIDER**

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2022 OCT 12 A 8:53
CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

THIS MATTER comes before the Probate Court pursuant to the Petitioner's Motion to Alter or Amend.

The hearing on the Motion was held September 28, 2022. Present were Movant Bernice Caldwell, represented by attorney J. Martin Foster, and attorney Charles Baxter Burnette, IV, who appeared on behalf of Respondent Patricia Marshall. Also present were Respondents Sharon Culp and Latrenda Robinson (individually and as GAL for Dennis Mitchell).

Having heard and given due consideration to the arguments of counsel and to Tomkins v. Tomkins¹ decided in 1828, citing the English case of Billinghurst v. Vickers², the Court concludes that not only are the facts of this case distinguishable from those of Tomkins and Billinghurst, but that the Court's decision is amply supported by the more recent case law cited in its Order.

The rulings of both the Tompkins and Billinghurst cases are based on the dual findings that the testator did not have the mental capacity to make a Will nor did he understand the contents of

¹ 17 S.C.L. 92, 1 Bail. 92 (1828).

² 1 Phill ECC, 197 (1810).

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the Will that he signed. In *Tompkins*, paraphrasing *Billinghurst*, the Court noted that "where capacity is in any degree doubtful at the time of the execution, there must be proof of instructions, or reading over."³ In *Billinghurst*, the Court specifically noted that "[c]onsidering that the capacity of the deceased was extremely doubtful at the time of execution. . . when capacity is doubtful at the time of execution, and there is no evidence of instructions, especially where the act is done through the agency of the party interested, the proof of mere execution is insufficient."⁴

In this case, Movant Bernice Caldwell conceded that the Decedent was not mentally impaired, that he was of sound mind, and that he had the capacity to make a Will. There was no allegation or evidence of undue influence in this case. Instead, the Movant argued the Decedent was illiterate and did not understand what he signed.

There is no dispute that the Decedent was illiterate, but illiteracy does not equate to incapacity nor to an inability to understand.

In *Tompkins*, the Court concluded that the Will was invalid and noted that not only was there an absence of proof of the testator's intention, there was *direct* proof that the testator died without knowing contents of his Will. In this case, the Movant put on no proof that the Decedent did not understand the contents of the Will. Respondent Marshall credibly testified that over the years she routinely helped the Decedent with legal documents because he could not read, that she discussed the contents of the Will and the Decedent's intentions with him over a long period of time, and that he communicated to her his desire to leave his property to her so that she could care for his mentally challenged son. The credible testimony of Respondent Patricia Marshall supports the Court's decision that Sumter Mitchell had capacity to execute his Will and understood its contents, and based on the evidence as a whole, the Court did not deem the fact that the Petitioner helped the Decedent prepare the Will to be sufficient to invalidate the Will.⁵

³ 17 S.C.L. 92, 1 Bail. 92 (1828).

⁴ 1 Phill ECC, 197 (1810).

⁵ See *Swiger v. Smith*, 426 S.C. 408, 827 S.E.2d 200 (Ct. App. 2019).

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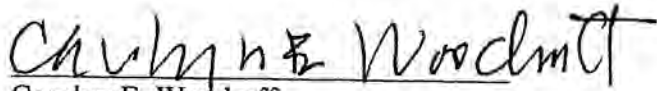
In this case, the Will was properly executed and the contestant neither alleged nor put on proof that it was not. Neither party called the witnesses to the Will to testify. Under the circumstances of this case which were established by both the Petitioner and Respondent Marshall, there is no statutory support or case law for proposition that the burden of proof shifts to the proponent of the Will to call the witnesses to the Will to testify.

Again, the Movant provided no credible evidence that the Decedent did not understand the contents of his Will. On the other hand, Respondent Marshall provided sufficient credible proof that the Decedent gave voice to his intentions in the Will. The Movant's argument discounts the presumption elucidated in South Carolina case law that a testator knows the contents of a properly executed Will, and she provided no credible evidence to the contrary to rebut the presumption. Ex Parte McKie, 107 SC 57, 91 SE 978 (1917).

Where the evidence showed that the Decedent had the mental capacity to make a Will, the Court correctly balanced the evidence put on by Respondent Marshall and the contestant's failure to produce evidence to support her position, to conclude the Decedent signed his Will knowing its contents. The Court declines to amend the Order entered August 16, 2022.

IT IS SO ORDERED.

Rock Hill, South Carolina
October 12, 2022


Carolyn E. Woodruff
Judge of Probate

STATE OF SOUTH CAROLINA
COUNTY OF YORK

]]

IN THE PROBATE COURT

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IN THE MATTER OF: SUMTER MITCHELL, Decedent,

2021 JUN -3 P 4: 21

BERNICE CALDWELL,

CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC
Petitioner,

v.

PATRICIA MARSHALL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS, SUMTER
O'NEAL CALDWELL and LATRINDA ROBINSON,

Respondents.

SUMMONS
CASE No. 2021-ES-46-00206

TO: THE RESPONDENT(S) ABOVE-NAMED:


YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Petitioner(s) listed above at the following address(es):

John Martin Foster
Attorney for Petitioner
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, South Carolina 29731

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to answer the Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

Rock Hill, South Carolina

Dated: June 2, 2021



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
Attorney for Petitioner
jmfoster@comporium.net

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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}

IN THE PROBATE COURT

FILED RECEIVED

IN THE MATTER OF: SUMTER MITCHELL, Decedent,

2021 JUN -3 P 4: 21

CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

BERNICE CALDWELL,

Petitioner,

v.

PATRICIA MARSHALL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS, SUMTER
O'NEAL CALDWELL and LATRINDA ROBINSON,

Respondents.

PETITION

CASE No. 2021-ES-46-00206

The petition of BERNICE CALDWELL, referred to in this pleading as Petitioner, respectfully states as follows:

AS A FIRST CAUSE OF ACTION:

1. This Petition is brought pursuant to the jurisdiction of the Probate Court:
as to the contest of wills, as set out in S.C. Code § 62-1-302(a)(1);
as to actions to try title concerning property in which the estate of a decedent or protected person asserts an interest, as set out in S.C. Code § 62-1-302(d)(3); and
as to declaratory judgment, as set out in S.C. Code §§ 15-53-10 *et seq.*
2. Sumter Mitchell, III, deceased, died on November 9, 2020, leaving the Respondent PATRICIA MARSHALL as the purported devisee and legatee as set forth in an instrument attached as Exhibit A, and incorporated by reference.
3. The Petitioner BERNICE CALDWELL and the Respondents DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS, SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON are those persons who would be the intestate heirs

the deceased.

4. On knowledge and information, all parties hereto are residents of York County, South Carolina. The real estate referenced herein is located in York County, South Carolina.
5. On February 11, 2021, the instrument referenced as Exhibit A and dated on its face March 19, 2019 was admitted to probate under the Civil Action number above by the Probate Court of York County, South Carolina, and the Respondent BERNICE CALDWELL was appointed by that Court as Personal Representative for the Estate of the Decedent.
6. Respondent PATRICIA MARSHALL is the sole legatee and devisee under that instrument attached as Exhibit A.
7. On knowledge and information, the instrument referenced as Exhibit A is not the last will and testament of the decedent for the reason that at the time the Decedent executed the instrument, the Decedent was not of sound and disposing mind.
8. On knowledge and information, the instrument referenced as Exhibit A is not the last will and testament of the Decedent in that at the time of the alleged execution of the instrument, the Decedent was under the undue influence of the Respondent.
9. On knowledge and information, the instrument referenced as Exhibit A is not the last will and testament of the Decedent in that at the time of the alleged execution of the instrument, the Decedent executed the same under a mistake.
10. On knowledge and information, the instrument referenced as Exhibit A is not the last will and testament of the Decedent for the reason that the Decedent did not execute the instrument in the manner and form required by the law of the State of South Carolina.

AS A SECOND CAUSE OF ACTION:

11. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
12. At the time of his death, the Deceased owned the following real property:

All that certain piece, parcel, lot or tract of land lying, being and situate in the City of Rock Hill, Catawba Township #3, York County, S.C. and being shown and designated as Lot 3 on plat of Carroll Place by R. H. Marett, R.S. dated August 15, 1968 and recorded in Plat Book 34 at Page 98 and being more particularly described according to said plat as follows, to wit: Beginning at a stake on the northwestern side of Green Street Extension at a point; 172.5 feet southwest from its intersection with Frank Street, joint front corner of Lots 2 and 3; running thence with Green street Extension S. 48 W. 57.5 feet to a stake, joint front corner of Lots 3 and 4; thence with the line of said lots N. 42 W. 192.1 feet to a stake; thence N. 42-15 E. 47.76 feet to a stake, joint rear corner of Lots 2 and 3; thence with the line of said lots S. 42 E. 197.8 feet to the point of beginning. Being the identical property conveyed to Pheo Cathcart and Evelyn C. Cathcart by deed of Yonce Insurance and Realty Company, Inc. dated October 9, 1969 and recorded October 13, 1969 in Deed Book 395, page 222. See also deed of distribution of Estate of Pheo Cathcart dated May 2, 1994 and recorded May 16, 1994 in Record Book 1007, page 351. See also deed of distribution of Estate of Bruce Edward Cathcart dated July 5, 1994 and recorded July 7, 1994 in Record Book 1045, page 107. See also deed of distribution of Estate of Evelyn Currence Cathcart dated August 18, 1994 and recorded August 22, 1994 in Record Book 1077, page 257.

Tax Map No. 600-10-04-004

Derivation: Being the identical real property conveyed to Sumter Mitchell by the Deed of Ruperd G. Currence, Sr., Robert S. Jackson, Louise Jackson, Ethel Currence Moore, Heyward Roach Currence, Dennis C. Currence, Delancey L. Currence, Bennix Currence, Warren Stanley Currence and Keith Tigler Currence dated February 17, 1995 and recorded March 7, 1995 in Record Book 1203 at Page 114 in the Office of the Clerk of Court for York County, South Carolina.

13. Pursuant to the filing of this action, the Petitioner has caused a *Lis Pendens* to be filed in the Office of the Clerk of Court for York County, South Carolina.
14. Prior to his death, the Petitioner and the Deceased entered into a certain contract whereby the Petitioner was to occupy and improve the real property referenced above while occupying the same at a small rent. Pursuant to the same agreement, the Deceased would, either by a deed during his life or, on his death, by his will, leave to the Petitioner the above-referenced real property. The Petitioner accepted the terms and conditions of the foregoing agreement and has fully and faithfully performed all of the terms and conditions thereof on the Petitioner's part to be performed. The Deceased died November 9, 2020, without

leaving a will or other instrument conveying the above-referenced real property to the Petitioner.

15. The Petitioner acted in reliance upon the agreement with the Deceased, in taking the following actions, among others, as to the house on the above-referenced real property:

- repairing and replacing electricity throughout the house;
- adding a dryer hook-up;
- replacing a washer hook-up, including drain pipes and outlet;
- partially replacing the foundation;
- rebuilding the back porch;
- adding a deck to the back porch;
- replacing the front and back doors, with deadbolt locks;
- installing new sheet-rock in two rooms;
- fixing large holes in the walls of other rooms;
- removing automotive and equipment from the back yard;
- removing or trimming overgrown shrubbery;
- having the house exterminated for roach infestation;
- having the house exterior pressure washed;
- replacing rotted shutters; and
- repairing the sewer line and drains.

16. On knowledge and information, the Estate of the Deceased is equitably estopped by the actions and inaction of the Deceased referenced herein from any assertion of the Deceased's right to ownership of the above-referenced real property.

17. On knowledge and information, the Deceased was aware of the actions of the Petitioner in making the extensive repairs to the above-referenced real property.

18. No notice or complaint, written or otherwise, was made to the Petitioner by or on behalf of the Deceased disputing or refusing the actions of the Petitioner in making the extensive repair to the above-referenced real property.

19. On knowledge and information, the Deceased's referenced actions constitute and evidence, and his inaction constitutes and evidences, an intention on the part of

- the Deceased to waive any claim of ownership in the above-referenced real property.
20. On knowledge and information, the Deceased's referenced actions constitute and evidence, and his inaction constitutes and evidences, an external act on the part of the Plaintiff by which his intention, to waive any claim of ownership in the above-referenced real property.
 21. On knowledge and information, the Deceased's referenced actions constitute, and evidence and his inaction constitutes and evidences, an acknowledgment of and acquiescence in the Petitioner's equitable ownership of the above-referenced real property.
 22. The Petitioner relied on the said waiver, acknowledgment and acquiescence of the Deceased in ordering her affairs, which ordering will be to her detriment if her equitable rights in the above-referenced real property are not upheld.
 23. On knowledge and information, the Deceased's actions constitute and evidence, and his inaction, all as referenced herein, constitutes and evidences an express waiver of any claim to the ownership of the above-referenced real property.
 24. On knowledge and information, the Deceased's actions constitute and his inaction (as referenced herein) constitutes, an implied waiver of any claim to the ownership of the above-referenced real property.
 25. Pursuant to her appointment as Personal Representative of the Estate of the Deceased, the Personal Representative has executed a defective Deed of Distribution to herself dated March 9, 2021 and recorded the same date in Record Book 19067 at Page 320 in the Office of the Clerk of Court for York County, S.C., a copy of which is attached as Exhibit B, and incorporated by reference.


AS A THIRD CAUSE OF ACTION:

26. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
27. The Petitioner institutes this action for a declaration of the respective rights, status and legal relations of the parties as to the subject real property, pursuant to S.C. Code § 15-53-30.

28. On knowledge and information, the parties hereto are all the persons who have or claim any interest which would be affected by the said declaration of rights, and no declaration shall prejudice the rights of persons not parties to the said proceeding, within the meaning of S.C. Code § 15-53-80.

Wherefore, the Petitioner requests that:

1. Any order granting probate of the purported instrument of SUMTER MITCHELL, deceased, described as Exhibit A, be set aside and revoked;
2. Upon the issuance of an order setting aside the probate of the described instrument, the Respondent PATRICIA MARSHALL be removed as Personal Representative of the Estate of the Decedent;
3. A judicial determination issue as to the existence, and as to the rights and duties under, ownership of the subject real property;
4. The Petitioner be awarded costs; and
5. The Petitioner be granted such other and further relief as the court deems just and proper.



John Martin Foster
Attorney for Petitioner
SC Bar No. 2086

The Guardian Building
223 East Main Street
Suite 520
Rock Hill, South Carolina 29730

Post Office Box 106
Rock Hill, South Carolina 29731-6106

(803) 324-8100
jmfoster@comporium.net

June 2, 2021

Rock Hill, South Carolina

This Last Will form is a draft form only. You must retype the will or use the fillable PDF on the FILED RECEIVED CD included in this product.

2021 FEB 11 A 9:15 LAST WILL AND TESTAMENT OF

CAROLYNE E. WOODRUFF
JUDITH M. PRABATE
Sunster Mitchell

I, Sunster Mitchell, of Rock Hill, South Carolina being of sound mind, do make, publish and declare this to be my Last Will and Testament, revoking all Wills and codicils at any time heretofore made by me.

ARTICLE I. ESTATE ADMINISTRATION AND EXPENSES

I direct that the expenses of my last illness and funeral, expenses incurred in the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this Will, and any interest or penalties thereon, shall be paid out of all my property, without apportionment and with no right of reimbursement from any recipient of any such property.

ARTICLE II. FAMILY INFORMATION

The terms "child" and "children", wherever used in this Will, include not only the child(ren) of the person designated, but also the legally adopted child(ren) of such person. Similarly, the term "issue" includes not only the child(ren) and other issue of the person designated, but also the legally adopted child(ren) and issue of such person.

Unless otherwise expressly excluded, it is my intention that my Will include any child(ren) named below in this Article, and any other child(ren) born of or adopted by me after the date of this Will.

A. Marriage

I am currently married to _____
**Initial: _____

I am not currently married.

**Initial: SM

B. Children of Present Marriage (Optional)

My child(ren) born to _____, prior to the signing of this Will, are: _____

**Initial: _____

C. Children of Previous Relationships (Optional)

I have _____ child(ren) from previous relationships, as follows:

My child(ren) born to _____, from a previous relationship, prior to the signing of this Will, are: _____

My child(ren) born to _____, from a previous relationship, prior to the signing of this Will, are: _____

**Initial: _____

ARTICLE III. TANGIBLE PERSONAL PROPERTY

I give my tangible personal property, and all rights that I have under any related insurance policies, as follows:

A. First Specific Gift of Tangible Personal Property (Optional)

I give my Tangible Personal Property to (My Sister) Patricia Mitchell as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to SM Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: SM

B. Second Specific Gift of Tangible Personal Property (Optional)

I give my 3 to Patricia Marshall, as primary beneficiary. If said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JM

C. Third Specific Gift of Tangible Personal Property (Optional)

I give my 3 to Patricia Marshall, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JM

D. Residuary Gift of Tangible Personal Property

I give all my tangible personal property owned by me at the time of my death, that is not otherwise disposed of under this instrument, including personal effects, clothing, jewelry, furniture, furnishings, household goods, automobiles and other vehicles, together with all insurance policies relating thereto, to Patricia Marshall as primary beneficiary. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any tangible personal property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

ARTICLE IV. REAL PROPERTY

I give all my real estate, and all rights that I have under any related insurance policies, other than items effectively disposed of elsewhere in this instrument, as follows:

A. First Specific Gift of Real Property (Optional)

I give the real property at 1118 Queen St Ext., but none of the contents thereof, to Patricia Marshall, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to JC Mitchell, my successor devisee, if said successor devisee shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at 1118 Queen St Ext to Patricia Marshall, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JM

B. Second Specific Gift of Real Property (Optional)

I give the real property at _____, but none of the contents thereof, to _____, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to _____, my successor devisee, if said successor devisee shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

C. Third Specific Gift of Real Property (Optional)

I give the real property at _____, but none of the contents thereof, to _____, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to _____, my successor devisee, if said successor devisee shall survive me.

see shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Gift of Real Property

I give all real property owned by me at the time of my death, wherever located, and all contents thereof, that is not otherwise disposed of under this Article, to Patricia Marshall as primary beneficiary. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any real property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All real estate owned by me at the time of my death, that is not otherwise disposed of under this Article, should pass to my residuary estate and should be disposed of in accordance with the terms set forth below governing my residuary estate.

ARTICLE V. CASH

I give my cash, and all rights that I have under any related insurance policies, as follows:

A. First General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

B. Second General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

C. Third General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Cash Gift

I give all cash owned by me at the time of my death, not otherwise disposed of under this instrument, to Patricia Marshall as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, as successor beneficiary.

Any cash which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All my cash, that is not otherwise disposed of under this instrument, should pass to my residuary estate and should be disposed of in accordance with the terms governing disposition of my residuary estate.

ARTICLE VI. INTANGIBLE PERSONAL PROPERTY

I give my intangible personal property, and all rights that I have under any related insurance policies, as follows:

A. First Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____,

my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

B. Second Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

C. Third Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Gifts of Intangible Personal Property

I give all intangible personal property owned by me at the time of my death, including but not limited to stocks, bonds, intellectual property, contract rights, licenses, and goodwill, that is not otherwise disposed of under this instrument, together with all insurance policies relating thereto, to Patricia Marshall, as primary beneficiary. If said primary beneficiary does not survive me, then to J.C. Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All intangible personal property owned by me at the time of my death, that is not otherwise disposed of under this Article, should pass to my residuary estate and should be disposed of in accordance with the terms governing my residuary estate.

ARTICLE VII. CHARITABLE DONATIONS (Optional)

I make the following specific charitable gifts of personal property: _____

I give my donation(s) to _____, or if it is not in existence at the time of my death, then to N/A. My donation is to be used in any manner as seen fit by the beneficiary.

Any property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

**Initial: _____

ARTICLE VIII. CANCELLATION OF INDEBTEDNESS (Optional)

I direct that all debts owed to me are to be cancelled at the time of my death.

**Initial: _____

ARTICLE IX. RESIDUE

I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my "residuary estate"), to the following:

To Patricia Marshall as primary beneficiary. If said primary beneficiary does not survive me, my residuary estate shall be paid and distributed to any of my living issue, in equal shares Per Stirpes.

If none of the beneficiaries described above in this Article shall survive me, and no issue of said beneficiaries is then living, my residuary estate shall be paid and distributed to J.C. Mitchell.

If none of the beneficiaries described above shall survive me, then I give my residuary estate to those who would take from me as if I were then to die without a Will, unmarried, the absolute owner of my residuary estate, and a

The Trust shall terminate when the beneficiary reaches the age of majority as defined by the State of _____; the beneficiary dies; or the Trust funds are exhausted through distributions allowed under the provisions of this Trust, whichever happens first. Any Trust funds remaining at the termination of the Trust shall pass to the beneficiary, or if no longer living to the beneficiary's heirs.

**Initial: _____

ARTICLE XI. GUARDIANSHIP

If at my death I am survived by a child, who has not attained the age of majority and whose other parent does not survive me, or another dependent person for whom I am responsible, I appoint _____ to be the guardian of the person and property of that child or dependent, except for such property that is transferred under any transfers to minors act and controlled by another individual as directed elsewhere in this instrument. If _____ shall fail or cease to act as guardian, I appoint _____ as guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

ARTICLE XII. PET PROVISION (Optional)

Upon my death, my Personal Representative shall set aside \$ _____ for the care of all my pets living at my death. It is my desire that _____ provide a home and care including, but not limited to, veterinary care, food, shelter, love and affection for the remainder of my pets' natural lives. In the event that _____ is unable or unwilling to care for my pets, _____ shall find a good home for them for the remainder of my pets' natural lives. Upon the death of all my pets, all remaining undistributed net income and principal of the share set aside for their care shall be distributed to the person who has been providing said care.

If I have no pets alive at my death, this specific distribution shall lapse and pass to my residuary estate and should be disposed of in accordance with the terms governing disposition of my residuary estate.

**Initial: _____

ARTICLE XIII. PERSONAL REPRESENTATIVE(S)

I appoint my Personal Representative(s) as follows:

A. Personal Representative

I appoint Thomas Marshall to be my Personal Representative, or if Co-Personal Representatives are named herein, to be my Co-Personal Representative.

If my above-named Personal Representative or both Co-Personal Representatives named herein shall fail to qualify for any reasons as my Personal Representative or Co-Personal Representatives, respectively, or having qualified shall die, resign or cease to act for any reasons, I appoint J. Mitchell as my Personal Representative.

I direct that no Personal Representative or Co-Personal Representative shall be required to file or furnish any bond, surety or other security in any jurisdiction.

B. Second Personal Representative (Co-Personal Representative) (Optional)

I appoint _____ to be my Co-Personal Representative.

If my Co-Personal Representatives shall fail to qualify for any reason as my Personal Representative, or having qualified shall die, resign or cease to act for any reason, the other may act alone.

**Initial: SM

ARTICLE XIV. EXECUTOR'S POWERS

I grant to my Personal Representative all powers conferred on Personal Representatives and Executors by the State of SC, and all powers conferred upon Personal Representatives and Executors wherever my Personal Representative may act. I also grant to my Personal Representative power to retain, sell at public or private sale, exchange, grant options on, invest and reinvest, and otherwise deal with any kind of property, real or personal, for cash or on credit; to hold, manage, insure, repair, improve, demolish, divide, and otherwise deal with and dispose of any property; to borrow money and mortgage, encumber or pledge any property to secure

resident of the State of _____

ARTICLE X. MINOR OR DEPENDENT BENEFICIARIES

(Note to Testator: Choose ONE and only ONE option for distributing property to any minor beneficiaries that currently exist or who may exist in the future. Distribution can be done through your Personal Representative OR through a Property Guardian OR through a Trust. Initial ONLY the option you choose.)

Personal Representative Option

If any property of my estate vests in absolute ownership in a minor or dependent beneficiary, my Personal Representative, at any time and without court authorization, may: distribute the whole or any part of such property to the beneficiary; or use the whole or any part for the health, education, maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee or other legal representative of the beneficiary, or to a custodian for the beneficiary under any gifts to minors or transfers to minors act, or to the person or persons with whom the beneficiary resides if they are also the natural or appointed guardians of such beneficiary. Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my Personal Representative from any liability with respect thereto, even though my Personal Representative may be such person. If such beneficiary is a minor, my Personal Representative may defer the distribution of the whole or any part of such property until the beneficiary attains the age of majority as defined by SC law, and may hold the same as a separate fund for the beneficiary with all of the powers described below. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary.

**Initial:

Property Guardian Option

If any property of my estate vests in absolute ownership in a minor child, younger at the time of my death than the age of majority as defined by _____ law, and the minor has no living parent, I direct that property they receive by bequest should be transferred under any transfer to minors act. I appoint _____ to be the guardian of the property of any such minor beneficiary who has not attained the age of majority. If _____ shall fail or cease to act as guardian, I appoint _____ as guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

**Initial: _____

Trust(s) for Minor Beneficiaries Option

If any property of my estate vests in absolute ownership in a minor child, younger than the age of majority as defined by the State of _____, or in a dependent, at the time of my death, I direct that a Trust be created to hold the property given them under this Will.

At the discretion of my Personal Representative, a single Trust for the benefit of all minor children or dependents and more remote issue, as hereinafter provided, may be created instead of separate Trusts for each beneficiary.

I appoint _____ to act as Trustee of any Trust created under this Will. If this Trustee does not survive me, or shall fail to qualify for any reason as Trustee, or having qualified shall die, resign or cease to act for any reason, I appoint _____ to act as Successor Trustee of any Trust created under this Will.

No Trustee shall be required to give any bond or obtain the order or approval of any court in carrying out any powers or discretion granted in this Trust.

The Trustee shall have the full power and authority allowed by the State of _____ to manage and distribute, based on his or her sole discretion, the Trust's income and principal on behalf of the beneficiary, including the right to use income or principal for the education, health, medical expenses, support and maintenance of the beneficiary.

The determination of the Trustee as to the amount or advisability of any discretionary payment of income or principal from any Trust hereunder shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such Trust. Upon making any such payment, the Trustee shall be released fully from all further liability therefor.

loans; to divide and distribute property in cash or in kind; to exercise all powers of an absolute owner of property; to compromise and release claims with or without consideration; and to employ attorneys, accountants and other persons for services or advice. The term "Personal Representative" wherever used herein shall mean the Personal Representative, Co-Personal Representative, Executors, Executor, Executrix or Administrator in office from time to time.

My Personal Representative shall have the authority to perform any act believed to be necessary and in the best interest of my estate and descendants, with no limitations, and consistent with the laws of the State of

SC
In addition, each Personal Representative is authorized to:

- a. Retain, until distribution and without liability for loss or depreciation resulting from such retention, any of my assets which shall come into his or her possession as a result of administering my estate.
- b. Mortgage, lease, pledge, exchange, partition, or sell any of my assets without proper court order, whether real or personal, at public or private sale and to invest or reinvest the proceeds from any sale in the best interests of my estate.
- c. Pass any real or personal property which is encumbered by a mortgage, deed of trust, lease or any other loan obligation that requires the payment of money, to the recipient of that particular property.
- d. Exercise or sell any or all conversion, subscription, option, voting and any other rights of whatsoever nature pertaining to any such property, and in their discretion to vote, in person or by proxy, with respect to any matters, regarding stocks, securities or other assets constituting part of my estate.
- e. Retain and continue to operate any business, incorporated or otherwise, which is part of my estate, including the right to effectuate any plan of corporate or business reorganization, consolidation, merger or similar plan.
- f. Prosecute, compromise, settle or submit to arbitration any claim in favor of or against my estate.
- g. Settle my estate without intervention of any court, except to the extent required by law.
- h. To access, use, and control my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smart phones, and any similar devices, which currently exists or may exist as technology develops for the purposes of accessing, modifying, deleting, controlling, or transferring my digital assets.

To access, modify, delete, control, and transfer my digital assets, including but not limited to, emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, web hosting accounts, tax preparation services accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops. To obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets described above.

ARTICLE XV. CONTEST

If any of my beneficiaries chooses to contest or attack my Will, or any of its provisions, his or her share under this Will shall be deemed revoked and distributed as if the contesting beneficiary had predeceased me without any children.

ARTICLE XVI. SURVIVORSHIP

I direct that for purposes of this Will a beneficiary shall be deemed to predecease me unless such beneficiary survives me by at least thirty (30) days.

IN WITNESS WHEREOF, I, Testator, willingly sign, seal, publish and declare this instrument as my Last Will and Testament, as my free and voluntary act, being of legal age of majority (or otherwise legally empowered to make a Last Will and Testament), and of sound mind and under no constraint or undue influence this 19 day of March, 2019.


Testator and Date March 19, 2019

We, the witnesses, do hereby declare under penalty of perjury under the laws of this State that the following is true and correct of our own knowledge: that the foregoing instrument was willingly signed, sealed, published and declared by the above named Testator, _____ (or some person in the Testator's presence and by the Testator's direction), or was acknowledged by the Testator as the Testator's free and voluntary act for the purposes therein expressed, or the Testator acknowledged the signature already made, to be the Testator's Last Will and Testament in our presence, all being present at the same time, and we being competent witnesses, at the Testator's request and in the Testator's conscious presence, sight, and hearing and in the presence of each other, believing to the best of our knowledge the Testator to be of legal age of majority (or otherwise legally empowered to make a Last Will and Testament) and of sound mind, memory, and body and under no constraint, duress, menace, fraud, or undue influence at the time of the signing or acknowledging of the instrument, and each of us is now the age of majority (or otherwise legally empowered to witness a Last Will and Testament or was a member of the armed forces or auxiliary of the armed forces or of the merchant marine of the United States or its allies) have subscribed our names as witnesses on the date above written. We reside at the addresses set forth after our names.

Rebecca Robinson

Witness and Date

Residing at:

236 Twitty Ct
Rock Hill, SC 29730

Winston Marshall

Witness and Date

Residing at:

238 Purkey St
Rock Hill, SC 29732

Witness signatures will be needed at the end of your Last Will & Testament.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

THE MATTER OF:
ESTATE OF MITCHELL III
(Decedent)

IN THE PROBATE COURT

DEED OF DISTRIBUTION
(Real Property Only)
NOT A WARRANTY DEED

CASE NUMBER: 2021ES4600206

The undersigned states as follows:

Decedent died on 11/9/2020; and probate of the Estate is being administered in the Probate Court for YORK County, South Carolina, in File # 2021ES4600206.

I/we was/were appointed Personal Representative (s) on February 11th, 2021.

Decedent owned real property described as follows: 3 Bedrooms, 2 Bath, Brick Home

Map Number: 6001004004

Property Address: 1118 Green St East, Park Hill, SC 29730

Legal Description: See Attached

YORK COUNTY ASSESSOR
Tax Map:
600-10-04-004
Date: 03/09/2021
E H



2021013378

DEED QUIT CLAIM
RECORDING FEES \$15.00
STATE TAX \$0.00
COUNTY TAX \$0.00
PRESENTED & RECORDED:
03-09-2021 10:42:35 AM
BK: RB 19067
PG: 320 - 322

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: CAMI REEDEN CLERK

Additional sheet(s) for additional property(ies) is attached (check if applicable)

Transfer is made pursuant to:

Decedent's Will
Intestacy Statute: SCPC 62-2-103
Private Family Agreement: SCPC 62-3-912
Disclaimer by: _____
Probate Court Order issued on _____
Other: _____

DR BK 19067 PG 320

Enb33

accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of a Personal Representative's(s') right, title a interest, including statutory and/or testam ry powers, over the real operty described to the beneficiaries named below:

Name: Patricia M. Marshall
Address: 238 Purdy St
Rock Hill, SC 29732

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

I WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 9th day of March 2021.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: _____

Print Name: _____

Witness: Cassi Redden

Print Name: Cassi Redden

Estate of: SUMNER MITCHELL III

Signature of Personal Representative: Patricia M. Marshall

Print Name: PATRICIA MITCHELL MARSHALL

If applicable,
Signature of Co-Personal Representative: _____

Print Name: _____

STATE OF SOUTH CAROLINA)
)

ACKNOWLEDGMENT

COUNTY OF York
Cassi Redden

Patricia M. Marshall

_____, Notary Public, a notary for the State of South Carolina do hereby certify that _____, as Personal Representative(s) of the Estate of Sumner Mitchell III, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 9th day of March 2021.

DL # 011620782

Cassi Redden (SEAL)
(Signature of Notary Public)
Cassi Redden
(Print name of Notary Public)
Notary Public for State of South Carolina
My Commission Expires: 02/27/2028

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

All that certain piece, parcel, lot or tract of land lying, being and situate in the City of East Hill, Columbia Township 43, York County, S.C. and being shown and delineated as Lot 2 on plat of General Plan by R. E. Harsh, R.S. dated August 13, 1904 and recorded in Book 24 of Page 86 and being more particularly described according to said plat as follows, to wit: Beginning at a stake on the northwestern side of Green Street Extension at a point, 172.5 feet southeast from its intersection with Frank Street, joint front corner of Lots 2 and 3; running thence with Green Street Extension S. 48° W. 57.5 feet to a stake, joint front corner of Lots 3 and 4; thence with the line of said lots N. 43° W. 192.1 feet to a stake; thence N. 48-15 E. 47.75 feet to a stake, joint rear corner of Lots 3 and 3; thence with the line of said Lots S. 43° E. 157.8 feet to the point of beginning. Being the identical property conveyed to Euseb Cuthbert and Evelyn C. Cuthbert by deed of James Hutchins and Realty Company, Inc. dated October 9, 1948 and recorded October 15, 1948 in Book 208, page 123. See also deed of distribution of Estate of Euseb Cuthbert dated May 2, 1944 and recorded May 16, 1944 in Book 197, page 361. See also deed of distribution of Estate of Euseb Cuthbert dated July 5, 1944 and recorded July 7, 1944 in Book 194, page 157. See also deed of distribution of Estate of Evelyn Cuthbert dated August 15, 1944 and recorded August 23, 1944 in Book 197, page 267.

STATE OF SOUTH CAROLINA]
]]
COUNTY OF YORK]

VERIFICATION

Personally appeared before me the undersigned, who, being duly sworn, deposes and says that he or she is the Petitioner herein; that he or she has read the allegations of the preceding Petition and that the allegations of the same are true, either based upon his or her regularly kept business records or of his or her own knowledge, except those allegations made upon knowledge and information, and, as to them, he or she verily believes them to be true.

Bernice Caldwell

Bernice Caldwell

SWORN TO and subscribed before me
this 2nd day of June, 2021.

JM Foster

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: _____

**JOHN MARTIN FOSTER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 07-18-29**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

]

IN THE PROBATE COURT

FILED RECEIVED

2022 MAY 31 P 12:56

IN THE MATTER OF SUMTER MITCHELL, Decedent,

CALDWELL, BERNICE
MITCHELL, PATRICIA
MITCHELL, DENNIS
MITCHELL, SHARON M.
CULP, THOMAS LAMONT
DAVIS, SUMTER O'NEAL
CALDWELL, LATRINDA
ROBINSON

BERNICE CALDWELL,

Petitioner,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

Respondents.

LIS PENDENS

Case No. 2021-ES-46-00206

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Probate Court upon the Petition of the above-named Petitioner against the above-named Respondents claiming ownership of the below-described real estate:

All that certain piece, parcel, lot or tract of land lying, being and situate in the City of Rock Hill, Catawba Township 43, York County, S.C. and *being* shown and designated as Lot3 on plat of Carroll Place by R. H. Merrett, R.S. dated August 15, 1968 and recorded in Plat Book 34 at Page 98 and being more particularly described according to said plat as follows, to wit: Beginning at a stake on the northwestern side of Green Street Extension at a point; 172.5 feet southwest from its intersection with Frank Street, joint front corner of Lots 2 and 3; running thence with Green Street Extension S. 48 W. 57.5 feet to a stake, joint front corner of Lots 3 and 4; thence with the line of said lots N. 42 W. 192.1 feet to a stake; thence N. 42-15 E. 47.76 feet to a stake, joint rear corner of Lots 2 and 3; thence with the line of said lots S. 42 E. 197.8 feet to the point of beginning. Being the identical property conveyed to Pheo [sic] Cathcart and Evelyn C. Cathcart by deed of Yonce Insurance and Realty Company, Inc. dated October 9, 1969 and recorded October 13, 1969 in Deed Book 395, page 222. See also deed of distribution of Estate of Pheo Cathcart dated May 2, 1994 and recorded May 16, 1994 in Record Book 1007, page 351. See also deed of distribution of Estate of Bruce Edward Cathcart dated July 5, 1994 and recorded July 7, 1994 in Record Book 1045, page 107. See also deed of distribution of

Estate of Evelyn Currence Cathcart dated August 18, 1994 and recorded August 22, 1994 in Record Book 1077, page 257.

DERIVATION; Being the identical real property conveyed:

A) By Deed of Ruperd G. Currence, Sr., et al., to Sumter Mitchell dated February 17, 1995 and recorded March 7, 1995 in Record Book 1203 at Page 114;

B) By purported Deed of Distribution from the Estate of Sumter Mitchell to Patricia Mitchell dated March 9, 2021 and recorded the same date in Record Book 19067 at Pages 320-322;

All references being to the Office of the Clerk of Court for York County, South Carolina.

Tax Map No. 600-10-04-004

/s/ John Martin Foster
Attorney for Petitioner
SC Bar No. 2086

223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, S. C. 29731

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

May 25, 2022

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2022 May 26 12:42 PM - YORK - COMMON PLEAS - CASE#2022LP4600214

STATE OF SOUTH CAROLINA
COUNTY OF YORK

}
}

IN THE PROBATE COURT

IN THE MATTER OF SUMTER MITCHELL, Decedent,

FILED RECEIVED

BERNICE CALDWELL,

v.

2022 MAY 31 P 12:56

Petitioner,

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

Respondents.

CERTIFICATE OF SERVICE
C.A. 2021-ES-46-00206

The undersigned, as counsel for Movant herein, hereby certifies that on May 27, 2022, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Lis Pendens; and
This Certificate of Service

the original of which were sent to be filed with the Clerk of the Court named above, by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, as follows:

Charles Baxter Burnette, IV
Burnette & Payne, P.A.
Attorneys for Patricia Mitchell
414 East Main Street
Rock Hill, S.C. 29730

Latrenda T. Reeder
GAL for Dennis Mitchell
501 West Cama Street
Charlotte, NC 28217-1757

/s/ John Martin Foster
Attorney for Petitioner
SC Bar No. 2086
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

May 27, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE PROBATE COURT

Case No.: 2021-ES-46-00206

Bernice Caldwell,)

Petitioner,)

vs.)

ANSWER

Patricia Marshall, in her own right and as)
Personal Representative, Dennis Mitchell,)
Sharon M. Culp, Thomas Lemont Davis,)
Sumpter O'Neal Caldwell and Latrinda)
Robinson,)

Respondents.)

Respondent Patricia Marshall, in her own right and as Personal Representative
(Respondent) answers the Petitioner's Petition as follows:

AS A FIRST DEFENSE

1. All allegations in the Petition not hereinafter more fully qualified, clarified, or explained are denied and strict proof is demanded thereof.

AS A SECOND DEFENSE

2. The allegations of the First Defense are incorporated herein and made a part of this defense in all respects not inconsistent herewith.

3. Paragraph 1 is a legal statement that does not require a response.

4. Respondent admits paragraph 2.

5. Respondent denies paragraph 3 to the extent that Bernice Caldwell is not an intestate heir of the deceased.

6. Respondent admits paragraph 4.

7. Respondent denies paragraph 5. Patricia Marshall was appointed as Personal Representative.

8. Respondent denies paragraph 6.

9. Respondent denies paragraph 7.

10. Respondent denies paragraph 8.

11. Respondent denies paragraph 9.

12. Respondent denies paragraph 10.

13. Paragraph 11 is a legal statement that does not require a response.

14. Respondent admits paragraph 12.

15. Respondent admits paragraph 13.

16. Respondent denies paragraph 14.

17. Respondent denies paragraph 15. Further, Respondent was the party that paid for the improvements.

18. Respondent denies paragraph 16.

19. Respondent denies paragraph 17.

20. Respondent denies paragraph 18 because the Petitioner did not make or pay for repairs.

21. Respondent denies paragraph 19-25.

22. Paragraphs 26 and 27 are legal statements and do not require a response.

23. Respondent admits paragraph 28.

AS A SECOND DEFENSE

Statute of Frauds

24. The allegations of all other defenses are incorporated herein and made a part of this defense in all respects not inconsistent herewith.

25. The Petitioner does not plead that any agreement between the Petitioner and Deceased was made in writing for the transfer of real estate from the Deceased to the Petitioner.

26. Under SC Code Ann. § 32-3-10 “No action shall be brought whereby: ... To charge any executor or administrator upon any special promise to answer damages out of his own estate” or “To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them... Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.”

27. The Petitioner does not satisfy the Statute of Frauds and may not bring an action for the transfer of real estate from the Deceased to the Petitioner, either as a life transfer or through the Decedent’s estate.

AS A THIRD DEFENSE

Incapacity (in the alternative)

28. The allegations of all other defenses are incorporated herein and made a part of this defense in all respects not inconsistent herewith.

29. The Petitioner alleges that the Decedent was not of sound capacity to draft the Decedent’s Will.

30. Though the Respondent fully denies all allegations of the Decedent’s incapacity, Respondent alternatively pleads that the Decedent cannot have been of sound capacity to contract with the Petitioner for the sale of real estate and not have been of sound capacity to draft the Decedent’s Will.

WHEREFORE, Respondent prays this Court:

- a. Denies Petitioner's prayers for relief;
- b. Deny Petitioner's request to be listed as an intestate heir;
- c. Alternatively, hold that Petitioner shall forfeit any and all interest in the Decedent's estate;
- d. Award Respondent attorney fees; and
- e. Grant any other relief this Court deems just and proper.

June 22, 2021

s/Charles Burnette
Charles B. Burnette IV
SC Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
(803) 328-1800
bburnette@burnettelaw.net
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE PROBATE COURT

Case No.: 2021-ES-46-00206

Bernice Caldwell,

Petitioner,

vs.

CERTIFICATE OF SERVICE

Patricia Marshall, in her own right and as)
Personal Representative, Dennis Mitchell,)
Sharon M. Culp, Thomas Lemont Davis,)
Sumpter O'Neal Caldwell and Latrinda)
Robinson,)

Respondents.)

I hereby certify that on June 22, 2021, I served Respondent's Answer to the
Petition in the United States Mail, postage prepaid, upon the person named below, at the address
below, pertaining to the above-referenced action.

Martin Foster
J. M. Foster Law Office
223 E Main St. #520
Rock Hill, SC 29730


C. Baxter Burnette

Rock Hill, South Carolina

June 22, 2021

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE PROBATE COURT

Case No.: 2021-ES-46-00206

Bernice Caldwell,

Petitioner,

vs.

RESPONDENT’S MEMORANDUM

Patricia Marshall, in her own right and as
Personal Representative, Dennis Mitchell,
Sharon M. Culp, Thomas Lemont Davis,
Sumpter O’Neal Caldwell and Latrinda
Robinson,

Respondents.

Respondent Patricia Marshall, in her own right and as Personal Representative (Respondent) submits the following:

The petitioner heavily relies on the language in the 1828 Court of Appeals Case, *Tomkins v. Tomkins*. In that case, the testator suffered from a disease that deteriorated the mind, which was confirmed by a number of witnesses, including physicians and nurses. “The evidence in the case under consideration, is very abundant, that the mental faculties of the testator were much impaired.”¹ One of the executors of the estate was sent for by the testator to write his Will. The main issue was whether a certain clause devising land to the executor was valid. The evidence confirmed that the testator verbally instructed the executor to give himself “the Holsonbake tract” and the residue of the estate to his two children. Instead, however, the executor gave himself “my land adjoining John Holsonbake,” which included two tracts in addition to the

¹ *Tomkins v. Tomkins*, 17 S.C.L., 96, 1828.

Holsonbake tract, leaving nothing in the residuary estate for the children. The executor did not read the Will to the testator but confirmed that he had distributed the property as directed.

In regard to the Will as a whole, the court declined to reverse the jury's determination that the testator, despite his reduced capacity, was of sound mind to create a Will, and recognized that the testator instructing the executor to write the Will was not inappropriate. The court invalidated the specific provision devising land to the executor on the ground that "a verbal departure from the instructions of the testator in one of the clauses of his Will, which had not been read over to him before execution."²

The facts in the present case differ significantly from *Tomkins* and the petitioner's legal reasoning from *Tomkins* does not apply. There was ample evidence in *Tomkins* that the testator suffered from a reduced mental capacity. In the present case, there is no evidence that the testator had any degree of mental incapacity, besides vague allegations that he was at times on morphine (which was only administered at the hospital and not at home during the time the Will was drafted). The testator only required assistance drafting the Will because he could not read or write, not because he was incapacitated. The respondent did not write the Will, but merely transcribed the testator's own words. Also, the respondent in this case did read over the Will to the testator, and only wrote what the testator specifically instructed, with no deviation from the testator's verbal instructions. The testator confirmed to the witnesses that the contents of the Will and the distribution of the property were according to his instructions. The legal reasoning in *Tomkins* does not apply here because there is no evidence that the testator had reduced capacity or that the respondent deviated from the testator's verbal instructions. There was also evidence in *Tomkins* that the testator explicitly intended for property to be devised to his children through the residuary clause, which was inconsistent with the executor granting himself the additional

² *Id.* at 92

properties. Here, the respondent, who the testator granted Power of Attorney over the guardianship of his son, presented credible evidence that the testator intended for the house to be provided as a residence for his only living biological son. But the petitioner is arguing that the testator instead intended to leave his real estate to the petitioner, who the testator has denied to be his biological child and refused to sign the property over to her in the hospital. The petitioner's argument that the testator intended to provide nothing to his son is wholly inconsistent with the actual evidence of the testator's intentions.

The petitioner appears to be suggesting that is the respondent's burden to prove that the testator was not incapacitated, was not coerced, and that there was no fraud involved in drafting the Will. But it is well established law that the petitioner must prove these allegations by clear and convincing evidence. The cases that the petitioner cites in regard to shifting presumptions and burdens of proof are all contingent on establishing, at the least, a *prima facie* showing that there was incapacity, fraud, or coercion. That simply is not the case here. The testator drafted his Will on his own initiative, using the same scribing assistance he has always used to prepare legal documents, with full understanding of his actions. His direct words were transcribed, read back to him, and he confirmed and acknowledged to two witnesses that these were indeed his actual words and intentions. The petitioner has presented no evidence of any lack of the testator's capacity to direct his Will to be transcribed or any evidence of impropriety on the part of the respondent.

July 20, 2022

s/Charles Burnette
Charles B. Burnette IV
SC Bar No.: 103747
BURNETTE & PAYNE, P.A.
414 E. Main Street
Rock Hill, SC 29730
(803) 328-1800
bburnette@burnettelaw.net
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF YORK

}
}
}

IN THE PROBATE COURT

FILED RECEIVED

~~2022 AUG 26 P 4:19~~

IN THE MATTER OF SUMTER MITCHELL, Decedent,

CAROLINE E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

BERNICE CALDWELL,

Petitioner,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

Respondents.

NOTICE AND MOTION TO ALTER OR AMEND JUDGMENT

C.A. 2021-ES-46-00206

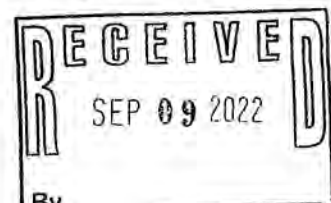
To: Charles Baxter Burnette, IV
Burnette & Payne, P.A.
Attorneys for Patricia Mitchell
414 East Main Street
Rock Hill, S.C. 29730

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Judge or Clerk of the Court,
or as soon thereafter as counsel may be heard.

PLACE: The Courtroom of the Probate Court
2 South Congress Street
York, South Carolina 29745,
or at such other place as the Court or Clerk may designate

Pursuant to Rule 59, S.C.R.C.P., the Petitioner, by and through her attorney,
moves this Court:



For an Order reopening the decision or Order of this Court executed on August 15, 2022, filed August 16, 2022 and received by counsel for Movant on August 18, 2022, amending the relevant findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper.

on the grounds that the said Order of the Court is contrary to law and the evidence as shown at the hearing,

1. The Petition herein challenged the recorded Will of the decedent Sumter Mitchell on various grounds: (References to Paragraphs herein are to the Petition)

- a) The Decedent was not of sound and disposing mind. (Para.7)
- b) The Decedent was under the undue influence of the Respondent MARSHALL. (Para.8)
- c) The filed instrument is not the Decedents Last Will and Testament due to mistake. (Para.9)
- d) The filed instrument is not executed in the prescribed manner and form (Para.10)

2. At trial, there was no dispute that the Decedent executed the document claimed as his Will.


3. At trial, there was no dispute as to the following facts:

- a) The claimed Will states on its face that it is not a final document.
- b) MARSHALL filled out the claimed Will except for the Decedent's signature.
- c) The Decedent was illiterate, being only able to sign his name.
- d) No one other than MARSHALL testified as to the Decedent's understanding of the claimed Will.
- e) No one other than MARSHALL testified as to the fact that the claimed Will was explained to the Decedent, or understood by him.
- f) MARSHALL testified to explaining the claimed Will to the Decedent.

- g) No other person was produced claiming to have explained the claimed Will to Decedent, or testifying as to his understanding of it.
 - h) MARSHALL is the sole heir to the Decedent under the claimed Will.
4. The proponent of a will, in a probate contest, has the burden of establishing the essential requisite of the testator's knowledge of the contents of the will which he signed. *Snodgrass v. Smith*, 42 Colo. 60, 94 P. 312 (1908); *RE Bundy's Estate*, 153 Or. 234, 56 P.2d 313 (1936); 106 A.L.R. 714; 80 AM.JUR.2D *Wills* 955 (1994).
 5. A presumption that an illiterate testator or one incapable to read or understand the language in which the will was written had knowledge of its contents is rebuttable. *Lippard v. Humphrey*, 209 U.S. 264, 52 L.Ed 783, 28 S.Ct 561 (1908); *Downey v. Lawley*, 377 Ill. 298, 36 N.E.2d 344 (1941); *Marcinko v. D'Antuono*, 104 R.I. 172, 243 A.2d 104 (1968), 37 A.L.R.3d 874; 80 AM.JUR.2D *Wills* 962 (1994).
 6. Case have concluded that where the will was written by a beneficiary not only overcomes the presumption arising from legal execution that the testator knew the contents, but creates a presumption against the instrument. *Garrett v. Heflin*, 98 Ala. 615, 13 So. 326 (1893); 80 AM.JUR.2D *Wills* 963 (1994).
 7. Even cases that hold a benefit to the scrivener is merely a circumstance unfavorable to the existence of knowledge of content, which in combination with the circumstances unfavorable to the presumption, may create a presumption against the testator's knowledge of the contents of the instrument. *Beall v. Mann*, 5 Ga. 456 (1848); *Purdy v. Hall*, 134 Ill. 298, 25 N.E. 645 (1890); *Kelly v. Settegast*, 68 Tex. 13, 2 S.W. 870 (1887); 80 AM.JUR.2D *Wills* 963 (1994).
 8. *Tomkins v. Tomkins*, 17 S.C.L. 92 (1828), held that a presumption may arise that the testator was not aware of the will's contents, where the will was not read to him, where the draftsman assured the testator his estate was disposed of as he directed, and where the scrivener was named as executor and guardian of residuary legatees. 80 AM.JUR.2D *Wills* 1017 (1994).

9. The proof necessary to show that an illiterate testator had knowledge of the will's contents must be "satisfactory" [*RE Gluckmanns' Will*, 87 N.J. Eq. 638, 101 A. 295 (1917)]; "full and satisfactory" [*Wisener & Brown v. Maupin*, 61 Tenn. 342 (1872)]; "clear and satisfactory" [*Compher v. Browning*, 219 Ill. 429, 76 N.E. 678 (1906)] or "strong" [*RE Reilly's Will*, 139 Misc. 732, 249 N.Y.S. 152 (1931)]; 80 AM.JUR.2D *Wills* 1017 (1994). Also, see 37 A.L.R.3d 901 §5(c).
10. The evidence presented at trial was insufficient to meet the burden requiring proof that the Decedent understood the claimed Will he signed, that he intended MARSHALL to be his sole heir, or that that claimed Will document was intended to be final.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rule, the records of this civil action, and any Supporting Memorandum which the Movant may submit herein.



John Martin Foster
Attorney for Petitioner
SC Bar No. 2086

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, South Carolina 29730

Post Office Box 106
Rock Hill, South Carolina 29731-6106

(803) 324-8100
(803) 324-8109: Fax
jmfoster@comporium.net

May 23, 2022

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

}
}

IN THE PROBATE COURT

FILED RECEIVED

IN THE MATTER OF SUMTER MITCHELL, Decedent,

2022 AUG 26 P 4: 19

BERNICE CALDWELL,

v.

ROBERT W. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON, Respondents.

CERTIFICATE OF SERVICE

C.A. 2021-ES-46-00206

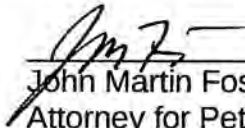
The undersigned, as counsel for Movant herein, hereby certifies that on August 25, 2022, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Notice and Motion to Alter or Amend Judgment, pursuant to Rule 59, S.C.R.C.P.;
and
This Certificate of Service

the original of which were sent to be filed with the Clerk of the Court named above, by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, as follows:

Charles Baxter Burnette, IV
Burnette & Payne, P.A.
Attorneys for Patricia Mitchell
414 East Main Street
Rock Hill, S.C. 29730

Latrenda T. Reeder
GAL for Dennis Mitchell
501 West Cama Street
Charlotte, NC 28217-1757



John Martin Foster
Attorney for Petitioner
SC Bar No. 2086
223 East Main Street, Suite 520
Rock Hill, SC 29730
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

August 25, 2022

485771
7/18/22

This Last Will form is a draft form only. You must retype the will or use the fillable PDF on the FILED RECEIVED CD included in this product.

2021 FEB 11 A ~~LAST~~ WILL AND TESTAMENT OF
Sunter Mitchell

CAROLYNE WOODRUFF
JUDGE OF PROBATE

I, Sunter Mitchell, of the County of Rock Hill and State of South Carolina, being of sound mind, do make, publish and declare this to be my Last Will and Testament, revoking all Wills and codicils at any time heretofore made by me.

ARTICLE I. ESTATE ADMINISTRATION AND EXPENSES

I direct that the expenses of my last illness and funeral, expenses incurred in the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this Will, and any interest or penalties thereon, shall be paid out of all my property, without apportionment and with no right of reimbursement from any recipient of any such property.

ARTICLE II. FAMILY INFORMATION

The terms "child" and "children", wherever used in this Will, include not only the child(ren) of the person designated, but also the legally adopted child(ren) of such person. Similarly, the term "issue" includes not only the child(ren) and other issue of the person designated, but also the legally adopted child(ren) and issue of such person.

Unless otherwise expressly excluded, It is my intention that my Will include any child(ren) named below in this Article, and any other child(ren) born of or adopted by me after the date of this Will.

A. Marriage

I am currently married to _____
**Initial: _____

I am not currently married.
**Initial: SM

DEPOSITION EXHIBIT
2 4-5-2022
W. Marshall

B. Children of Present Marriage (Optional)

My child(ren) born to _____, prior to the signing of this Will, are: _____

**Initial: _____

DEPOSITION EXHIBIT
2 4-5-2022
Robinson

C. Children of Previous Relationships (Optional)

I have _____ child(ren) from previous relationships, as follows:

My child(ren) born to _____, from a previous relationship, prior to the signing of this Will, are: _____

My child(ren) born to _____, from a previous relationship, prior to the signing of this Will, are: _____

**Initial: _____

DEPOSITION EXHIBIT
2 4-5-2022
P. Marshall

ARTICLE III. TANGIBLE PERSONAL PROPERTY

I give my tangible personal property, and all rights that I have under any related insurance policies, as follows:

A. First Specific Gift of Tangible Personal Property (Optional)

I give my TRG. the personal property to (my sister) Patricia Marshall as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to SM Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: SM

B. Second Specific Gift of Tangible Personal Property (Optional)

I give my 3 to Barbara Marshall, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JCM

C. Third Specific Gift of Tangible Personal Property (Optional)

I give my C to Barbara Marshall, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JCM

D. Residuary Gift of Tangible Personal Property

I give all my tangible personal property owned by me at the time of my death, that is not otherwise disposed of under this instrument, including personal effects, clothing, jewelry, furniture, furnishings, household goods, automobiles and other vehicles, together with all insurance policies relating thereto, to Barbara Marshall as primary beneficiary. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any tangible personal property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

ARTICLE IV. REAL PROPERTY

I give all my real estate, and all rights that I have under any related insurance policies, other than items effectively disposed of elsewhere in this instrument, as follows:

A. First Specific Gift of Real Property (Optional)

I give the real property at 1118 Owen St Ext., but none of the contents thereof, to Barbara Marshall, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to JC Mitchell, my successor devisee, if said successor devisee shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at 1118 Owen St Ext to Barbara Marshall, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: JCM

B. Second Specific Gift of Real Property (Optional)

I give the real property at _____, but none of the contents thereof, to _____, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to _____, my successor devisee, if said successor devisee shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

C. Third Specific Gift of Real Property (Optional)

I give the real property at _____, but none of the contents thereof, to _____, as primary devisee, if said primary devisee shall survive me. If said primary devisee does not survive me, then to _____, my successor devisee, if said successor devisee shall survive me.

see shall survive me. If there are any encumbrances, claims or liabilities on this piece of property at the time of my death, my estate shall pay them off before transferring title.

I give all of the contents of the real property at _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Gift of Real Property

I give all real property owned by me at the time of my death, wherever located, and all contents thereof, that is not otherwise disposed of under this Article, to Jessica Marshall as primary beneficiary. If said primary beneficiary does not survive me, then to JC Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any real property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All real estate owned by me at the time of my death, that is not otherwise disposed of under this Article, should pass to my residuary estate and should be disposed of in accordance with the terms set forth below governing my residuary estate.

ARTICLE V. CASH

I give my cash, and all rights that I have under any related insurance policies, as follows:

A. First General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

B. Second General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

C. Third General Cash Gift (Optional)

I give \$ _____ in cash to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Cash Gift

I give all cash owned by me at the time of my death, not otherwise disposed of under this instrument, to Jessica Marshall as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to JC Mitchell, as successor beneficiary.

Any cash which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All my cash, that is not otherwise disposed of under this instrument, should pass to my residuary estate and should be disposed of in accordance with the terms governing disposition of my residuary estate.

ARTICLE VI. INTANGIBLE PERSONAL PROPERTY

I give my intangible personal property, and all rights that I have under any related insurance policies, as follows:

A. First Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____, my successor beneficiary, if said successor beneficiary shall survive me.

my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

B. Second Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____ my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

C. Third Specific Gift of Intangible Personal Property (Optional)

I give my _____ to _____, as primary beneficiary, if said primary beneficiary shall survive me. If said primary beneficiary does not survive me, then to _____ my successor beneficiary, if said successor beneficiary shall survive me.

**Initial: _____

D. Residuary Gifts of Intangible Personal Property

I give all intangible personal property owned by me at the time of my death, including but not limited to stocks, bonds, intellectual property, contract rights, licenses, and goodwill, that is not otherwise disposed of under this instrument, together with all insurance policies relating thereto, to Debra Marshall, as primary beneficiary. If said primary beneficiary does not survive me, then to J.C. Mitchell, my successor beneficiary, if said successor beneficiary shall survive me.

Any property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

All intangible personal property owned by me at the time of my death, that is not otherwise disposed of under this Article, should pass to my residuary estate and should be disposed of in accordance with the terms governing my residuary estate.

ARTICLE VII. CHARITABLE DONATIONS (Optional)

I make the following specific charitable gifts of personal property: _____

I give my donation(s) to _____, or if it is not in existence at the time of my death, then to N/A. My donation is to be used in any manner as seen fit by the beneficiary.

Any property which cannot pass directly to a beneficiary named herein, or to a successor beneficiary if one is specified, shall pass into my residuary estate.

**Initial: _____

ARTICLE VIII. CANCELLATION OF INDEBTEDNESS (Optional)

I direct that all debts owed to me are to be cancelled at the time of my death.

**Initial: _____

ARTICLE IX. RESIDUE

I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my "residuary estate"), to the following:

To Debra Marshall as primary beneficiary. If said primary beneficiary does not survive me, my residuary estate shall be paid and distributed to any of my living issue, in equal shares Per Stirpes.

If none of the beneficiaries described above in this Article shall survive me, and no issue of said beneficiaries is then living, my residuary estate shall be paid and distributed to J.C. Mitchell.

If none of the beneficiaries described above shall survive me, then I give my residuary estate to those who would take from me as if I were then to die without a Will, unmarried, the absolute owner of my residuary estate, and a

resident of the State of _____

ARTICLE X. MINOR OR DEPENDENT BENEFICIARIES

(Note to Testator: Choose ONE and only ONE option for distributing property to any minor beneficiaries that currently exist or who may exist in the future. Distribution can be done through your Personal Representative OR through a Property Guardian OR through a Trust. Initial ONLY the option you choose.)

Personal Representative Option

If any property of my estate vests in absolute ownership in a minor or dependent beneficiary, my Personal Representative, at any time and without court authorization, may: distribute the whole or any part of such property to the beneficiary; or use the whole or any part for the health, education, maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee or other legal representative of the beneficiary, or to a custodian for the beneficiary under any gifts to minors or transfers to minors act, or to the person or persons with whom the beneficiary resides if they are also the natural or appointed guardians of such beneficiary. Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my Personal Representative from any liability with respect thereto, even though my Personal Representative may be such person. If such beneficiary is a minor, my Personal Representative may defer the distribution of the whole or any part of such property until the beneficiary attains the age of majority as defined by SC law, and may hold the same as a separate fund for the beneficiary with all of the powers described below. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary.

**Initial: ES

Property Guardian Option

If any property of my estate vests in absolute ownership in a minor child, younger at the time of my death than the age of majority as defined by _____ law, and the minor has no living parent, I direct that property they receive by bequest should be transferred under any transfer to minors act. I appoint _____ to be the guardian of the property of any such minor beneficiary who has not attained the age of majority. If _____ shall fail or cease to act as guardian, I appoint _____ as guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

**Initial: _____

Trust(s) for Minor Beneficiaries Option

If any property of my estate vests in absolute ownership in a minor child, younger than the age of majority as defined by the State of _____, or in a dependent, at the time of my death, I direct that a Trust be created to hold the property given them under this Will.

At the discretion of my Personal Representative, a single Trust for the benefit of all minor children or dependents and more remote issue, as hereinafter provided, may be created instead of separate Trusts for each beneficiary.

I appoint _____ to act as Trustee of any Trust created under this Will. If this Trustee does not survive me, or shall fail to qualify for any reason as Trustee, or having qualified shall die, resign or cease to act for any reason, I appoint _____ to act as Successor Trustee of any Trust created under this Will.

No Trustee shall be required to give any bond or obtain the order or approval of any court in carrying out any powers or discretion granted in this Trust.

The Trustee shall have the full power and authority allowed by the State of _____ to manage and distribute, based on his or her sole discretion, the Trust's income and principal on behalf of the beneficiary, including the right to use income or principal for the education, health, medical expenses, support and maintenance of the beneficiary.

The determination of the Trustee as to the amount or advisability of any discretionary payment of income or principal from any Trust hereunder shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such Trust. Upon making any such payment, the Trustee shall be released fully from all further liability therefor.

The Trust shall terminate when the beneficiary reaches the age of majority as defined by the State of _____; the beneficiary dies; or the Trust funds are exhausted through distributions allowed under the provisions of this Trust, whichever happens first. Any Trust funds remaining at the termination of the Trust shall pass to the beneficiary, or if no longer living to the beneficiary's heirs.
**Initial: _____

ARTICLE XI. GUARDIANSHIP

If at my death I am survived by a child, who has not attained the age of majority and whose other parent does not survive me, or another dependent person for whom I am responsible, I appoint _____ to be the guardian of the person and property of that child or dependent, except for such property that is transferred under any transfers to minors act and controlled by another individual as directed elsewhere in this instrument. If _____ shall fail or cease to act as guardian, I appoint _____ as guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

ARTICLE XII. PET PROVISION (Optional)

Upon my death, my Personal Representative shall set aside \$_____ for the care of all my pets living at my death. It is my desire that _____ provide a home and care including, but not limited to, veterinary care, food, shelter, love and affection for the remainder of my pets' natural lives. In the event that _____ is unable or unwilling to care for my pets, _____ shall find a good home for them for the remainder of my pets' natural lives. Upon the death of all my pets, all remaining undistributed net income and principal of the share set aside for their care shall be distributed to the person who has been providing said care.

If I have no pets alive at my death, this specific distribution shall lapse and pass to my residuary estate and should be disposed of in accordance with the terms governing disposition of my residuary estate.
**Initial: _____

ARTICLE XIII. PERSONAL REPRESENTATIVE(S)

I appoint my Personal Representative(s) as follows:

A. Personal Representative
I appoint Robert Marshall to be my Personal Representative, or if Co-Personal Representatives are named herein, to be my Co-Personal Representative.

If my above-named Personal Representative or both Co-Personal Representatives named herein shall fail to qualify for any reasons as my Personal Representative or Co-Personal Representatives, respectively, or having qualified shall die, resign or cease to act for any reasons, I appoint J. Mitchell as my Personal Representative.

I direct that no Personal Representative or Co-Personal Representative shall be required to file or furnish any bond, surety or other security in any jurisdiction.

B. Second Personal Representative (Co-Personal Representative) (Optional)
I appoint _____ to be my Co-Personal Representative.

If my Co-Personal Representatives shall fail to qualify for any reason as my Personal Representative, or having qualified shall die, resign or cease to act for any reason, the other may act alone.

**Initial: _____

ARTICLE XIV. EXECUTOR'S POWERS

I grant to my Personal Representative all powers conferred on Personal Representatives and Executors by the State of SC, and all powers conferred upon Personal Representatives and Executors wherever my Personal Representative may act. I also grant to my Personal Representative power to retain, sell at public or private sale, exchange, grant options on, invest and reinvest, and otherwise deal with any kind of property, real or personal, for cash or on credit; to hold, manage, insure, repair, improve, demolish, divide, and otherwise deal with and dispose of any property; to borrow money and mortgage, encumber or pledge any property to secure

loans; to divide and distribute property in cash or in kind; to exercise all powers of an absolute owner of property, to compromise and release claims with or without consideration; and to employ attorneys, accountants and other persons for services or advice. The term "Personal Representative" wherever used herein shall mean the Personal Representative, Co-Personal Representative, Executors, Executor, Executrix or Administrator in office from time to time.

My Personal Representative shall have the authority to perform any act believed to be necessary and in the best interest of my estate and descendants, with no limitations, and consistent with the laws of the State of SC.

In addition, each Personal Representative is authorized to:

- a. Retain, until distribution and without liability for loss or depreciation resulting from such retention, any of my assets which shall come into his or her possession as a result of administering my estate.
- b. Mortgage, lease, pledge, exchange, partition, or sell any of my assets without proper court order, whether real or personal, at public or private sale and to invest or reinvest the proceeds from any sale in the best interests of my estate.
- c. Pass any real or personal property which is encumbered by a mortgage, deed of trust, lease or any other loan obligation that requires the payment of money, to the recipient of that particular property.
- d. Exercise or sell any or all conversion, subscription, option, voting and any other rights of whatsoever nature pertaining to any such property, and in their discretion to vote, in person or by proxy, with respect to any matters, regarding stocks, securities or other assets constituting part of my estate.
- e. Retain and continue to operate any business, incorporated or otherwise, which is part of my estate, including the right to effectuate any plan of corporate or business reorganization, consolidation, merger or similar plan.
- f. Prosecute, compromise, settle or submit to arbitration any claim in favor of or against my estate.
- g. Settle my estate without intervention of any court, except to the extent required by law.
- h. To access, use, and control my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smart phones, and any similar devices, which currently exists or may exist as technology develops for the purposes of accessing, modifying, deleting, controlling, or transferring my digital assets.

To access, modify, delete, control, and transfer my digital assets, including but not limited to, emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, web hosting accounts, tax preparation services accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops. To obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets described above.

ARTICLE XV. CONTEST

If any of my beneficiaries chooses to contest or attack my Will, or any of its provisions, his or her share under this Will shall be deemed revoked and distributed as if the contesting beneficiary had predeceased me without any children.

ARTICLE XVI. SURVIVORSHIP

I direct that for purposes of this Will a beneficiary shall be deemed to predecease me unless such beneficiary survives me by at least thirty (30) days.

IN WITNESS WHEREOF, I, Testator, willingly sign, seal, publish and declare this instrument as my Last Will and Testament, as my free and voluntary act, being of legal age of majority (or otherwise legally empowered to make a Last Will and Testament), and of sound mind and under no constraint or undue influence this 19 day of March, 2019.

Testator and Date

March 19, 2019

We, the witnesses, do hereby declare under penalty of perjury under the laws of this State that the following is true and correct of our own knowledge: that the foregoing instrument was willingly signed, sealed, published and declared by the above named Testator, _____ (or some person in the Testator's presence and by the Testator's direction), or was acknowledged by the Testator as the Testator's free and voluntary act for the purposes therein expressed, or the Testator acknowledged the signature already made, to be the Testator's Last Will and Testament in our presence, all being present at the same time, and we being competent witnesses, at the Testator's request and in the Testator's conscious presence, sight, and hearing and in the presence of each other, believing to the best of our knowledge the Testator to be of legal age of majority (or otherwise legally empowered to make a Last Will and Testament) and of sound mind, memory, and body and under no constraint, duress, menace, fraud, or undue influence at the time of the signing or acknowledging of the instrument, and each of us is now the age of majority (or otherwise legally empowered to witness a Last Will and Testament or was a member of the armed forces or auxiliary of the armed forces or of the merchant marine of the United States or its allies) have subscribed our names as witnesses on the date above written. We reside at the addresses set forth after our names.

Rebecca Robinson
Witness and Date

Residing at:
236 Twitty Ct
Rock Hill, SC 29730

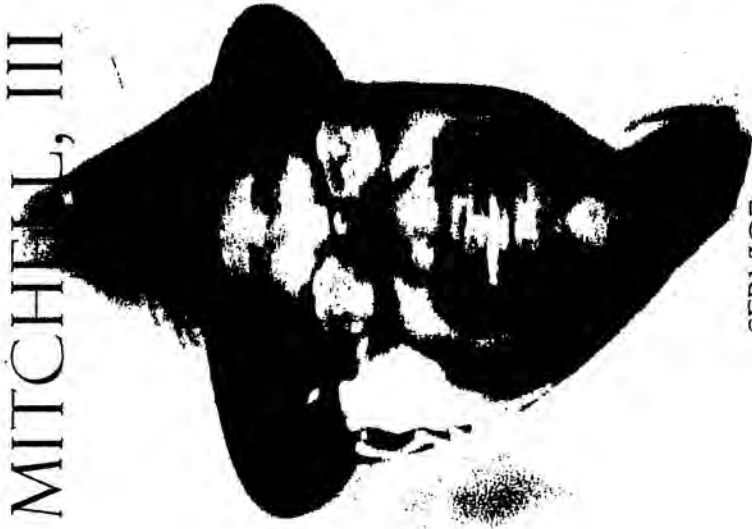
Winston Marshall
Witness and Date

Residing at:
238 Purday St
Rock Hill, SC 29732

Witness signatures will be needed at the end of your Last Will & Testament.

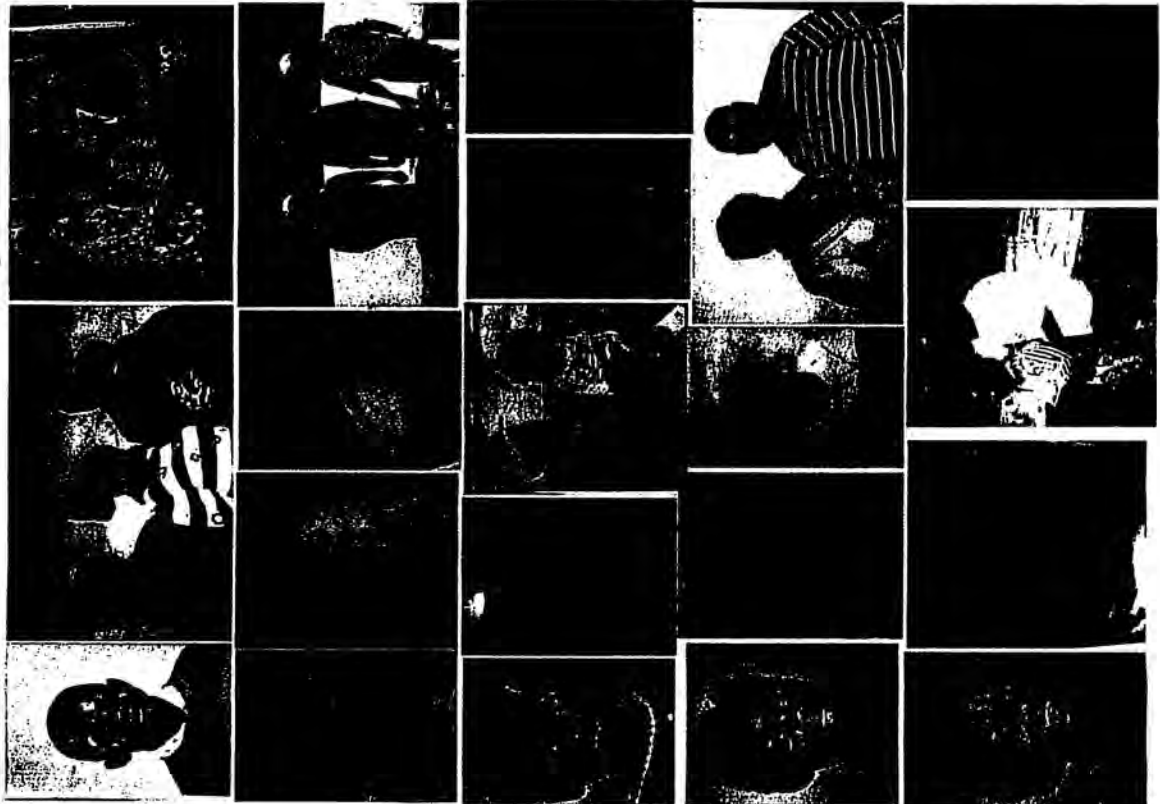


A Homegoing
SERVICE FOR
SUMTER "BIG SUMP"
MITCHELL, III



DEPOSITION
 EXHIBIT
 4-5-2022
 R. Moore Jr II

SERVICE
 Sunday, November 15, 2020 ~ 1:00 PM
 Pineville AME Zion Church
 4200 York Highway, Rock Hill, South Carolina
 Rev. Dr. Brandon Ingram, Pastor
 Rev. Dishawn Muldrowe - Rev. Scotia Miller



FUNERAL ARRANGEMENTS ENTRUSTED TO:
Parker Funeral Home
 870 Saluda Street, Rock Hill, South Carolina
 (803)329-1414
 "Where Everybody Is Somebody, and Christ Is All"

VTW Printing 803-328-3294

1500 315-5355 EXT 211

Order of Service

Help; Obituary

Invocation.....

Selection Big Sump & The Mighty Wandering Stars

Scripture Reading:

Old Testament..... Minister
New Testament..... Minister

Solo Della McKinney

Prayer of Comfort Minister

Selection Big Sump & The Mighty Wandering Stars

Remarks (*limit 2 minutes, please*)

Willie Hinton Jerry Dunham
Marvin McMullen William Cureton
JC Mitchell

Selection Pineville Hymn Choir

Eulogy Rev. Dr. Brandon Ingram

Recessional

Interment.....

Benediction

ACKNOWLEDGEMENTS:

The family acknowledges with grateful appreciation every expression of kindness, concerns and love shown during their time of bereavement. May God bless each of you.

Mr. Sumter Mitchell III, 81, of 236 Twitty Court, Rock Hill, South Carolina passed away at his residence on November 9, 2020. He was born May 11, 1939 in York County, to the late William Mitchell and Louise Kennedy Mitchell.

In addition to his parents he was preceded in death by his children, Randy Mitchell and Marina Evette Caldwell.

Sumter worked at Cone Mills as a textile worker. He was a member of Pineville AME Zion Church; also a member of Pineville Men Choir, Pineville Hymn Choir. He was a Mason. He was part of the Gospel Group Big Sump & The Mighty Wandering Stars. He enjoyed singing and golfing.

He is survived by his very special friend and caregiver, Rebecca Robinson; children, Dennis Mitchell, Bernice Caldwell, Sharon Culp (Joseph), Jamonta Davis, Sumter O Neal Caldwell, Jatinda Robinson all of Rock Hill, SC; sisters, Janie Hemphill (Robert Hemphill), Patricia Marshall (T.J. Marshall) all of Rock Hill, SC; brothers, J.C. Mitchell and Joe Lewis Mitchell (Barbara) of Charlotte, NC; host of nieces, nephews, cousins; fifteen grandchildren, fourteen great-grandchildren.

Sabeel Bearets
Family

Flavel Bearets
Family

STATE OF SOUTH CAROLINA

)
)
)
)
)
)
)

IN THE PROBATE COURT

COUNTY OF YORK

**DEED OF DISTRIBUTION
(Real Property Only)
NOT A WARRANTY DEED**

IN THE MATTER OF:
SUMTER MITCHELL III
(Decedent)

CASE NUMBER: 2021ES4600206

The undersigned states as follows:

Decedent died on 11/9/2020; and probate of the Estate is being administered in the Probate Court for YORK County, South Carolina, in File # 2021ES4600206.

I/We was/were appointed Personal Representative (s) on February 11th, 2021.

Decedent owned real property described as follows: *3 Bedrooms, 2 Bath, Brick Home*

Tax Map Number: *6001004004*

Street/Property Address: *1118 Green St East Rock Hill, SC 29730*

Legal Description: *See Attached*

YORK COUNTY ASSESSOR

Tax Map:
600-10-04-004
Date: **03/09/2021**

E H



2021013378

DEED QUIT CLAIM
RECORDING FEES \$15.00
STATE TAX \$0.00
COUNTY TAX \$0.00

PRESENTED & RECORDED:
03-09-2021 10:42:35 AM

BK: RB 19067
PG: 320 - 322

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: CASSI REDDEN CLERK

Additional sheet(s) for additional property(ies) is attached (check if applicable)

This transfer is made pursuant to:

- Decedent's Will
- Intestacy Statute: SCPC 62-2-103
- Private Family Agreement: SCPC 62-3-912
- Disclaimer by: _____
- Probate Court Order issued on _____
- Other: _____

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s)' right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: Patricia M. Marshall
Address: 238 Purshley St
Rock Hill, SC 29732

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

IN WITNESS WHEREOF, the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 9th day of March, 2021.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: _____

Print Name: _____

Witness: Cassi Redden

Print Name: Cassi Redden

Estate of: SUMTER MITCHELL III

Signature of Personal Representative: Patricia M. Marshall

Print Name: PATRICIA MITCHELL MARSHALL

If applicable,
Signature of Co-Personal Representative: _____

Print Name: _____

STATE OF SOUTH CAROLINA }
}

ACKNOWLEDGMENT

COUNTY OF York
Cassi Redden

Patricia M. Marshall

I, _____, Notary Public, a notary for the State of South Carolina do hereby certify that _____, as Personal Representative(s) of the Estate of Sumter Mitchell III, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 9th day of March 2021.
DL # 011620782

Cassi Redden (SEAL)
(Signature of Notary Public)
Cassi Redden
(Print name of Notary Public)
Notary Public for State of South Carolina
My Commission Expires: 02/17/2028

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

All that certain piece, parcel, lot or tract of land lying, being and situate in the City of Rock Hill, Catawba Township #3, York County, S.C. and being shown and designated as Lot 3 on plat of Carroll Place by R. H. Maret, R.S. dated August 15, 1968 and recorded in Plat Book 34 at Page 98 and being more particularly described according to said plat as follows, to wit: Beginning at a stake on the northwestern side of Green Street Extension at a point; 172.5 feet southwest from its intersection with Frank Street, joint front corner of Lots 2 and 3; running thence with Green Street Extension S. 48° W. 57.5 feet to a stake, joint front corner of Lots 3 and 4; thence with the line of said lots N. 42° W. 192.1 feet to a stake; thence N. 42-15 E. 47.76 feet to a stake, joint rear corner of Lots 2 and 3; thence with the line of said lots S. 42° E. 197.8 feet to the point of beginning. Being the identical property conveyed to Phoe Cathcart and Evelyn C. Cathcart by deed of Yonce Insurance and Realty Company, Inc. dated October 9, 1969 and recorded October 13, 1969 in Deed Book 395, page 222. See also deed of distribution of Estate of Phoe Cathcart dated May 2, 1994 and recorded May 16, 1994 in Record Book 1007, page 351. See also deed of distribution of Estate of Bruce Edward Cathcart dated July 5, 1994 and recorded July 7, 1994 in Record Book 1045, page 107. See also deed of distribution of Estate of Evelyn Currence Cathcart dated August 18, 1994 and recorded August 22, 1994 in Record Book 1077, page 257.

Page #6
7/18/12

SOUTH CAROLINA RESIDENTIAL LEASE AGREEMENT

This Residential Lease Agreement (hereinafter "Lease") is entered into this the 12-30-11 day of December by and between the Lessor: Dunbar Mitchell (hereinafter referred to as "Landlord"), and the Lessee(s): Boalice & Dennis Mitchell (hereinafter referred to collectively as "Tenant"), all of which are jointly, severally and individually bound by, and liable under the terms and conditions of this Lease. 12-30-11

For the valuable consideration described below, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby covenant, contract and agree as follows:

1. **GRANT OF LEASE:** Landlord does hereby lease unto Tenant, and Tenant does hereby rent from Landlord, solely for use as a personal residence, excluding all other uses, the personal residence located in York County, South Carolina, with address of: 1118 Green St. including the following items of personal property:

2. **NATURE OF OCCUPANCY:** As a special consideration and inducement for the granting of this Lease by the Landlord to the Tenant, the personal residence described above shall be used and occupied only by the members of the Tenant's family, others whose names and ages are set forth below:

3. **TERM OF LEASE:** This Lease shall commence on the 12-30-11 day of December, 2011, and extend to the expiration on the 30 day of December, 2012, unless renewed or extended pursuant to the terms herein

4. **SECURITY DEPOSIT:** Upon execution of this Lease, Tenant shall deposit the sum of \$ to be held by Landlord as a security deposit for reasonable cleaning of, and repair of damages to, the premises upon the expiration or termination of this Lease, or other reasonable damages resulting from a default by Tenant. Tenant shall be liable to Landlord for all damages to the leased premises upon the termination of this Lease, ordinary wear and tear excepted. Tenant shall be entitled to interest on the security deposit. Tenant may not apply the security deposit to any rent due under this Lease. If Landlord sells or assigns the leased premises, Landlord shall have the right to transfer Tenant's security deposit to the new owner or assignee to hold under this Lease and upon so doing Landlord shall be released from all liability to Tenant for the return of said security deposit.

In compliance with South Carolina Code § 27-40-410:

Upon termination of the Lease, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with the Lease. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the Lease and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to the tenant, the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding address or new address, the tenant is not entitled to damages, provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address.

The foregoing does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or otherwise.

5. **RENT PAYMENTS:** Tenant agrees to pay rent unto the Landlord during the term of this Lease in equal monthly installments of \$ 480.50, said installment for each month being due and payable on or before the 1st day of the month, the first full rent payment under this Lease being due on the 15th day of Jan, 2012

Tenant agrees that if rent is not paid in full on or before the 15th day of the month, Tenant will pay a late charge of \$ 25.00 as allowed by applicable South Carolina law.

The promised rent from the commencement of this Lease to the first day of the following month is \$ _____, which amount shall be paid at the execution of this Lease.

Tenant agrees that rent shall be paid in lawful money of the United States by (indicate those that apply):
Cash, personal check, money order, cashier's check, other _____

* Rent payments shall be made payable to Sumter Mitchell and mailed or delivered to the following address: 1118 Green St. Rock Hill S.C. 29730. All notices from Tenant to Landlord on this Lease and applicable South Carolina law shall be delivered to the above address.

Tenant agrees that rent monies will not be considered paid until Landlord or Landlord's agent receives the rent monies, either by mail or by delivery to the above address. Tenant placing rent monies in the mail is not sufficient for rent to be considered paid, and rent will be considered unpaid until actual receipt thereof.

If there are multiple Tenants signed to this Lease, all such Tenants are jointly, severally and individually bound by, and liable under, the terms and conditions of this Lease. A judgment entered against one Tenant shall be no bar to an action against other Tenants.

6. CONSEQUENCES OF BREACH BY TENANT: If Tenant, by any act or omission, or by the act or omission of any of Tenant's family or invitees, licensees, and/or guests, violates any of the terms or conditions of this Lease or any other documents made a part hereof by reference or attachment, Tenant shall be considered in breach of this Lease (breach by one tenant shall be considered breach by all tenants where Tenant is more than one person).

In compliance with South Carolina Code § 27-40-710 et seq.

If there is a breach by the tenant with the Lease agreement (other than nonpayment of rent- see below) or a breach materially affecting health and safety or the physical condition of the property, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the Lease agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice, if the breach is not remedied in fourteen (14) days. The Lease agreement terminates as provided in the notice except that:

(1) if the breach is remediable by repairs or otherwise and the tenant adequately remedies the breach before the date specified in the notice, or

(2) if the remedy cannot be completed within fourteen (14) days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time, the Lease agreement may not terminate by reason of the breach.

IF TENANT DOES NOT PAY RENT ON TIME:

This is your statutory notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit. The landlord is not required to furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the Lease agreement has expired.

If there is breach by the tenant materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and the tenant shall reimburse the landlord for the cost and, in addition, the landlord shall have the remedies available under this chapter.

If there is breach by the tenant materially affecting health and safety that cannot be remedied by repair, or if landlord does not elect to so remedy, and the tenant fails to comply as conditions require in case of emergency, or within fourteen days after written notice by the landlord if it is not an emergency, specifying the breach and requesting that the tenant remedy within that period of time, the landlord may terminate the Lease agreement.

Tenant expressly agrees and understands that upon Landlord's termination of this Lease, the entire remaining balance of unpaid rent for the remaining term of this Lease shall ACCELERATE, whereby the entire sum shall become immediately due, payable, and collectable. Landlord may hold the portion of Tenant's security deposit remaining after reasonable cleaning and repairs as a partial offset to satisfaction of the accelerated rent.

7. **DELIVERY OF NOTICES:** Any giving of notice under this Lease or applicable South Carolina law shall be made by Tenant in writing and delivered to the address noted above for the payment of rent, either by hand delivery or by mail. Certified or registered mail is recommended. Delivery by mail shall not be considered complete until actual receipt by Landlord or Landlord's agent.

Any notices from Landlord to Tenant shall be in writing and shall be deemed sufficiently served upon Tenant when deposited in the mail addressed to the leased premises, or addressed to Tenant's last known post office address, or hand delivered, or placed in Tenant's mailbox. If Tenant is more than one person, then notice to one shall be sufficient as notice to all.

8. **UTILITIES:** Tenant will provide and pay for the following utilities (indicate those that apply):
 Electric, Gas, Telephone, Cable Television, Water, Garbage pick-up.

Landlord will provide and pay for the following utilities (indicate those that apply):
 Electric, Gas, Telephone, Cable Television, Water, Garbage pick-up.

Tenant shall be responsible for contacting and arranging for any utility service not provided by the Landlord, and for any utilities not listed above. Tenant shall be responsible for having same utilities disconnected on the day Tenant delivers the leased premises back unto Landlord upon termination or expiration of this Lease.

9. **NOTICE OF INTENT TO SURRENDER:** Any other provision of this lease to the contrary notwithstanding, at least thirty (30) days prior to the normal expiration of the term of this Lease as noted under the heading TERM OF LEASE above, Tenant shall give written notice to Landlord of Tenant's intention to surrender the residence at the expiration of the Lease term. If said written notice is not timely given, the Tenant shall become a month-to-month tenant as defined by applicable South Carolina law, and all provisions of this Lease will remain in full force and effect, unless this Lease is extended or renewed for a specific term by written agreement of Landlord and Tenant.

If Tenant becomes a month-to-month tenant in the manner described above, Tenant must give a thirty (30) day written notice to the Landlord of Tenant's intention to surrender the residence. At any time during a month-to-month tenancy Landlord may terminate the month-to-month Lease by serving Tenant with a written notice of termination, or by any other means allowed by applicable South Carolina law. Upon termination, Tenant shall vacate the premises and deliver same unto Landlord on or before the expiration of the period of notice.

10. OBLIGATIONS AND DUTIES OF LANDLORD:

In compliance with South Carolina Code § 27-40-440, Landlord shall:

- 1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
- 2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
- 3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;
- 4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
- 5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the Lease agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

11. OBLIGATIONS AND DUTIES OF TENANT:

In compliance with South Carolina Code § §27-40-510, Tenant shall

- (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) keep the dwelling unit and that part of the premises that he uses reasonably safe and reasonably clean;
- (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the tenant reasonably clean;
- (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
- (6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who is allowed access to the premises by the tenant;
- (7) conduct himself and require other persons on the premises with the tenant's permission or who are allowed access to the premises by the tenant to conduct themselves in a manner that will not disturb other tenant's peaceful enjoyment of the premises;
- (8) comply with the lease and rules and regulations.

Tenant agrees that any violation of these provisions shall be considered a breach of this Lease.

12. NO ASSIGNMENT: Tenant expressly agrees that the leased premises nor any portion thereof shall not be assigned or sub-let by Tenant without the prior written consent of Landlord.

13. TENANT INSURANCE: Landlord shall not be liable to Tenant, Tenant's family or Tenant's invitees, licensees, and/or guests for damages not proximately caused by Landlord or Landlord's agents. Landlord will not compensate Tenant or anyone else for damages proximately caused by any other source whatsoever, or by Acts of God, and Tenant is therefore strongly encouraged to independently purchase insurance to protect Tenant, Tenant's family, Tenant's invitees, licensees, and/or guests, and all personal property on the leased premises and/or in any common areas from any and all damages.

14. CONDITION OF LEASED PREMISES: Tenant hereby acknowledges that Tenant has examined the leased premises prior to the signing of this Lease, or knowingly waived said examination. Tenant acknowledges that Tenant has not relied on any representations made by Landlord or Landlord's agents regarding the condition of the leased premises and that Tenant takes premises in its AS-IS condition with no express or implied warranties or representations beyond those contained herein or required by applicable South Carolina law. Tenant agrees not to damage the premises through any act or omission, and to be responsible for any damages sustained through the acts or omissions of Tenant, Tenant's family or Tenant's invitees, licensees, and/or guests. If such damages are incurred, Tenant is required to pay for any resulting repairs at the same time and in addition to the next month's rent payment, with consequences for non-payment identical to those for non-payment of rent described herein. At the expiration or termination of the Lease, Tenant shall return the leased premises in as good condition as when taken by Tenant at the commencement of the lease, with only normal wear-and-tear excepted. Tenant shall have the right to remove from the premises Tenant's fixtures placed thereon by Tenant at his expense, provided, however, that Tenant in effecting removal, shall restore the leased premises to as good, safe, sound, orderly and sightly condition as before the addition of Tenant's fixture. Failing this, Tenant shall be obligated to pay for repairs as stated above.

15. ALTERATIONS: Tenant shall make no alterations, decorations, additions, or improvements to the leased premises without first obtaining the express written consent of Landlord. Any of the above-described work shall become part of the dwelling. If carried out by independent contractors, said contractors must be approved by Landlord. Tenant shall not contract for work to be done without first placing monies sufficient to satisfy the contract price in an escrow account approved by Landlord. All work shall be done at such times and in such manner as Landlord may designate. If a construction or mechanic's

lien is placed on the leased premises as a result of the work, such shall be satisfied by Tenant within ten (10) days thereafter at Tenant's sole expense. Tenant shall be considered in breach of this Lease upon failure to satisfy said lien.

16. NO ILLEGAL USE: Tenant shall not perpetrate, allow or suffer any acts or omissions contrary to law or ordinance to be carried out upon the leased premises or in any common area. Upon obtaining actual knowledge of any illegal acts or omissions upon the leased premises, Tenant agrees to immediately inform Landlord and the appropriate authorities. Tenant shall bear responsibility for any and all illegal acts or omissions upon the leased premises and shall be considered in breach of this Lease upon conviction of Tenant or any of Tenant's family or invitees, licensees, and/or guests for any illegal act or omission upon the leased premises- whether known or unknown to Tenant.

17. NOTICE OF INJURIES: In the event of any significant injury or damage to Tenant, Tenant's family, or Tenant's invitees, licensees, and/or guests, or any personal property, suffered in the leased premises or in any common area, written notice of same shall be provided by Tenant to Landlord at the address designated for delivery of notices (identical to address for payment of rent) as soon as possible but not later than five (5) days after said injury or damage. Failure to provide such notice shall constitute a breach of this Lease.

18. LANDLORD'S RIGHT TO MORTGAGE: Tenant agrees to accept the premises subject to and subordinate to any existing or future mortgage or other lien, and Landlord reserves the right to subject premises to same. Tenant agrees to and hereby irrevocably grants Landlord power of attorney for Tenant for the sole purpose of executing and delivering in the name of the Tenant any document(s) related to the Landlord's right to subject the premises to a mortgage or other lien.

19. DELAY IN REPAIRS: Tenant agrees that if any repairs to be made by Landlord are delayed by reasons beyond Landlord's control, there shall be no effect on the obligations of Tenant under this Lease.

20. ABANDONMENT: Abandonment shall be defined as the absence of the Tenant from the leased premises for a period of seven (7) or more consecutive days while rent or any owing monies remain unpaid- whereupon Tenant will be considered in breach of this Lease. This definition is subordinate to, and shall not in any way impair, the rights and remedies of Landlord under this Lease or applicable South Carolina law, except that in case of abandonment, Landlord or Landlord's agents may immediately or any time thereafter enter and re-take the leased premises as provided by applicable South Carolina law, and terminate this Lease without notice to Tenant.

21. NOTICE OF ABSENCE FROM PREMISES: If Tenant is to be absent from the leased premises for seven (7) or more consecutive days, written notice of such should be served upon Landlord. If such absences are to be customary or frequent, the expected frequency and duration of absence should be summarily noted here: _____

Tenant expressly agrees and understands that absence from the premises, with or without notice, in no way obviates the requirement to pay rent and other monies as stated herein, or the consequences of failure to timely pay same.

22. POSSESSION OF PREMISES: Tenant shall not be entitled to possession of the premises designated for lease until the security deposit and first month's rent (or prorated portion thereof), less any applicable promotional discount, is paid in full and the premises designated for lease is vacated by the prior tenant.

23. DELAY OF POSSESSION: Tenant expressly agrees that if by reason of the premises being unready for occupancy, or by reason of the previous tenant or occupant of the dwelling holding over, or as a result of any other cause whatsoever, Tenant is unable to enter and occupy the premises, Landlord shall not be liable to Tenant in damages, but shall abate the rent for the period in which the Tenant is unable to occupy the premises.

24. MATERIALITY OF APPLICATION TO RENT: All representations made by Tenant(s) on the Application to Rent (or like-titled document) are material to the grant of this Lease, and the Lease is granted only on condition of the truthfulness and accuracy of said representations. If a failure to disclose or lack of truthfulness is discovered on said Application, Landlord may deem Tenant to be in breach of this Lease.

25. MODIFICATION OF THIS LEASE: Any modification of this lease shall not be binding upon Landlord unless in writing and signed by Landlord or Landlord's authorized agent. No oral representation shall be effective to modify this Lease. If, as per the terms of this paragraph, any provision of this lease is newly added, modified, or stricken out, the remainder of this lease shall remain in full force and effect.

- 26. REMEDIES NOT EXCLUSIVE:** The remedies and rights contained in and conveyed by this Lease are cumulative, and are not exclusive of other rights, remedies and benefits allowed by applicable South Carolina law.
- 27. SEVERABILITY:** If any provision herein, or any portion thereof, is rendered invalid by operation of law, judgment, or court order, the remaining provisions and/or portions of provisions shall remain valid and enforceable and shall be construed to so remain.
- 28. NO WAIVER:** The failure of Landlord to insist upon the strict performance of the terms, covenants, and agreements herein shall not be construed as a waiver or relinquishment of Landlord's right thereafter to enforce any such term, covenant, or condition, but the same shall continue in full force and effect. No act or omission of Landlord shall be considered a waiver of any of the terms or conditions of this Lease, nor excuse any conduct contrary to the terms and conditions of this Lease, nor be considered to create a pattern of conduct between the Landlord and Tenant upon which Tenant may rely upon if contrary to the terms and conditions of this Lease.
- 29. ATTORNEY FEES:** In the event that Landlord employs an attorney to collect any rents or other charges due hereunder by Tenant or to enforce any of Tenant's covenants herein or to protect the interest of the Landlord hereunder, Tenant agrees to pay a reasonable attorney's fee and all expenses and costs incurred thereby.
- 30. HEIRS AND ASSIGNS:** It is agreed and understood that all covenants of this lease shall succeed to and be binding upon the respective heirs, executors, administrators, successors and, except as provided herein, assigns of the parties hereto, but nothing contained herein shall be construed so as to allow the Tenant to transfer or assign this lease in violation of any term hereof.
- 31. DESTRUCTION OF PREMISES:** In the event the leased premises shall be destroyed or rendered totally untenable by fire, windstorm, or any other cause beyond the control of Landlord, then this Lease shall cease and terminate as of the date of such destruction, and the rent shall then be accounted for between Landlord and Tenant up to the time of such damage or destruction of said premises as if being prorated as of that date. In the event the leased premises are damaged by fire, windstorm or other cause beyond the control of Landlord so as to render the same partially untenable, but repairable within a reasonable time, then this lease shall remain in force and effect and the Landlord shall, within said reasonable time, restore said premises to substantially the condition the premises were in prior to said damage, and there shall be an abatement in rent in proportion to the relationship the damaged portion of the leased premises bears to the whole of said premises.
- 32. EMINENT DOMAIN:** In the event that the leased premises shall be taken by eminent domain, the rent shall be prorated to the date of taking and this Lease shall terminate on that date.
- 33. LANDLORD ENTRY AND LIEN:** In addition to the rights provided by applicable South Carolina law, Landlord shall have the right to enter the leased premises at all reasonable times for the purpose of inspecting the same and/or showing the same to prospective tenants or purchasers, and to make such reasonable repairs and alterations as may be deemed necessary by Landlord for the preservation of the leased premises or the building and to remove any alterations, additions, fixtures, and any other objects which may be affixed or erected in violation of the terms of this Lease. Landlord shall give reasonable notice of intent to enter premises except in the case of an emergency. Furthermore, Landlord retains a Landlord's Lien on all personal property placed upon the premises to secure the payment of rent and any damages to the leased premises.
- 34. GOVERNING LAW:** This Lease is governed by the statutory and case law of the State of South Carolina.
- 35. LEAD-BASED PAINT DISCLOSURE: HOUSING BUILT BEFORE 1978 MAY CONTAIN LEAD-BASED PAINT. LEAD FROM PAINT, PAINT CHIPS, AND DUST CAN POSE HEALTH HAZARDS IF NOT MANAGED PROPERLY. LEAD EXPOSURE IS ESPECIALLY HARMFUL TO YOUNG CHILDREN AND PREGNANT WOMEN. BEFORE RENTING PRE-1978 HOUSING, LESSORS MUST DISCLOSE THE PRESENCE OF KNOWN LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS IN THE DWELLING. LEASES MUST ALSO RECEIVE A FEDERALLY APPROVED PAMPHLET ON LEAD POISONING PREVENTION.**

Landlord states as follows: [Landlord check one]

The leased premise was constructed in 1978 or later.

The leased premise was constructed prior to 1978. Landlord has conformed with all federal requirements regarding lead-based paint disclosure including the completion and mutual signing with Tenant and any agents, of the Lead-Based Paint Disclosure Form attached hereto and incorporated into this lease as a part hereof. All associated information required by the Disclosure form (if any) was furnished to Tenant, and Tenant received the EPA pamphlet "Protect Your Family from Lead in Your Home."

36. ADDITIONAL PROVISIONS

_____ *N/A* _____

WITNESS THE SIGNATURES OF THE PARTIES TO THIS RESIDENTIAL LEASE AGREEMENT:

LANDLORD

Sign: Santa Mitchell Print: Santa R Mitchell Date: 12-30-11

TENANT

Sign: Berice Caldwell Print: Berice Caldwell Date: 12-30-11

TENANT

Sign: Dennis Mitchell Print: Dennis Mitchell Date: 12-30-11

TENANT

Sign: _____ Print: _____ Date: _____

TENANT

Sign: _____ Print: _____ Date: _____

*Erhard C Parker
my Commission expires April 24, 2019*

TAX BILL NO. 073938-21-3

RECEIPT FOR PAYMENT OF PROPERTY TAXES
YORK COUNTY TREASURER P.O. BOX 116 YORK, S.C. 29745

CH1

TAXPAYER COPY

DATE PAID 03/01/2022

*Ret #1
7/18/22*

APPRAISED VALUE				ASSES. %	ASSESSED VALUE	LEVY	LESS EXEMPTIONS	TOTAL TAXES PAID
PERSONAL	LAND	BUILDING	TOTAL					
	7568	47632	55200	4%	2208	413.9	867.72	46.17
DISTRICT	CITY CODE	SCHOOL DISTRICT	CITY		DESCRIPTION OF PROPERTY:			
9X	RH	ROCK HILL	ROCK HILL		LOT 3 GREEN ST			
MAP REFERENCE NUMBER		ACRES	LOTS	BLDGS.	H.E.# H 026411 2000			
600-10-04-004		1.00		1				
\$	538.53	SCH TAXES \$	19.45	CITY TAXES \$.00	CITY ASMT		
\$	54.98	GEN FUND \$	56.52	GP-SHERIFF \$	7.95	GP-SOLICTR	GROSS TAXES 913.89	
\$	6.40	RBSV FUND \$	18.55	CNTY BONDS \$	10.60	LIBRARY	LESS EXEMPTIONS: 867.72	
\$	5.74	CULTURE \$	8.17	YORK TECH \$.00	UNINCORP.		
\$.00	SPEC. FIRE \$						
				913.89 GROSS TAX				
TAXES LEVIED BY SCHOOL BOARD		TAXES LEVIED BY CITY		TAXES LEVIED BY COUNTY COUNCIL				
538.53		206.45		168.91		PENALTIES & COSTS 4.62		
MITCHELL SUMTER C/O MARSHALL PATRICIA M 238 PURSLEY ST ROCK HILL SC 29732						50.79		
						York County SOUTH CAROLINA		
Check your payment status on-line at www.YORKCOUNTYGOV.com								

TAX BILL NO. 073938-21-3

RECEIPT FOR PAYMENT OF PROPERTY TAXES
YORK COUNTY TREASURER P.O. BOX 116 YORK, S.C. 29745

CH1

DATE PAID 03/01/2022

APPRAISED VALUE				ASSES. %	ASSESSED VALUE	LEVY	LESS EXEMPTIONS	TOTAL TAXES PAID
PERSONAL	LAND	BUILDING	TOTAL					
	7568	47632	55200	4%	2208	413.9	867.72	46.17
DISTRICT	CITY CODE	SCHOOL DISTRICT	CITY		DESCRIPTION OF PROPERTY:			
9X	RH	ROCK HILL	ROCK HILL		LOT 3 GREEN ST			
MAP REFERENCE NUMBER		ACRES	LOTS	BLDGS.	H.E.# H 026411 2000			
600-10-04-004		1.00		1				
TAXES LEVIED BY SCHOOL BOARD		TAXES LEVIED BY CITY		TAXES LEVIED BY COUNTY COUNCIL				
538.53		206.45		168.91		GROSS TAXES 913.89		
MITCHELL SUMTER C/O MARSHALL PATRICIA M 238 PURSLEY ST ROCK HILL SC 29732						LESS EXEMPTIONS: 867.72		
						PENALTIES & COSTS 4.62		
						50.79		

Pet # 9
7/18/22

Front Deck
Paid
710642

CUSTOMER'S ORDER NO.		DATE				
NAME Phil						
ADDRESS						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE RETD.	PAID OUT
QUAN.	DESCRIPTION		PRICE	AMOUNT		
1	44	2x2-42 FT BEVEL		0.92	40	44
2	2	2x12-842 Prime		14.51	29	05
3	14	5/4x6-8 FT STD PT		5.86	105	46
4	3	2x4 8 FT Prime		5.59	16	17
5	3	2x8-8 FT Prime		18.03	54	05
6	3	2x8 16 FT		9.19	27	59
7	1	4x4 12 FT #2 PT		18.98	18	98
8	5	4x4 8 FT 2 PT		11.38	56	80
9	2	2x4 10 FT		5.86	11	72
10	1	2x12-16 Prime		18.98	18	59
11	2	5/4x6 16-FT STD		749	17	85
12	3	1x6-8 FT PG		5.20	15	60
RECEIVED BY						

4705 KEEP THIS SLIP FOR REFERENCE

Front Deck
Paid
710643

CUSTOMER'S ORDER NO.		DATE				
NAME Phil						
ADDRESS						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE RETD.	PAID OUT
QUAN.	DESCRIPTION		PRICE	AMOUNT		
1	5	Deckmate Tond 410		19.12	95.60	
2	6	THRU 6x7 Fbg		2.60	16	08
3	2	Timberlock g screw		12.15	24	28
4	2	Timberlock 6 screw		10.40	20	94
5	2	Headlock 6 screw		16.92	34	96
6	2	Timberlock 6 screw		27.21	54	42
7	1	4x4-10 FT 2 PT		15.93	15	92
8	2	Headlock 6		24.38	48	60
9	1	Simpson 9x2.5		14.61	14	61
10	1	3D 1-1/4 ELECTRO		3.20	3	20
11	2	Ledgerlock 3-5/8		1.10	2	20
12	16	2x8 2 MAY 2015		.93	9	50
RECEIVED BY						

4705 KEEP THIS SLIP FOR REFERENCE

Front Deck
Paid

710644

③

CUSTOMER'S ORDER NO.		DATE				
NAME Phil						
ADDRESS						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
QUAN.	DESCRIPTION	PRICE	AMOUNT			
1	16D 3-1/2 Hots AN	4.20	4.20			
2	1 SIMPSON # 6 X 15	10.50	10.50			
3	1 Timberlok 4 Sides	23.00	23.00			
4	1 14" X 50" Timcill	64.90	64.90			
5						
6						
7						
8						
9						
10						
11						
12						

RECEIVED BY *Patricia P...*

KEEP THIS SLIP FOR REFERENCE

Back Deck
Paid

710645

②

CUSTOMER'S ORDER NO.		DATE				
NAME Phil						
ADDRESS						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
QUAN.	DESCRIPTION	PRICE	AMOUNT			
1	1 1/2 2x2-4x2 PT BEVEL	0.57	74.60			
2	2 2x8-9FT	7.77	15.54			
3	4 2x8-12FT	11.47	45.88			
4	8 5/4x6-9FT	3.88	31.04			
5	18 5/4x6-12FT	6.17	111.06			
6	8 2x4 8FT 2 Prime	4.47	35.76			
7	6 2x8 16FT 2 Prime	15.57	92.22			
8	5 4x4 12FT 2 PT	13.27	66.35			
9	10 4x4 8FT 2 PT	7.27	72.70			
10	1 4x4-6 2 PT	5.88	5.88			
11	1 2x19-9x Prime	15.27	15.27			
12	1 2x19-10 2 Prime	17.57	17.57			

RECEIVED BY

KEEP THIS SLIP FOR REFERENCE

Back Deck ①
Paid
710646

CUSTOMER'S ORDER NO.		DATE				
NAME Phil						
ADDRESS						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
QUAN.	DESCRIPTION	PRICE	AMOUNT			
1	1x6 & FT PT GC	5.49	27.35			
2	Deckmate Tana-1/2	21.97	174.88			
3	30 Thru Lok 7 Fkg	2.57	86.10			
4	2 Simpson 9x25	15.38	30.76			
5	3 4x4-10FT 2 PT	10.58	32.84			
6	4 ML 24 2 2x4 12 GA	1.84	7.92			
7	20 2x8 2 max Saist	1.89	25.85			
8	2 16D3-1/2 Bolt	5.25	10.50			
9	1 Simpson 10x1.5	12.24	12.24			
10	1 Timberlok 4' 3/4" 502	30.86	30.86			
11	Material Cost					
12	1152.00					

RECEIVED IN

KEEP THIS SLIP FOR REFERENCE
996336
Cost

Invoice 996336

SOLD TO	Bernice Caldwell	SHIP TO	
ADDRESS	118 Green St EX	ADDRESS	
CITY, STATE, ZIP	Rock Hill	CITY, STATE, ZIP	
CUSTOMER ORDER NO.	SOLD BY	TERMS	F.O.B.
			DATE

ORDERED	SHIPPED	DESCRIPTION	PRICE	UNIT	AMOUNT
		1 New water pipe			
		1 Sink line			
		1 Tub line			
		1 Hot water heater			
		2 outside faucet			
		Paint & labor			
		Total			\$3000.00
		Daniel			
		Siddie White			

Lot #3
7/18/22

394947

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE
NAME		
ADDRESS 1118 Green St. Ext		
CITY, STATE, ZIP		

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT	MOSE. FETD.	PAID OUT
---------	------	--------	--------	---------	-------------	----------

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	Repaired whole in wall		
2	with sheet rock & finish		
3	total	300.00	
4			
5			
6	Johnny Fewell		
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			

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394950

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE				
NAME						
ADDRESS 118 Green St. Ext						
CITY, STATE, ZIP						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	Paint front & back		
2	deck		
3	Labor total	500.00	
4			
5			
6			
7	Johnny Fewell		
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			

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01-11

394948

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE
NAME		
ADDRESS 1118 Green St. Ext.		
CITY, STATE, ZIP		

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE RETD.	PAID OUT
---------	------	--------	--------	----------	------------	----------

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	1		
2	2		
3	3		
4	4		
5	5		
6	6		
7	7		
8	8		
9	9		
10	10		
11	11		
12	12		
13	13		
14	14		
15	15		
16	16		
17	17		
18	18		

1 Labor: Built 10ft x 19ft
2 deck on back of house,
3 with steps.
4 Labor total 900⁰⁰

Johnny Fewell

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Invoice

SOLD TO		SHIP TO	
Berice Caldwell		Berice Caldwell	
ADDRESS		ADDRESS	
118 Green St Ex		118 Green St Ex	
CITY, STATE, ZIP		CITY, STATE, ZIP	
Rochester, NY		Rochester, NY	
CUSTOMER ORDER NO.	SOLD BY	TERMS	F.O.B.
			DATE

ORDERED	SHIPPED	DESCRIPTION	PRICE	LIMIT	AMOUNT
		1 New water pipe			
		1 3/4" pipe			
		1 Two 1/2" x 1/2" heater			
		2 outside joints of			
		Postage & taxes			
		Total	\$300.00		
		David			
		Snodice & Co			

394949

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE
NAME		
ADDRESS 1118 Green St. Ext		
CITY, STATE, ZIP		

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT	MOSE. RETD.	PAID OUT
---------	------	--------	--------	---------	-------------	----------

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	8 x 10 deck on front		
2	of house with		
3	steps.		
4	Labor total	600. ⁰⁰	
5			
6			
7	Johnny Fewell		
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			

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SUMTER MITCHELL
POA PATRICIA A. MARSHALL
1118 GREEN STREET EXT
ROCK HILL, SC 29730-5625

7et #10
7/18/22



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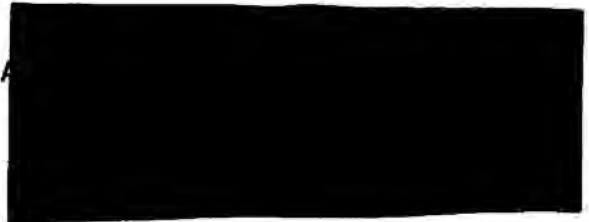
Your Adv Plus Banking

for November 14, 2020 to December 16, 2020

SUMTER MITCHELL POA PATRICIA A. MARSHALL

Account summary

Beginning balance on November 14, 2020	\$102.64
Deposits and other additions	1,275.24
ATM and debit card subtractions	-0.00
Other subtractions	-1,270.00
Checks	-0.00
Service fees	-0.00
Ending balance on December 16, 2020	\$107.88



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SSM-07-20-0688.A | 3172550



Deposits and other additions

Date	Description	Amount
11/18/20	SSA TREAS 310 DES:XXSOC SEC ID:XXXXXXXXXA SSA INDN:SUMTER MITCHELL CO ID:9031036030 PPD	1,169.00
12/01/20	USPBGC-CONE MILL DES:PN PMTS/BG ID:D9HE1753W/20336 INDN:MITCHELL CO ID:1046748526 PPD	106.24
Total deposits and other additions		\$1,275.24

Withdrawals and other subtractions

Other subtractions

Date	Description	Amount
11/18/20	SC TLR cash withdrawal from CHK 1550	-1,270.00
Total other subtractions		-\$1,270.00

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SSM-03-20-0438A | 3058826



1 EXHIBIT INDEX

2

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1 PROCEEDINGS

2 THE COURT: This is a proceeding in the matter of the

3 Estate of Sumter Mitchell, III. It's Case No. 2021-RS-46,

4 Matter 206, and we're here preliminarily on a motion for a

5 continuance that was filed by Mr. Martin Foster, who

6 represents the petitioner in this matter. He's in the

7 courtroom, along with his client, and Mr. Burnette is here

8 representing a personal representative of the estate.

9 So, I just want to first caution everyone. Be sure that

10 your cell phones are turned off. I don't want to hear any

11 cell phones ringing while we're in court today.

12 Go ahead, Mr. Foster.

13 MR. FOSTER: Thank you.

14 Ma'am, just to take care of what we discussed off the

15 record, the Court had emailed me as to the question of

16 service upon certain parties. They have been held in

17 default. I will notice for the record that Ms. Sharon Culp,

18 Mr. Sumter O'Neal Caldwell, and, of course, Ms. Latrenda

19 Robinson, who is our guardian, are here.

20 THE COURT: Okay.

21 MR. FOSTER: So that --

22 THE COURT: So, it's really only Mr. Davis.

23 MR. FOSTER: Beg your pardon?

24 THE COURT: It's really only Mr. Davis that was not

25 submitted Notice of Hearing.

1 MR. FOSTER: Yes.

2 THE COURT: Okay.

3 MR. FOSTER: I'm sorry. I'm looking -- yes, Mr. Thomas

4 Lamont Davis is not present, but has been held -- or has been

5 -- there's an affidavit of default.

6 Ma'am, briefly -- and I must apologize to the Court -- I

7 filed a motion and neglected to attach the attachments. It

8 has been sent to Mr. Burnette. If the Court wishes, I can

9 hand those up, if it wants (inaudible)

10 THE COURT: Well, I actually have those --

11 MR. FOSTER: Oh.

12 THE COURT: -- because they were in the email that you --

13 -- when you emailed the motion to me.

14 MR. FOSTER: Oh, okay.

15 THE COURT: So, even though they were not with the filed

16 motion, I do have copies.

17 MR. FOSTER: Thank you.

18 Ma'am, essentially what happened is this. In the course

19 of preparation, I learned -- I believe it was Wednesday --

20 that we had overlooked some heirs who were the children of

21 dead parties, Mr. Randy Mitchell and Ms. Yvette Baxter. I

22 think it's clear that they have to be joined.

23 I apologize to the Court for this delay and this

24 oversight. I know nothing I can add. I'm not going to throw

25 my clients under the wheel for this. I will admit that I

1 I have found when I handle other partition actions that when I

2 have occasionally had clients who say, "Oh, you mean the dead

3 people, too," and, thus, it was in this case. It is the

4 Court's decision, but we attempt to do that.

5 I would add, at the risk of making this sound like I'm

6 arguing in the schoolyard, looking through the record, I

7 notice that the funeral bulletin for Mr. Sumter Mitchell,

8 which was prepared by Ms. Patricia Marshall, as she

9 testified, contains the name of these people. I would note

10 that Ms. Rebecca Robinson, who was a witness at our

11 depositions, acknowledged that Randy Mitchell was a son of --

12 MR. BURNETTE: I have to object that; it's hearsay.

13 THE COURT: All right.

14 MR. FOSTER: I'm not saying she said it.

15 THE COURT: Well, let's just go ahead.

16 MR. FOSTER: Point simply being that these folks are

17 necessary to a full determination.

18 I apologize to the Court for this situation, and all I

19 can say is that we attempted to remedy it as quickly as we

20 could.

21 THE COURT: All right. I'm going to hear from Mr.

22 Burnette, but -- let me hear from Mr. Burnette. Go ahead,

23 Mr. Burnette. What is your position?

24 MR. BURNETTE: Well, Your Honor, I think it's totally

25 speculative that these are interested parties, that these are

1 beneficiaries to the Will. A large issue in this case is
2 paternity; that there are a lot of claimed children of Sumter
3 Mitchell; that there's no evidence that there is actual
4 paternity; that that is a big issue in this trial. Needless
5 to say, this has already been probated. This is essentially
6 a creditor claim at this point. There's never anything
7 raised during the probate process about these being
8 interested parties or beneficiaries. I've seen no records of
9 paternity that these are grandchildren or children of the
10 deceased. This is just something that has been raised at the
11 last second.

12 And this is highly prejudice to my client, Your Honor.
13 It's the second time we've been out here for a final hearing.
14 My client does have difficulty affording hearings and this is
15 the second one; we're looking at a third now if this is
16 granted.

17 It seems like this always happens at the last second.
18 There's no actual evidence that these are parties, and I
19 think this motion should be denied, Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. FOSTER: The Court may not wish to hear more
22 argument, but could --

23 THE COURT: You can have one more go at it, Mr. Foster.

24 MR. FOSTER: Ma'am, in her deposition, Ms. Marshall
25 admitted though she qualified the fact that she prepared the

1 funeral bulletin for Mr. Sumter Mitchell, she listed his
2 heirs, including those who -- the parents of those who we
3 wish to add.

4 I, again, do not want to make this a schoolyard matter,
5 but Mr. Burnette has the same duty as me to add people.

6 THE COURT: Are you talking about his funeral bulletin
7 or to his obituary?

8 MR. FOSTER: Beg your pardon, ma'am?

9 THE COURT: Are you talking about his funeral bulletin
10 or his obituary?

11 MR. FOSTER: I have not seen his obituary, ma'am,
12 recently, but that is his funeral bulletin.

13 THE COURT: Okay. Thank you.

14 Well, Mr. Foster, practically speaking, are there not
15 persons here who could represent the interest of these
16 alleged grandchildren?

17 MR. FOSTER: Well, ma'am --

18 THE COURT: I mean, we're here on causes of action for
19 lack of capacity and undue influence, equitable estoppel, and
20 declaratory judgment. If these alleged grandchildren were
21 here, would they be called as witnesses?

22 MR. FOSTER: Would they be what, ma'am? I'm sorry.

23 THE COURT: Called as witnesses.

24 MR. FOSTER: Not by me, ma'am.

25 THE COURT: Okay.

1 MR. FOSTER: They do, of course, have the right to
2 present whatever case they wish to, and they would have the
3 right to be served. I'm attempting to do what is proper, as
4 I understand, under the law.

5 THE COURT: All right. I understand. And, again, I ask
6 are there not Respondents whose interest might be aligned to
7 these grandchildren if they are trying to either protect the
8 Will or --

9 MR. FOSTER: If I -- well, let me just repeat, and if
10 I'm saying what's obvious, forgive me.

11 My understanding is that should we prevail and the Will
12 -- or the punitive Will is set aside, they will be owners.

13 THE COURT: Mm-hmm. Okay. And if it's not, they won't
14 be.

15 MR. FOSTER: That's right.

16 THE COURT: Okay. And there are other folks in the
17 courtroom that have the same interest. Correct?

18 MR. FOSTER: Yes, ma'am.

19 THE COURT: Okay. Now, the other question I have is --
20 I looked through the file and I have a question, too, for
21 you. I've seen both Brenda Caldwell and Bernice Caldwell.
22 Are those the same person?

23 MR. FOSTER: My mistake, ma'am. It's Bernice.

24 THE COURT: All right.

25 MR. FOSTER: That was my mistake.

1 THE COURT: All righty. And, you know, I see that Randy
2 Mitchell I believe it was --

3 MR. FOSTER: Yes, ma'am.

4 THE COURT: -- was listed in the application that was
5 filed by Ms. Marshall, and Ms. Caldwell was listed as a
6 sister of Randy Mitchell in his obituary, which was one of
7 the filings that you made, and Ms. Caldwell was listed as a
8 sister in I think it's Ms. Baxter's obituary. So, I think at
9 this point I'm going to deny your motion. I think there was
10 sufficient notice in the record that there might've been some
11 persons out there --

12 MR. FOSTER: It's fine.

13 THE COURT: -- and it was a lack of diligence that -- or
14 I don't know what it was. But, anyway, I think we need to go
15 forward. This has been going on for quite some time.

16 MR. FOSTER: That decision is yours, ma'am.

17 THE COURT: All right. So, what we'll do, then, is let
18 me just recite that the motion is denied.

19 Are there any other motions that any parties wish to
20 make?

21 MR. BURNETTE: No, Your Honor.

22 THE COURT: Okay.

23 MR. FOSTER: No, ma'am. Not that I'm aware of.

24 THE COURT: All righty. So, what we have is a summons
25 and petition that were filed back on June 3rd of last year

1 and that petition alleges a lack of capacity -- I've already
2 said this, but I'm going to repeat it -- a lack of capacity
3 and undue influences, equitable estoppel, and declaratory
4 judgment. The answer, of course, denies that. The answer
5 was filed on June the 25th.
6 There are affidavits of service on Latrenda -- is it
7 Robinson or Latrenda Reeder?
8 MR. FOSTER: Reeder, I believe, ma'am.
9 MS. REEDER: Reeder.
10 THE COURT: Reeder. And you are that lady?
11 MS. REEDER: Yes.
12 THE COURT: You're Ms. Reeder. Okay. And who are the
13 other folks that are back here?
14 MR. FOSTER: Ma. Sharon Culp.
15 THE COURT: Sharon Culp.
16 MR. FOSTER: Mr. Sumter O'Neal Caldwell. Am I saying it
17 right, sir?
18 MR. CALDWELL: Yes, sir.
19 THE COURT: I can't see. That's Sumter O. Caldwell.
20 MR. CALDWELL: (background inaudible)
21 THE COURT: Okay. All right. Got it. Ms. Reeder was
22 appointed guardian ad litem for Dennis Mitchell back on --
23 MR. FOSTER: Yes, ma'am.
24 THE COURT: -- January the 4th. She's here representing
25 him, too. I think that's all I want to recite.

1 So, do you wish to make any opening statement or not?
2 MR. FOSTER: One procedural matter that Your Honor
3 reminds me of.
4 I understand that one of the children of Randy Caldwell
5 is in jail. I presume if the Court wishes to proceed that I
6 could ask -- or ask as is proper -- Ms. Latrenda Reeder to
7 serve as guardian for him also.
8 THE COURT: You could.
9 MR. FOSTER: Okay.
10 THE COURT: All right.
11 MR. FOSTER: No, ma'am, I do not, unless the Court
12 wishes, make an opening statement.
13 THE COURT: All right. Thank you.
14 Mr. Burnette, opening statement?
15 MR. BURNETTE: No, Your Honor. We'll respond
16 accordingly to their evidence.
17 THE COURT: All right. I don't know what to say about
18 the guardian ad litem for a person who's not even named in
19 the petition. So, we'll just proceed because, again, I think
20 even as guardian ad litem for Dennis Mitchell and as the
21 other folks are here, they basically are representing the
22 interest of anyone who's a respondent in this matter and,
23 again, at this point, it's too late --
24 MR. FOSTER: I understand.
25 THE COURT: -- to include these folks. So, go ahead and

1 call your first witness, Mr. Foster.
2 MR. FOSTER: Thank you, ma'am. We'd call Ms. Patricia
3 Marshall.
4 THE COURT: Ms. Marshall, the microphone over -- there's
5 a gray chair behind this microphone over here. If you'll
6 just come on around and remain standing while I swear you in
7 and then you may have a seat. Just raise your right hand,
8 please.
9 Do you swear or affirm to tell the truth and nothing but
10 the truth, so help you God?
11 THE WITNESS: Yes, Your Honor.
12 THE COURT: Thank you. Please be seated.
13 Mr. Foster.
14 MR. FOSTER: Thank you, ma'am.
15 WHEREUPON:
16 PATRICIA MARSHALL, having first been sworn, was examined
17 and testified as follows:
18 DIRECT EXAMINATION BY MR. FOSTER:
19 Q. Ms. Marshall, would you state your name, please?
20 A. Patricia Ann Mitchell Marshall.
21 Q. And, ma'am, what is your relationship to the late
22 Sumter Mitchell?
23 A. I'm his younger sister.
24 Q. Okay. And, ma'am, I'm handing you a copy of what I
25 believe is acknowledged to be the late Mr. Mitchell's Will.

1 MR. FOSTER: I am showing it to Counsel. I believe a
2 copy -- the judge will also have a copy of this in the
3 motions that have been filed.
4 THE COURT: I do.
5 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
6 Q. Ma'am, do you recognize this document?
7 A. I do.
8 Q. Okay. Ma'am, I have some questions I want to ask
9 about this matter.
10 Ma'am, to begin with, the thing starts out with, "This
11 Last Will is a draft form only. You must retype the Will or
12 use the syllable PDF on the CD included in this product."
13 Now, ma'am, in your deposition -- do you recall your
14 deposition, ma'am?
15 A. I do.
16 Q. At that time, as I understand it, you testified
17 that Mr. Mitchell himself provided this document to you.
18 A. He did.
19 Q. Ma'am, Mr. Mitchell was illiterate, was he not?
20 A. He is. He was to a certain extent.
21 Q. Well, ma'am, let's stop there. He was able to sign
22 his name. Is that correct?
23 A. Able to sign his name. Correct.
24 Q. Could he read?
25 A. No, he could not read.

1 Q. Thank you. Now, ma'am, Mr. Mitchell could not have
2 used the Internet, could he?
3 A. No.
4 Q. Did he say where he got this?
5 A. He did not.
6 Q. Did you ask?
7 A. I did not.
8 Q. Did you have any concerns about having him sign a
9 document that says at the top that it's a draft?
10 A. No, I did what he asked me to do.
11 MR. FOSTER: At this point, perhaps I need to say -- and
12 I hope I'm not too late in saying -- ma'am, there are things
13 I have to illicit from Ms. Marshall that are, as I understand
14 it, her testimony. But as I understand it may also be in
15 violation of the dead man's statute. And I assume at this
16 point, unless I'm directed otherwise, that that is possible
17 for me to do insofar as it is the Court's job to determine
18 what is or is not allowable.
19 THE COURT: Well, just preliminarily let me say that
20 testimony about a testator's intentions, document that he
21 signed, those are not barred by the dead man's statute.
22 Those are not barred by any rules of evidence. Now,
23 communications that this lady had with the decedent would be
24 barred by the dead man's statute except as to the testator's
25 declarations as to his Will.

1 MR. FOSTER: I understand, ma'am, and we'll proceed on
2 that basis.
3 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
4 Q. Now, ma'am, you were present at the time Mr.
5 Mitchell signed this document?
6 A. I was present.
7 MR. FOSTER: Okay. Ma'am, I've got a copy of this.
8 Does the Court have the original?
9 THE COURT: It does.
10 MR. FOSTER: Okay.
11 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
12 Q. Ma'am, I want you to look at this document from the
13 first page, if you will. Which of the -- there are various
14 things on this that are handwritten. Can you point out to
15 me, ma'am, which of these handwritten statements were put in
16 there by Mr. Mitchell.
17 A. None of these were put in here by Mr. Sumter
18 Mitchell.
19 Q. Okay.
20 A. I read this Will to him sentence by sentence, he
21 told me what to put into this document, and he signed it and
22 put his initials on it.
23 MR. FOSTER: I renew my comment about the dead man's
24 statute insofar as we are dealing with the intention of Mr.
25 Mitchell.

1 THE COURT: Ms-hm.
2 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
3 Q. Ma'am, on the second page, if you turn over.
4 A. Yes.
5 MR. FOSTER: Your Honor, do I need to hand this document
6 up to assure the Court it is the same document?
7 THE COURT: I think it should be marked as an exhibit
8 since you're going to be taking testimony, yes.
9 MR. FOSTER: Okay. Let's stop and do that.
10 THE COURT: All right. Just hand me one to mark,
11 please. Any objection, Mr. Burnette?
12 MR. BURNETTE: No objection, Your Honor.
13 THE COURT: This is Petitioner's No. 1. Here you go.
14 (Petitioner's Exhibit No. 1 admitted into evidence)
15 (background)
16 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
17 Q. Ma'am, I'm handing this back.
18 A. Okay.
19 Q. And we're talking now about the second page.
20 A. I can get to the second page.
21 Q. Ma'am, again, there is handwriting on this page.
22 A. Correct.
23 Q. Who wrote, to your knowledge, the handwriting on
24 this page?
25 A. I wrote the handwriting on this page.

1 Q. Okay. If you turn to the third page, ma'am. There
2 is handwriting on this page.
3 A. I wrote the handwriting on this page.
4 Q. That includes the part where the residuary gift is
5 to yourself.
6 A. Correct.
7 Q. And the residuary cash gift is to yourself.
8 A. Correct.
9 Q. Can you turn to the fourth page, ma'am?
10 A. I have it.
11 Q. There's handwriting on this page, ma'am. Who wrote
12 that in?
13 A. I did.
14 Q. That includes the "S/A" in the middle of the page?
15 A. Yes.
16 Q. Would you turn to the fifth page, ma'am.
17 A. I have it.
18 Q. There's handwriting on this page, ma'am. Whose
19 handwriting is that?
20 A. That is my handwriting.
21 Q. Okay. And the fifth page -- and the sixth page --
22 ma'am, I beg your pardon. I have mine out of order, so be
23 sure that yours is in order.
24 A. Yes, it is.
25 Q. Okay. On the sixth page, ma'am, there is

1 handwriting. Whose handwriting is that?
2 A. Mine and my brother's handwriting because his
3 initial is on this page.
4 Q. Okay. This is your brother, Sumter, we're talking
5 about?
6 A. Yes.
7 Q. And, ma'am, where is his handwriting?
8 A. His initial is on this page.
9 Q. Okay. Is that under Article 10?
10 A. I don't have my glasses.
11 Q. Do you need them, ma'am?
12 A. That is his initials on this page. I can see his
13 initial. I recognize that.
14 Q. Well, is it his initial, ma'am. Did he write it
15 in?
16 A. Excuse me?
17 Q. Did he write it in?
18 A. Yes, he did.
19 Q. Okay. So, we have the first thing that he wrote.
20 Ma'am, I'm turning to the seventh page, if you can find
21 that. Do you have that, ma'am?
22 A. The one that has his signature on it?
23 Q. Well, we're trying to find that out, ma'am.
24 A. Okay.
25 Q. Do you have the seventh page? A7 at the bottom.

1 A. I don't see a number at the bottom, but I have this
2 page right here.
3 Q. May I? Okay. (inaudible) deposition copy.
4 Ma'am, whose handwriting is on this page?
5 A. Mine and his.
6 Q. Okay. What's yours, ma'am?
7 A. Where I have "the 19th day of March, 2019."
8 Q. Ms-hmm.
9 A. His signature is on the next line. And I have on
10 the -- where it says "Date," I wrote "March 19, 2019."
11 Q. And, ma'am, I understand your testimony to be that
12 the testator's signature is his own.
13 A. Correct.
14 Q. Who was present when that signature was made?
15 A. Him and myself.
16 Q. Okay. Ma'am, I'm asking you to turn to the eighth
17 page.
18 A. Okay.
19 Q. This is the last page. Ma'am, whose handwriting is
20 this?
21 A. The handwriting on this page is my son, Winston
22 Marshall, he wrote that. Rebecca Robinson wrote her name. I
23 filled in the "236 Twitty Court, Rock Hill, South Carolina,"
24 and I also wrote in the "238 Puraley Street, Rock Hill, South
25 Carolina."

1 Q. They were not present when Mr. Mitchell signed
2 this.
3 A. He was -- they were not present when Mr. Mitchell
4 signed this document.
5 Q. And I believe your testimony in deposition was he
6 brought this to your house.
7 A. He brought this to my house. Yes.
8 Q. This form, pardon me.
9 A. He brought these forms to my house.
10 Q. He did not have a CD.
11 A. He did not.
12 Q. Ma'am, I believe you testified that in the past --
13 (background)
14 THE COURT: Hang on one second, Mr. Foster.
15 (background)
16 UNKNOWN MALE: Sorry, Your Honor.
17 THE COURT: You okay?
18 UNKNOWN MALE: Yes.
19 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
20 Q. In the past, people had filled out other legal
21 documents for him. Is that correct?
22 A. Can you repeat that question, please?
23 Q. I'm sorry. I believe in your deposition you
24 testified, in the past, you and other people had filled out
25 legal documents for him.

1 A. Correct.
2 Q. Okay.
3 A. We did all his paperwork for him.
4 Q. Yes, ma'am. Who is "we"?
5 A. Myself, my sister -- who is deceased at the time --
6 we are the ones that mostly did his paperwork for him.
7 Q. Okay.
8 A. And also his caretaker, Ms. Rebecca Robinson, in
9 latter years.
10 Q. Ms-hmm. Ma'am, you are living at 238 Puraley. Is
11 that correct?
12 A. Correct.
13 Q. Ma'am, Mr. Mitchell gave you that property, did he
14 not?
15 A. What property?
16 Q. 238 Puraley.
17 A. No, sir.
18 Q. What is this, ma'am?
19 A. This is not the same person.
20 Q. (inaudible)
21 A. I'm answering your question.
22 THE COURT: Wait. Wait, wait, wait, wait. Just stop
23 for a second.
24 THE WITNESS: Okay.
25 THE COURT: Okay. Mr. Foster is the attorney

1 representing his client.
2 THE WITNESS: Yes, ma'am.
3 THE COURT: He's doing his job.
4 THE WITNESS: Yes, ma'am.
5 THE COURT: I don't want to see an attitude of
6 belligerence from any witness and not from you, either.
7 THE WITNESS: Understood, Your Honor.
8 THE COURT: Just answer the question very calmly.
9 THE WITNESS: Okay.
10 THE COURT: Thank you. Go ahead.
11 THE WITNESS: I really can't see what this is, but I
12 think this is a Will that that 238 property was given to me.
13 Now, this is not the same person as my brother. They're two
14 different people. That house was willed to me.
15 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
16 Q. It was signed by Sumter Mitchell.
17 A. Huh?
18 Q. It was signed by Sumter Mitchell. Can we agree?
19 A. No. That's not the same person, sir.
20 MR. FOSTER: Okay. For the record, we would move this
21 into evidence.
22 THE COURT: Any objection, Mr. Burnette? Have you seen
23 this?
24 MR. BURNETTE: Can I see this?
25 MR. FOSTER: Oh, I'm sorry. I should've handed you a

1 copy.
2 THE WITNESS: I can't see anything.
3 MR. FOSTER: Here you go.
4 (pause)
5 MR. BURNETTE: I have no objection to this.
6 THE COURT: All righty. It's Petitioner's No. 2.
7 (Petitioner's Exhibit No. 2 admitted into evidence)
8 (pause)
9 THE COURT: Oh, I'm sorry, are you waiting on me?
10 MR. FOSTER: (inaudible)
11 THE COURT: I'm sorry. It's marked. It's right here.
12 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
13 Q. Ms. Marshall, you also have power of attorney for
14 Mr. Mitchell, do you not?
15 A. Correct.
16 Q. Can you identify this document?
17 A. Yes, that's the document.
18 Q. Okay. Can you hold that one up, ma'am?
19 A. Okay.
20 Q. That document -- tell me about -- before we get
21 into that, tell me about Mr. Dennis Mitchell. What is his
22 situation?
23 A. Can you be more specific?
24 Q. What is his capacity mentally, ma'am?
25 A. He's mentally challenged.

1 Q. How old would you say his mental age is, as just a
2 general person, would you say that?
3 A. I can't say because I'm not a doctor. So, I can't
4 say. All I know --
5 Q. Would you say he is five years old?
6 A. No, I wouldn't say he's five years old.
7 Q. Did he have a driver's license?
8 A. He does not.
9 Q. Does he require someone to take care of him?
10 A. Yes.
11 Q. Okay. Ma'am, can you explain to me why you have as
12 a witness on this document that gave you power of attorney
13 Mr. Dennis Mitchell?
14 A. Because they were present at the time.
15 Q. Well, my question, ma'am, do you believe a
16 person with his level of intelligence -- he does get a
17 disability check, does he not?
18 A. Correct.
19 Q. With his level of intelligence, ma'am, you believe
20 he was capable of signing something like this?
21 A. Yes, I do.
22 Q. Okay. There was no lawyer involved in doing this
23 power of attorney, ma'am.
24 A. No, it wasn't.
25 Q. There was no lawyer involved in doing the Will.

1 A. No, it wasn't.
2 MR. FOSTER: Without objection by Counsel, we would move
3 the power of attorney into evidence.
4 THE COURT: All righty. Could you retrieve the Will --
5 Petitioner's No. 1, as well?
6 MR. FOSTER: The copy?
7 THE COURT: Well, here. I mean, I'll mark whichever you
8 want to. I just want all the exhibits back over here so I
9 don't lose anything.
10 (background)
11 THE COURT: So, the Will is No. 1, and I'll mark the
12 power of attorney as No. 3. So, hand me the power of
13 attorney, please. Okay. All right. There we go. Thank
14 you.
15 (Petitioner's Exhibit No. 3 admitted into evidence)
16 THE COURT: Here you go.
17 MR. FOSTER: Thank you.
18 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
19 Q. Now, ma'am, going back to Plaintiff's 1 -- the Will
20 -- you can have that, ma'am. That's a copy.
21 A. Okay.
22 Q. You filled this out; you saw the man sign it. No
23 one else saw him sign it.
24 A. I'm the only one saw him sign the document.
25 Q. Okay. Ma'am, you are not a lawyer. Is that

1 correct?
2 A. I am not a lawyer.
3 Q. You explained this document to him.
4 A. I did.
5 Q. Did anyone else explain it to him?
6 A. No.
7 Q. Okay. Well, ma'am, in your deposition you thought
8 it was possible that some other people did. You don't think
9 that's true today.
10 A. I don't know if he and Miss Rebecca had a
11 discussion. I walked away. We were at my home when this
12 took place and I walked away to get my son so he could be a
13 witness to this document, as well.
14 Q. So that --
15 A. So, I don't -- I don't know if some discussion was
16 done. I think Rebecca told you in her deposition that she
17 talked to him.
18 Q. We'll get to that, ma'am.
19 A. Okay.
20 Q. At this point, you're telling me, as I understand
21 the version of events, he signed it and then you think Ma.
22 Robinson talked to him.
23 A. I'm not sure --
24 Q. Okay.
25 A. -- if she did or not because I walked away.

1 Q. Is it a fact, ma'am, that she denied having
2 discussed it with him?
3 A. I have no idea.
4 Q. Well, ma'am, you were sitting there in the
5 deposition -- by her deposition. In fact, you brought her,
6 did you not?
7 A. I did.
8 Q. Okay. And didn't she, in fact, say that she did
9 not explain it to him.
10 MR. BURNETTE: I object; it's hearsay.
11 MR. FOSTER: I can hand up the deposition of Ma.
12 Robinson.
13 THE COURT: Is she going to testify?
14 MR. BURNETTE: It's still hearsay.
15 MR. FOSTER: No, ma'am. Well, she's not here.
16 MR. BURNETTE: Exactly.
17 THE COURT: I don't see her. I'll sustain that
18 objection.
19 MR. FOSTER: Okay. I will state for the record, ma'am,
20 I believe when it's been denied, I have the right to put the
21 deposition in.
22 THE COURT: I think you do.
23 MR. FOSTER: Excuse me, ma'am?
24 THE COURT: I think you do.
25 MR. FOSTER: Well, I will be happy to put the deposition

1 in today, if the Court will allow me a moment. If the Court
2 will give me a moment.
3 THE COURT: Sure.
4 (pause)
5 THE COURT: Go ahead. Oh, you're still thinking?
6 MR. FOSTER: Ma'am?
7 THE COURT: You ready to go?
8 MR. FOSTER: Well, I was going to refer to the line in
9 question.
10 THE COURT: Go ahead.
11 MR. FOSTER: Ma'am, I call your attention to page 10,
12 line 6 to 8, in which Ms. Robinson stated that no one
13 explained the document to Mr. Mitchell while she was there.
14 There's nothing else indicating that she signed it there --
15 that she explained it to him.
16 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
17 Q. Okay. Ma. Marshall.
18 A. Yes, sir.
19 Q. My notice on your deposition -- my reading of your
20 deposition indicates that Mr. Mitchell had talked with her
21 brother -- his brother, J.C., and to his nephew, William
22 Hemphill, about what was in the Will.
23 A. Correct.
24 Q. Are they here today, ma'am?
25 A. They are not.

1 Q. Okay. Now, ma'am, going over the document -- the
2 Will, there's a provision where he lists -- not leaving his
3 money to -- but lists his children. That was not filled out.
4 Can we agree? I can show you on the page.
5 A. Correct.
6 Q. There's an --
7 A. Like --
8 Q. Go ahead, ma'am.
9 A. -- like I foretated, I wrote on that paper what he
10 told me to put on there.
11 Q. As we have your word, ma'am.
12 A. Okay.
13 Q. There's an Article XI for guardianship. It's left
14 blank. Is that correct?
15 A. That's correct.
16 Q. Now, ma'am, later in your testimony, you told us at
17 some length of Mr. Mitchell's intent, as you say it, that he
18 wanted the house fixed up -- the house that Ms. Caldwell is
19 living in fixed up and he wanted Dennis taken care of. That
20 was your testimony. Is that correct, ma'am?
21 A. You asked me a question what was I going to do with
22 the house --
23 Q. Well, ma'am --
24 A. -- and that was my answer.
25 Q. I'm asking you now about what he said. You

1 testified that Mr. Marshall said that he was going to fix up
2 --
3 A. Mr. Mitchell.
4 Q. Pardon. Thank you. Mr. Mitchell was going to fix
5 the house up. Or, in other words, his intent to see about
6 Dennis being taken care of. Is that true?
7 A. I don't understand your question, but as far as I
8 remember, you asked me what was I going to do with the house.
9 Q. Okay. Ma'am --
10 A. And I stated to you --
11 Q. Mm-hmm.
12 A. -- that I planned to fix the house up and allow
13 Dennis to live in it because where he's staying, he can't
14 afford to pay the rent.
15 Q. Mm-hmm.
16 A. I have to help him out every month.
17 Q. Well, ma'am, let me refer you to a deposition. and
18 I'm going to hand a copy up (inaudible)
19 Ma'am, I'm directing your attention and the Court's to
20 page 21 of your deposition, which, if I can fiddle around,
21 I'm going to hand to you.
22 Ma'am, I'm turning this to page 21 (inaudible) of your
23 deposition.
24 A. Okay.
25 Q. You may go on over to the next page.

1 A. Okay. I really can't see it. I don't have my
2 glasses.
3 THE COURT: Do you have them here with you?
4 THE WITNESS: I don't have them here with me. I thought
5 I put them in my purse, but they're not in my purse.
6 MR. FOSTER: Well, I'll offer you mine, then, ma'am.
7 THE WITNESS: That would be great.
8 MR. FOSTER: But I'm imagine I'm too blind.
9 THE WITNESS: Thank you.
10 THE COURT: Let me get my magnifying glass. This is
11 getting to be a regular occurrence.
12 (END OF FIRST AUDIO RECORDING)
13 (START OF SECOND AUDIO RECORDING)
14 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
15 Q. This Will leaves everything he had to you.
16 A. Correct.
17 Q. You were not concerned enough to get anybody else
18 to talk to him about what it meant?
19 A. Excuse me?
20 Q. Were you not concerned enough about the fact that
21 you were the heir and the scrivener to get somebody else to
22 go over the Will with him?
23 A. I really don't know what you're asking me.
24 MR. FOSTER: With the Court's permission, I will take
25 that as an answer.

1 (pause)
2 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
3 Q. Ma'am, did Mr. Mitchell have children?
4 A. He had two children that I know of.
5 Q. And they were?
6 A. Randy Mitchell and Dennis Mitchell.
7 Q. Okay. Ma'am, can you explain to us why the answer
8 to your -- to our petition when it talks about children -- we
9 allege, of course, the ones we knew at that time -- your
10 response was -- this is paragraph 5 -- "Respondent denies
11 paragraph 3 to the extent that Bernice Mitchell is not an
12 intestate heir of the deceased."
13 Ma'am, it is the fact, is it not, that you made out the
14 funeral bulletin for Mr. Sumter Mitchell?
15 A. Correct.
16 Q. And, ma'am, if I may show you that, which I believe
17 is in evidence, anyway, as the Court record, I'm assuming I
18 can find it amid the things here. I apologize to the Court.
19 THE COURT: Take your time.
20 (pause)
21 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
22 Q. Ma'am, this may be a part of the deposition I
23 handed you, but I want to be sure that we have it to ask the
24 question that I want to ask. You made out that funeral
25 bulletin in front of you.

1 A. Correct.
2 Q. Okay. It lists Ms. Mitchell, does it not -- Mr.
3 Caldwell as a daughter, does it not?
4 A. It does.
5 Q. It also lists the two people who were not joined,
6 Mr. Randy Mitchell and Ms. Yvette Mitchell.
7 A. Correct.
8 Q. And, ma'am, you are now denying knowledge or you
9 are denying the fact they were the children of Mr. Sumter
10 Mitchell.
11 A. Sir, I don't know. My brother took care of a lot
12 of children.
13 Q. Uh-huh.
14 A. Just like I do, my mother did. We took care of
15 other people's children.
16 Q. And, ma'am, you listed those children on the --
17 A. I listed the children on the obituary --
18 Q. Mm-hmm.
19 A. -- out of respect because your client came to the
20 home and gave me all these names to put on the obituary. I
21 didn't know those names myself. She gave them to me. So,
22 out of respect, I just put them on the obituary.
23 Q. Your testimony --
24 A. And I didn't question her about it.
25 THE COURT: I'm going to stop you a second, Mr. Foster.

1 There is a funeral bulletin which has an obituary in it
2 that's attached to your motion that you filed May 26th.
3 MR. FOSTER: Yes, ma'am.
4 THE COURT: Is that what we're talking about?
5 MR. FOSTER: Yes, ma'am.
6 THE COURT: All right. I think we need to get this into
7 evidence.
8 MR. FOSTER: Yes, ma'am. I'm afraid I cannot put my
9 hands upon my copy. If I may hand that to the client, I can
10 use that, if the Court allows.
11 THE COURT: All right. What have you got?
12 MR. FOSTER: Beg your pardon, ma'am?
13 THE COURT: What do you have?
14 MR. FOSTER: I cannot find my copy, ma'am. It's lost in
15 documents here.
16 THE COURT: All righty. Is that the -- was it attached
17 to the --
18 MR. FOSTER: It is part of the deposition, ma'am.
19 THE COURT: Let's use that one. Mr. Marshall's
20 deposition?
21 MR. FOSTER: Yes, ma'am. I believe everyone's
22 deposition.
23 THE WITNESS: Maybe it's in here. It's in here.
24 MR. FOSTER: Okay. That's what I'm talking about,
25 ma'am.

1 THE COURT: Yeah, I'm pulling out this one.
2 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
3 Q. Ma'am --
4 THE COURT: All right. Hang on, hang on, hang on.
5 MR. FOSTER: Sorry.
6 THE COURT: (talking to herself) Deposition. One, two,
7 three. Okay, it's not -- I don't see it --
8 MR. FOSTER: I have it.
9 THE COURT: I don't see it as an exhibit to --
10 (background)
11 MR. FOSTER: I have fiddled around and found it, ma'am,
12 so.
13 THE COURT: Oh. Well, good. Would you have her
14 identify it, please? And then we'll get it marked.
15 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
16 Q. Ma'am, is this a copy of (inaudible) --
17 A. Correct. That's a copy.
18 Q. Okay.
19 A. Ma-hmm.
20 MR. FOSTER: Ma'am, we submit this --
21 THE COURT: Any objection, Mr. Burnette?
22 MR. BURNETTE: No objection, Your Honor.
23 THE COURT: All right. This will be Petitioner's No. 4.
24 (Petitioner's Exhibit No. 4 admitted into evidence)
25 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:

1 Q. Okay. Ma'am, pursuant to that Will, which you have
2 filed for probate, did you do a deed of distribution to
3 yourself?
4 A. I did. I was following procedure.
5 Q. Ma'am, is this a copy of the deed of distribution?
6 A. Yes, sir.
7 Q. Ma'am, can we agree that this document was signed
8 by one witness?
9 A. Would that be a witness right there?
10 Q. I'm not asking about the one who's there, ma'am.
11 I'm asking about the one who's not there. Up above, where it
12 says "Witness" and there's a blank.
13 A. I did what the courts told me to do.
14 Q. Ma'am, was this document prepared by a lawyer?
15 A. No, they gave me that at the courthouse.
16 MR. FOSTER: Okay. Let me submit this as (inaudible)
17 THE COURT: All righty. That will be -- any objection,
18 Mr. Burnette?
19 MR. BURNETTE: No, Your Honor.
20 THE COURT: We'll receive this -- it's the deed of
21 distribution -- as Petitioner's No. 5.
22 (Petitioner's Exhibit No. 5 admitted into evidence)
23 THE COURT: There you go.
24 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
25 Q. Ma'am, be assured I'm not trying to harass you.

1 A. Ma-hmm.
2 Q. Did a lawyer have anything to do with (inaudible)
3 A. No, I went to the courthouse and they gave me those
4 papers, and I filled out my part and they filled out their
5 part, and they charged me, and that was the end of that. I
6 didn't -- didn't anyone tell me I had to get a lawyer to get
7 that done.
8 Q. Ma'am, I presume by them charging you, you're
9 talking about the \$15 to get it recorded?
10 A. Correct.
11 Q. Okay. Probate Court didn't charge you.
12 A. Excuse me?
13 Q. The Probate Court --
14 A. No, sir.
15 Q. -- did not charge you.
16 A. No, sir.
17 Q. Okay. So, ma'am, it would be accurate to say that
18 you're used to filling out legal documents yourself or
19 believe yourself to be.
20 A. I followed procedure --
21 Q. Ma-hmm.
22 A. -- for the deed of trust. I thought I was
23 following procedure.
24 Q. As well as on the Will. Did you believe you were
25 following procedure on the Will?

1 A. Yes, I believe I was following procedure on the
2 Will.
3 Q. In spite of the fact that no one saw Mr. Mitchell
4 sign except you.
5 A. Correct.
6 Q. Ma'am, I may have asked this, so forgive me. The
7 instructions at the top about getting a final copy on a CD,
8 did you make any attempt to get what I'll call "a final copy"
9 of the Will document?
10 A. I did not.
11 Q. Do you know anything about where that document or
12 that form came from?
13 A. I do not.
14 Q. Do you use the Internet, ma'am?
15 A. Not much. I'm not literate when it comes to the
16 Internet.
17 Q. How about Winston, your son?
18 A. Does he use the Internet?
19 Q. Yes, ma'am.
20 A. I think he does quite a bit on his phone.
21 Q. And I believe you indicated that after Mr.
22 Mitchell, you tell us, signed this document, you got Ms.
23 Robinson and Winston Mitchell, your son -- Winston Marshall -
24 - pardon me -- your son to come and witness at that point.
25 Is that correct?

1 A. That's correct.
2 Q. Ma'am, moving on slightly, the house at 118 -- 1118
3 Green Street Extension, which is the subject of your deed of
4 distribution, you were aware that Miss Bernice lived there.
5 A. She rented that property, yes.
6 Q. Okay. And she made repairs on that property. Is
7 that correct?
8 A. I don't -- I don't know what you're asking me
9 because she was not the only one that made repairs. And when
10 she made repairs, my brother would pay her for it -- pay for
11 the repairs.
12 MR. POSTER: To the extent necessary --
13 THE WITNESS: And I did at one point myself.
14 MR. POSTER: -- to the extent necessary, I renew my
15 point about the dead man's statute, if allowable.
16 DIRECT EXAMINATION BY MR. POSTER CONTINUES:
17 Q. Ma'am, you testified in your deposition that you
18 knew she put decks on the house. Is that correct?
19 A. That's the only thing I knew she did.
20 Q. Okay.
21 A. Other than a floor that was put in the bathroom,
22 which I paid for.
23 Q. Do you have any documents to show you paid for it,
24 ma'am?
25 A. I do not.

1 Q. Okay.
2 A. But I have -- I didn't know I needed to bring that
3 document. I do have the receipt at home that the man that
4 repaired the bathroom, he came by the house, picked up the
5 money, gave me a receipt.
6 Q. Uh-huh.
7 A. So I have -- I do have the receipt.
8 Q. Okay. Ma'am, that document has not been produced
9 to us. Is that correct? You haven't sent me or Ms. Caldwell
10 a copy of that.
11 A. You didn't ask me for it, sir.
12 Q. Okay.
13 A. I don't believe you asked me for it.
14 Q. Well, I will leave --
15 A. I can't remember.
16 Q. Yes, ma'am. I believe you testified you weren't in
17 -- if I remember correctly, ma'am, you weren't in 1118 Green
18 Street while Ms. Bernice Caldwell was there. Am I correct?
19 A. Can you repeat the question, sir?
20 Q. You weren't in that house while Ms. Bernice
21 Caldwell lived there. Is that correct?
22 A. I did not live there. I live at 238 Purlsey
23 Street.
24 Q. That's not my question, ma'am. My question was
25 whether you were in that house or visited it while she lived

1 there.
2 A. Yeah, I visited there before.
3 Q. Not before, ma'am. I'm asking were you there while
4 Ms. Marshall -- pardon -- Ms. Bernice Caldwell lived there?
5 A. I don't understand what he's asking me.
6 Q. Ms. Bernice Caldwell lived in the house.
7 A. Correct.
8 Q. Were you there while she lived in the house?
9 A. No.
10 Q. Okay. So, you wouldn't know what repairs she made.
11 A. Yes, I would. I know of the repairs that she
12 reported to the landlord.
13 Q. The landlord being your brother.
14 A. Being my brother. Yes.
15 Q. Okay. Ma'am, there was I believe a lease between
16 Ms. Bernice Caldwell and her father. Is that correct?
17 A. There were [sic] a lease between Bernice Caldwell
18 and Sumter Mitchell. Yes.
19 Q. Are you aware of that lease?
20 A. I am. I have a copy.
21 Q. Who prepared that lease, ma'am?
22 A. My sister, who is now deceased.
23 Q. This is your sister, ma'am, named who?
24 A. Her name is Frances Barnett.
25 Q. Do you know anything of the circumstances

1 surrounding that Will -- that lease being executed?
2 A. I do not.
3 Q. Okay. Ma'am, I'm going to show you a copy of what
4 purports to be that lease. I believe this was already
5 submitted in your eviction action against Ms. Caldwell.
6 A. Correct.
7 (background)
8 Q. Ma'am, is this a copy of the lease?
9 A. That is a copy of the lease.
10 Q. Look through the whole thing.
11 A. I don't have to, sir. It's a copy of the lease.
12 THE COURT: Any objection, Mr. Burnette?
13 MR. BURNETTE: No objection, Your Honor.
14 THE COURT: It will be No. 6.
15 (Petitioner's Exhibit No. 6 admitted into evidence)
16 (pause)
17 MR. FOSTER: Your Honor, I need to be instructed by the
18 Court, with my apologies. We had a dispute about whether Ms.
19 Robinson had advised Mr. Mitchell of the meaning of the Will.
20 Now, Ms. Robinson is not here.
21 THE COURT: Mm-hmm.
22 MR. FOSTER: I have her deposition. In her deposition,
23 I believe I can state without objection, she denies giving
24 such knowledge. Ma'am, I can -- if I have not done so, I
25 can, and if I have done so, I apologize for my lack of memory

1 -- I can submit that deposition and direct the Court where
2 that denial takes place.
3 THE COURT: Was it taken de bene esse?
4 MR. FOSTER: I'm afraid the Court has overdone me in
5 terms of decision. It was done -- she was deposed as a
6 witness to this case. She was not necessarily done as a
7 witness to the trial.
8 THE COURT: All right. What do you have to say, Mr.
9 Burnette?
10 MR. BURNETTE: I'd object it seriously. I don't see any
11 exception to let this in. That witness isn't here.
12 MR. FOSTER: I don't believe -- I'm not going to get
13 into the status of the thing, but if someone says, "I did
14 something," that is not hearsay. Or, "I did not do
15 something," that is not hearsay.
16 MR. BURNETTE: (inaudible) matter. It's trying to prove
17 whether the statement -- the subject of the statement
18 happened or not.
19 THE COURT: Well, it is being submitted to prove the
20 truth of the matter asserted. Correct?
21 MR. FOSTER: Yeah. So, if the Court has -- have I
22 handed it to the Court already?
23 THE COURT: No, you have not.
24 MR. FOSTER: Well, ma'am, in that event, I would -- if
25 the Court is allowing us to do so, I am going to point out

1 that Ms. Robinson stated --
2 MR. BURNETTE: Again, seriously, I object to it going
3 in.
4 THE COURT: Yeah, I think I'm going to sustain the
5 objection. I don't think if it was not taken for purposes of
6 submission at trial, I don't think it can come in at this
7 point. She would need to be here.
8 MR. FOSTER: Well, ma'am, I don't believe we indicated
9 why it was taken, one way or another. We did not subpoena --
10 THE COURT: Well, I asked you --
11 MR. FOSTER: I'm sorry.
12 THE COURT: -- I asked you if it was taken de bene esse.
13 You said no.
14 MR. FOSTER: Again, ma'am, I display my ignorance. It
15 was taken as such. It was not taken --
16 THE COURT: Was it taken because she would be
17 unavailable to be at trial?
18 MR. FOSTER: No, ma'am.
19 THE COURT: Okay. No, it's not coming in.
20 MR. FOSTER: Okay.
21 THE COURT: Sustained.
22 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
23 Q. Ms. Marshall?
24 A. Yes, sir.
25 MR. FOSTER: Well, I believe I made my point. I don't

1 believes I have any more questions of Ms. Marshall at this
2 point.
3 THE COURT: Well, you certainly have the right to follow
4 up, cross-examination, so.
5 MR. Burnette.
6 MR. BURNETTE: Thank you, Your Honor.
7 CROSS-EXAMINATION BY MR. BURNETTE:
8 Q. Ms. Marshall, will you describe the circumstances
9 under which Sumter's Will was created?
10 A. Sumter's Will was created over a number of days and
11 months. He brought that forward to me because he would come
12 over my house sometimes two to three times a week. And --
13 MR. FOSTER: Ma'am?
14 THE COURT: Hold on. Hold on.
15 MR. FOSTER: I don't wish to try the patience of the
16 Court. To the extent needed and to the extent it's
17 applicable, I trust that my objection as to the dead man's
18 statute continues.
19 THE COURT: Mm-hmm. Yes, I understand. And let me just
20 tell the witness there is something in South Carolina law
21 called "the dead man's statute," which means that a witness
22 who's an interested witness cannot testify as to
23 communications or transactions with a deceased person. Now,
24 we've already talked about an exception to that, which is
25 what someone says about their Will. So, as long as the

1 testimony is confined to what the declarations of the
2 testator were about the Will itself, that can come in. No
3 other communication or transaction can come in. That clear?
4 MR. BURNETTE: Yes, Your Honor.
5 THE COURT: All right.
6 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
7 Q. With that in mind, will you describe how this Will
8 was drafted?
9 A. Okay. Like I said, he brought the Will to my house
10 and the Will was done over a number of days and months. He
11 was at my house, like, two to three times a week. Sometimes
12 he would come and spend the night and he would talk about
13 what he wanted on that Will. And I would go over that Will
14 with him page after page after page and he told me what he
15 wanted on it. I explained it to him the best of my
16 knowledge. He told me what to put on the Will. And we did
17 this time after time until the Will was completed. We didn't
18 do the Will all in one day. It was done in a number of days
19 and, like I said, months, as well. And when the Will was
20 finished, he signed it and I told him he needed two
21 witnesses, and that's when I call Ms. Rebecca, which is his
22 caretaker. And my son was there, but he was in another part
23 of the house. And I told them that Sumter needed them to
24 witness his Will, and that's all I knew to do. I didn't know
25 anything else to do. I just did what he told me to do. I

1 didn't suggest to him about anything. I didn't tell him what
2 to put on the Will. He did that on his own and I read every
3 Article to him. And, like I say, the Will was completed and
4 the witnesses came over and signed it and that was the end of
5 it.
6 Q. Was Sumter present when the witnesses signed the
7 Will?
8 A. Sumter was present.
9 Q. Did Sumter acknowledge that this was his Last Will
10 and Testament to the witnesses?
11 A. Yes, he did.
12 Q. Did he do this personally to both witnesses?
13 A. Say again?
14 Q. Did he do this personally to both witnesses?
15 A. Yes, he did.
16 Q. Okay. So, the witnesses understood, with Mr.
17 Sumter present, that this was his last Will and Testament.
18 A. Yes.
19 Q. Okay. How has Sumter prepared his legal documents
20 in the past?
21 A. I've always prepared them for him because he could
22 not read. And myself or either his caretaker or my sister,
23 who is deceased, we would read things to him that would come
24 in the mail; we would transact all his business as far as
25 paying his bills and stuff like that because he couldn't read

1 or write. The only thing he could do was write his name and
2 write his initial. But we didn't do anything to try to get
3 over on him. He was head smart, he had good common sense in
4 everything. I wouldn't have known about this lease to Miss
5 Bernice had we -- he kept everything. He saved everything.
6 So, this lease was in his briefcase and we were looking
7 through his briefcase one day and we found the lease. So, he
8 had good common sense up until the day he died.
9 Q. Okay. Did you generally read out documents to him
10 when you would prepare them?
11 A. Yes. Yes, we would read out documents to him and
12 try to explain to him what they meant to the best of our
13 knowledge.
14 Q. Okay. Did he understand the legal documents?
15 A. He understood.
16 MR. FOSTER: Now, hold on. She can testify what she
17 thinks he understood, but she certainly can't testify as to
18 what he understood.
19 THE COURT: I'll sustain that.
20 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
21 Q. Okay. Do you believe he understood these legal
22 documents that you would prepare for him?
23 A. He told us. We would ask him, "Sumter, do you
24 understand what this means?" Or, "Do you understand what
25 this says?" And he'd say, "Yeah, I understand."

1 Q. Okay. Did he understand what his Will meant?
2 A. Yes.
3 Q. Okay.
4 MR. FOSTER: Subject to the same objection.
5 THE COURT: I'll sustain that.
6 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
7 Q. Okay. And did Sumter approach you about preparing
8 this Will?
9 A. Yes, he did.
10 Q. Okay. So, this was his intention that this be his
11 Last Will and Testament?
12 A. Yes, sir.
13 Q. Okay.
14 MR. FOSTER: Same objection.
15 THE COURT: I'm going to -- that's talking about the
16 actual execution of the Will, so I'm going to overrule that
17 objection.
18 Next question, Mr. Burnette.
19 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
20 Q. Ms. Marshall, why do you believe Sumter gave you
21 power of attorney?
22 A. Because he trusted me. I, myself, and my sister
23 and the caretaker, we did everything for Sumter. We took him
24 to his appointments. We did everything for him. We stayed
25 with him when he was in the hospital, you know, from time to

1 time. Every time he'd go to the hospital, someone would be
2 with him round the clock. We did everything for him because
3 he wasn't able to do those things after he got up in age, and
4 we did everything for him after he got to be, you know, in
5 his 70s -- 60s and 70s. We did everything for him as far as
6 waiting on him and taking him where he needs to go and all
7 those things.

8 Q. Okay. And why did he need his finances taken care
9 of in certain circumstances?

10 A. Excuse me?

11 Q. Why did he need someone to help take care of his
12 finances?

13 A. Because he couldn't read and write.

14 Q. Okay. And why do you believe he gave you, in this
15 power of attorney, a purported guardianship over Dennis
16 Mitchell?

17 A. Because he trusted me, and that's what he talked
18 about all the time. He knew I would do the right thing by
19 Dennis. Dennis is 63 years old, he's mentally challenged, he
20 needs help, as well. He done had two operations: one hip
21 operation and a heart operation. That's the reason why he
22 gets disability. He don't [sic] get that much. The place
23 where he's renting takes most of his check. I have to pay
24 his life insurance, I have to pay his light bill out of my
25 money, and that's the reason why Sumter set things up like he

1 did because he knew someday he wasn't going to be here and he
2 needed someone to take care of his son, make sure his son was
3 taken care of, have a decent place to stay.

4 Q. Okay. And who are Sumter's biological children?

5 A. Biological children is Dennis Mitchell and Randy
6 Mitchell.

7 Q. Okay. And Randy Mitchell is deceased. Correct?

8 A. Randy Mitchell is deceased.

9 Q. Okay. And what was your understanding of what

10 Sumter wanted to happen to the property that's in question
11 (inaudible) --

12 A. My understanding -- what he talked about all the
13 time and he told a lot of people --

14 MR. FOSTER: I believe I have to say again -- you know,
15 can we just assume this is continuing?

16 THE COURT: Yes, it certainly is. And I'll sustain it
17 again.

18 Go ahead.

19 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:

20 Q. Okay. What do you believe that Sumter wanted to
21 happen with the property?

22 A. I believe -- and Sumter -- and I may be wrong by
23 saying that Sumter stated to me --

24 MR. FOSTER: Again --

25 THE WITNESS: -- that --

1 THE COURT: Hang on. When somebody objects, you have to
2 stop talking.

3 THE WITNESS: Okay.

4 THE COURT: All right. The basis of your objection is
5 the dead man's statute?

6 MR. FOSTER: (non-verbal response)

7 THE COURT: I'll sustain that.

8 Go ahead, Mr. Burnette.

9 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:

10 Q. Okay. What do you intend to do with this property?

11 A. I intend to fix up the property and make it livable
12 for Dennis to reside in.

13 Q. Okay. And if -- do you believe this will happen if
14 Bernice Caldwell stays in the property?

15 A. I --

16 Q. Will -- do you believe that Dennis Mitchell will
17 have a house to stay in if Bernice Caldwell lives in this
18 property?

19 A. If she has -- if she lives in the property?

20 Q. Yea.

21 A. He wouldn't have a place to stay because he's in a
22 rental property right now that he really cannot afford.

23 Q. Okay.

24 A. Unless I help him each month like I have been
25 doing.

1 Q. Okay. And do you believe Sumter wanted Dennis to
2 have this house to stay in?

3 A. Yes.

4 MR. FOSTER: I --

5 (background)

6 THE COURT: We need to get away from any communications
7 or transactions that he had -- she had with the decedent.
8 Only that pertains to the execution of a will.

9 MR. BURNETTE: Yes, Your Honor.

10 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:

11 Q. What is the relationship between -- well, what was
12 the relationship between Sumter Mitchell and Bernice
13 Caldwell?

14 A. As far as I know, he rented her his property
15 because she had nowhere to stay and she was trying to get up
16 on her feet. He helped her like he helped a lot of other
17 children in the neighborhood or children that he knew and
18 knew their parents. That's the only relationship I can say
19 for sure. I don't know. I don't know about any other
20 relationship. All I know I would notice her sometime coming
21 over there, giving him the rent money for the property.
22 That's the only thing that I know, that I can attest to
23 because I wasn't there.

24 Q. Okay. And did Sumter take care of children that
25 were not his biological children?

1 A. Yes, he did.
2 Q. Okay. And why did he do this?
3 A. Because that's what my mom did. My mom took care
4 of children in the neighborhood. He and another brother of
5 mine took care of children that didn't belong to him, and I
6 do the same thing right now. I'm a foster mom. Just take
7 care of children that they can't take care of themselves or
8 don't have a home to live in.
9 Q. All right. And as far as biological children,
10 though, Dennis is his only biological son that's living, to
11 your understanding?
12 A. I can say yes to that because I'm sure that Dennis
13 is his son. He's been taking care of Dennis most of Dennis'
14 life.
15 Q. Okay. And do you intend to benefit from this
16 property, personally?
17 A. No, sir, I have my own home. I live at 238 Pursley
18 Street.
19 Q. Okay. Do you intend for it to go entirely to
20 Dennis Mitchell?
21 A. Entirely to Dennis Mitchell.
22 MR. BURNETTE: All right. Thank you.
23 THE WITNESS: I won't have no [sic] interest in it
24 whatsoever.
25 MR. BURNETTE: Thank you. No more questions, Your

1 Honor.
2 THE COURT: Thank you. Follow-up, Mr. Foster?
3 MR. FOSTER: A few things, ma'am.
4 REDIRECT EXAMINATION BY MR. FOSTER:
5 Q. Ma'am, you mentioned Dennis Mitchell's insurance.
6 Do you pay that?
7 A. I do.
8 Q. Who is the beneficiary?
9 A. Right now, his father, Sumter Mitchell is the
10 beneficiary.
11 Q. Which would --
12 A. And we haven't had it changed yet.
13 Q. So that would be Mr. Mitchell's estate?
14 A. Excuse me?
15 Q. That would go to Mr. Mitchell's estate, if Dennis
16 were to pass. Is that correct?
17 A. Yeah, unless we change it.
18 Q. Which would be to you. Did Mr. Sumter Mitchell
19 have any insurance?
20 A. Yes, he did.
21 Q. Who was the beneficiary?
22 A. Dennis was the beneficiary.
23 Q. Okay.
24 A. Dennis Mitchell.
25 Q. Ma'am, you mentioned that your mother -- that was

1 Dennis -- Sumter Mitchell's wife --
2 A. No, that was Sumter Mitchell's mother.
3 Q. Okay. Fine. Sumter Mitchell's mother took care of
4 people in the neighborhood. Children who couldn't take care
5 of themselves, I assume?
6 A. Correct.
7 Q. Do you know who Yvette Baxter was?
8 A. I do not.
9 Q. You listed her in the funeral bulletin.
10 A. I don't know her. I was given that name to put on
11 the program by your client.
12 Q. Ma'am, do you know what the term "admission" means?
13 A. Yes.
14 Q. Okay. You don't know anything about Yvette?
15 A. I don't know Yvette. I don't know who that is.
16 Q. You weren't at her funeral.
17 A. Excuse me?
18 Q. You weren't at her funeral.
19 A. I was not.
20 Q. Never heard of her.
21 A. I don't know who that person is.
22 Q. Ma'am --
23 A. Just like the other names that she gave me. I
24 don't know who those people are. And it may be because I was
25 the youngest out of 12.

1 Q. -- ma'am, how long did you handle affairs for Mr.
2 Sumter Mitchell?
3 A. I would say maybe about five to eight years.
4 Q. And you don't know who is children are.
5 A. I do not.
6 Q. Never asked.
7 A. Other than Dennis and Randy.
8 Q. You never asked.
9 A. I never asked and he never told me.
10 Q. Okay, ma'am. You testified that you explained this
11 Will to Mr. Sumter Mitchell.
12 A. Correct.
13 Q. That's number one.
14 A. Correct.
15 Q. That we be sure that that's in front of you, it is.
16 A. Correct.
17 Q. Ma'am, you're not a lawyer. We've established
18 that. Is that correct?
19 A. Correct. I'm not a lawyer.
20 Q. Ma'am, I want you to look at this document with me.
21 I want you to tell me how you explained to Mr. Sumter
22 Mitchell on the second page that you filled out. Ma'am, I'm
23 sorry. Judge Kimball [sic] would have a fit if I sat down in
24 the middle of a trial, and I don't --
25 THE COURT: No, you're perfectly fine. In fact, it's

1 better to pick you up on the microphone if you're sitting.
2 MR. FOSTER: Thank you.
3 THE COURT: Just pull it down towards you. But if
4 you've got Petitioner's No. 1 -- is that what she's looking
5 at?
6 MR. FOSTER: Yes, ma'am.
7 THE COURT: Okay.
8 MR. FOSTER: I trust.
9 THE COURT: All right.
10 REDIRECT EXAMINATION BY MR. FOSTER CONTINUES:
11 Q. Ma'am, on the second page of that document, there's
12 a provision here toward the top, the "Residuary Gift of
13 Tangible Personal Property." How did you explain that to the
14 late Mr. Mitchell?
15 A. I'm trying to see where you are.
16 Q. Toward the top, ma'am, under D. This is the second
17 page.
18 A. Okay. Residual Gift of Tangible Personal Property?
19 I read it to him.
20 Q. Did you explain it to him?
21 A. I read the Article to him and I explained it to him
22 to the best of my knowledge.
23 Q. Explain it to me as you explained it to Mr.
24 Mitchell -- or as you tell us you explained it to Mr.
25 Mitchell.

1 A. "I give all my--"
2 Q. Ma'am, I don't mean to interrupt -- and the Court
3 may get on me -- but I'm not trying to ask you to read it.
4 I'm asking you to explain it to me and to the Court in the
5 same way you explained it to Mr. Mitchell.
6 THE COURT: Well, I'm going to allow her to read it
7 because she needs to read it --
8 MR. FOSTER: Well, I'm not --
9 THE COURT: -- so she knows what she's explaining.
10 MR. FOSTER: -- I'm not trying to take it.
11 THE COURT: Go ahead.
12 MR. FOSTER: I would point out to the Court -- and I
13 hope I don't seem ill-mannered in doing so -- she has
14 presumably read it before. But I see the good Court's point.
15 THE WITNESS: That's been months ago, sir.
16 THE COURT: Just go ahead and read it. Take your time
17 and read it, and then tell the Court and Mr. Foster what you
18 think it means.
19 THE WITNESS: "I give all my tangible personal property
20 owned by me at the time of my death that is not otherwise
21 disposed of under this instrument, including personal
22 effects, clothing, jewelry, furniture, furnishing, household
23 goods, automobiles and other vehicles, together with all
24 insurance policies--" I can't see what that is --all policies
25 relating thereto to Patricia Marshall as primary beneficiary.

1 If said primary beneficiary do not survive me, then to J.C.
2 Mitchell, my successor beneficiary, if said successor
3 beneficiary shall survive me. Any tangible personal property
4 which cannot pass directly to a beneficiary named herein or
5 to a successor beneficiary, if one is specified, that passed
6 into my residual estate -- residential estate."
7 Q. Okay, ma'am. You've read it to us and I'm asking
8 again how did you explain that clause to Mr. Sumter Mitchell?
9 A. After I read it, I told Sumter, I said, "Sumter,
10 this means that everything you own, no matter what it is --
11 your house, your automobile, your clothing, everything that
12 you own -- you need to make sure you will it somebody or put
13 a beneficiary here for those articles." And he chose me. He
14 told me to put my name and put J.C., which is my brother,
15 under it.
16 Q. And you remember that specifically, ma'am.
17 A. I remember that specifically.
18 Q. And this also includes the insurance policies.
19 A. Yes, but the insurance policy was -- I wasn't the
20 beneficiary on the insurance policy; Dennis Mitchell was.
21 Q. So, you're telling me there's a conflict between
22 this and the beneficiary on the insurance policy. They don't
23 read the same.
24 A. They don't read the same because he had this
25 insurance years and years ago. He didn't just purchase that

1 insurance. So, he put Dennis as his beneficiary on his
2 insurance. I think that might've been before I even start
3 doing his business, as far as taking care of things that he
4 needed to have taken care of.
5 Q. Did you point out to him this clause conflicts with
6 the insurance policy he had on Dennis?
7 A. I did not.
8 Q. Did you understand that at the time?
9 A. I did.
10 Q. But you didn't point it out to him.
11 A. No, I didn't because, like I said, he put Dennis
12 down as his beneficiary and I wasn't going to try to get him
13 to change it. I did just what he asked me to do.
14 Q. Even though there's a conflict between this
15 document and the beneficiary document.
16 A. I did whatever he told me to do.
17 Q. And we have your word for that, ma'am.
18 A. Yes, sir. I did what he told me to do.
19 Q. Ma'am --
20 A. I couldn't go in and change his beneficiary. I
21 wouldn't do that. He left it to his son, so I wasn't about
22 to go try to change it.
23 Q. Well, ma'am, he left it to you, didn't he?
24 A. Yeah, but I wasn't going to change it.
25 Q. Okay.

1 A. I was going to leave it just like it was.
2 Q. Ma'am, can you turn over to page 5?
3 A. Yes, sir.
4 Q. This is one that starts -- well, the first things
5 on it starts, "Article XI Guardianship."
6 A. Yes, sir, I see that.
7 Q. It's blank. Is that correct?
8 A. Yes, sir.
9 Q. Do you maintain, ma'am, that you explained to him
10 that he was not going to leave any guardianship to anybody?
11 A. I did. He told -- when I read that to him and
12 explained it to him, he said, "Well, we won't put anything
13 there."
14 Q. Okay. And, ma'am, once again, who was present when
15 you explained these things to him? Or say you did.
16 A. Myself and my brother. Like I foretated, this
17 will was not done in one day.
18 Q. Your brother --
19 A. It was done over a period of time.
20 Q. -- this is your brother, J.C.?
21 A. Excuse me?
22 Q. This is your brother, J.C.?
23 A. J.C. Mitchell is my brother.
24 Q. Is he here, ma'am?
25 A. He's not here.

1 Q. Ma'am --
2 A. I didn't know he was supposed to be here.
3 Q. -- ma'am, you did say in your deposition that Mr.
4 Mitchell -- deceased Mr. Mitchell had talked about the Will
5 with your brother.
6 A. He did -- I did say that he talked to my brother,
7 he talked to -- I told you if you wanted two people -- if you
8 wanted to ask two people, and those are the two names that I
9 gave you, J.C. Mitchell and William Bephill.
10 Q. Yes, ma'am. And Mr. Burnette and I are going to
11 argue about whose duty it is to establish this understanding.
12 My question, though, is have you produced Mr. Mitchell -- Mr.
13 J.C. Mitchell to prove what he -- what your -- what the
14 deceased told him? He's not here, is he?
15 A. He would've been here -- if he had been subpoenaed
16 to be here, he would've been here.
17 Q. If he was asked, ma'am?
18 A. Yeah, or if he was asked to be here, he would've
19 been here.
20 Q. And you didn't ask him.
21 A. I didn't ask him.
22 Q. Okay.
23 A. Because I talked to my lawyer about that.
24 Q. Yes, ma'am. So, here's where we are legally, as I
25 understand it. We have one person here to say that Mr.

1 Sumter Mitchell understood his document you put up as a Will.
2 That person is you.
3 A. Correct.
4 Q. You are the only heir.
5 A. Correct.
6 Q. Mr. Mitchell was illiterate.
7 A. Correct.
8 Q. Mr. Mitchell's affairs were being handled by you.
9 A. I wasn't the only one his affairs was being handled
10 by.
11 Q. Well, ma'am, he is the only one who gave -- you are
12 the only power of attorney --
13 A. Correct.
14 Q. -- when he was alive.
15 A. Correct.
16 MR. FOSTER: I believe that's what I had.
17 THE COURT: All right. Thank you. You may step down,
18 Ms. Marshall.
19 Next witness.
20 MR. FOSTER: Well, if I may, ma'am, before we go
21 further. I'm not presuming that we're at an end by any
22 standards, but I did have a brief I wish to hand to the
23 Court.
24 THE COURT: All righty.
25 (background)

1 MR. FOSTER: Ma'am --
2 THE COURT: Here. Mr. Foster.
3 MR. FOSTER: I'm sorry. Oh, thank you, ma'am.
4 Ma'am, I'm not presuming that we're at an end, but I
5 wish to hand this up to indicate that there are quite a few
6 cases, and I believe I've accurately and completely stated
7 them, which I'll summarize as this: that when we're dealing
8 with an illiterate person and when we're dealing with a
9 scrivener who is the heir stated in the Will, the burden is
10 upon the proponent of the Will. And I believe the final part
11 that we quoted is the effect that there has to be some --
12 well, I can quote the things, "strong, clear, and convincing
13 evidence to show that the person who signed this knew what
14 they were doing." We have in this case one witness, to the
15 extent she is allowable, and that is Ms. Marshall, the person
16 who got the money. That is essentially, ma'am, what we're
17 maintaining.
18 Now, we have claimed in the petition -- if I'm not going
19 too fast, ma'am, or too rattling -- we claimed in the
20 petition that should this be granted, Ms. Bernice Caldwell,
21 here, has a claim to the house based upon her repairs to it
22 and based upon what she at least understood the agreement
23 with her father to be.
24 Now, I am not about to tell this Court how to run
25 itself. We can go ahead with that at this point; we can go

1 ahead with that, if the Court wishes, at another time. I am
 2 nervous about the lack of people who have been not served.
 3 They will be heirs if the Court decides to sustain the points
 4 I've made in my memorandum. They will be, of course,
 5 unaffected if the Court says the Will is good. They will, of
 6 course, have an interest contrary to my client in the event
 7 the Court disputes -- throws the Will out, in which event all
 8 the heirs will have an interest therein, and my client's
 9 claim for agreement and betterment goes forward.
 10 Ma'am, I'm willing to do whatever the Court wishes, but
 11 I believe I have the duty to lay the question before you,
 12 ma'am.
 13 THE COURT: Are you making a directed verdict?
 14 MR. FOSTER: No, ma'am. Well, I guess I'm asking really
 15 about procedure. What I'm saying is I'm -- my client has a
 16 claim that is contingent upon how you will rule as to the
 17 validity of the Will.
 18 THE COURT: Okay.
 19 MR. FOSTER: I am still concerned about the people who
 20 are not here.
 21 THE COURT: Well, wait a minute. I'm not sure that your
 22 client's claim is contingent on how the ruling goes on the
 23 Will. So, I'm going to ask Mr. Burnette if he wants to
 24 address that.
 25 MR. BURNETTE: Right. So, Your Honor, if I understand,

1 this is essentially a directed verdict saying that there is a
 2 presumption here that the testator was incapacitated, I don't
 3 see any evidence of that. The only evidence our client
 4 testified to was that he could not read or write, but that he
 5 still understood the contents of his Will. She wrote to his
 6 direction that there was no inability to understand this. I
 7 haven't seen any evidence that he was incapacitated in any
 8 way, only that he could not read or write, and I don't think
 9 that there's any evidence of directed verdict, Your Honor.
 10 THE COURT: Yeah, I think under the law of South
 11 Carolina, the challenger to the Will has the burden to show
 12 that there was lack of capacity or undue influence or --
 13 MR. FOSTER: I would agree --
 14 THE COURT: -- any of the other problems that go along
 15 with a Will. So, I think we're going to proceed for a full
 16 hearing on this matter.
 17 MR. FOSTER: Your call, ma'am. In that event, I would
 18 call Ms. Bernice Caldwell.
 19 THE COURT: All right. Ms. Caldwell, come on around,
 20 please, to the witness chair.
 21 Anybody need to take a short break? Are we okay?
 22 Everybody's okay? All right.
 23 Ms. Caldwell, just remain standing, please. I'm going
 24 to swear you in. Just raise your right hand.
 25 Do you swear or affirm to tell the truth and nothing but

1 the truth, so help you God?
 2 THE WITNESS: I do.
 3 THE COURT: Thank you. Please be seated.
 4 WHEREUPON:
 5 BERNICE CALDWELL, having first been sworn, was examined
 6 and testified as follows:
 7 DIRECT EXAMINATION BY MR. FOSTER:
 8 Q. Would you state your name, please?
 9 A. Bernice Caldwell.
 10 Q. Ma'am, did you move in to 1118 Green Street
 11 Extension?
 12 A. Yes, sir.
 13 Q. About when was that?
 14 A. I moved in in 2010.
 15 Q. And, ma'am, what was your understanding of your
 16 father's intent -- well, let me put that differently. What
 17 was your understanding of what was going to happen to the
 18 house?
 19 A. During the time that I stayed on Columbia Avenue,
 20 in Mr. Barnett's house, my dad would come to my house while I
 21 was working and my neighbors would tell me that a man was
 22 there in a green truck. I stayed home to see who the man was
 23 and it was my dad, and he asked me to move --
 24 Q. No, no. Ma'am, you can't say what he said.
 25 A. Okay.

1 Q. What did you understand from what he told you?
 2 A. To stay in there and don't move out.
 3 Q. Which is where?
 4 A. 1118 Green Street Extension.
 5 Q. Ma'am, based upon your understanding, did you
 6 extend monies to fix that place up?
 7 A. I did.
 8 Q. What shape was it in when you moved in?
 9 A. The sewer line was messed up; I had great water
 10 leaks up under the sink in the kitchen; you couldn't see the
 11 house because trees was [sic] covering it; it had holes in
 12 the walls and the (inaudible) was pulled from it -- the walls
 13 in it.
 14 Q. Mm-hmm.
 15 A. I had to put a floor in the bathroom; like I say,
 16 fix holes in the walls from the bedroom -- front bedroom --
 17 Q. Mm-hmm.
 18 A. -- and the back bedroom had holes in the walls in
 19 it. And the porch was separating from the steps -- the steps
 20 separated from the porch.
 21 Q. Did you repair all those conditions?
 22 A. I did.
 23 Q. Was there anything else about the house that needed
 24 to be repaired?
 25 A. No. I got the walls --

1 Q. Did the house have electricity when you moved in?
2 A. It blinked off and on. So, when I had the hot --
3 the water fixed, the plumber came and fixed that.
4 Q. How about the dryer hook-up?
5 A. The dryer hook-up, electrician put it in.
6 Q. Was there a washer hook-up?
7 A. Yes, but it was clogged up, so I had -- they had to
8 do a bypass up under the house with all the iron pipes and
9 put white pipes up under it because it was clogged, and dug
10 another drain to go to the sewer because it had a foul odor
11 that was up under the house where the pipes had broke at
12 [sic].
13 Q. And, ma'am, was there a problem with the
14 foundation?
15 A. The foundation is one-sided right now to it. It's
16 like it's one-sided. And, like I say, the steps was [sic]
17 coming from the house -- disconnect from the house.
18 Q. Has that been repaired?
19 A. Yes.
20 Q. Was -- did you have to replace any doors?
21 A. Yes, I did. The front door and the back door I
22 replaced because he had chicken wire on the back door.
23 Q. Who is "he"?
24 A. My dad.
25 Q. Okay. Did any sheetrock have to be put in?

1 A. The sheetrock was put in my dad's bedroom and my
2 brother's bedrooms. The first bedroom and the second bedroom.
3 Q. What was the condition of the backyard?
4 A. The backyard was covered with automobiles, like
5 somebody was working on a car. You just couldn't see it.
6 You know, it was just cluttered. There was (inaudible)
7 everywhere.
8 Q. Was there any shrubbery in the backyard?
9 A. Yes.
10 Q. What was it's condition?
11 A. Say that again.
12 Q. What was the condition of the shrubbery in the
13 backyard?
14 A. Aw, man, we had to clean that off. My brother
15 cleaned that off. It had all kind of automobile pieces and
16 stuff back there. Big, motor-like things and, you know, like
17 somebody had been working on a car and just left everything.
18 Q. And, ma'am, was there an any infestation of the
19 house with any vermin or any bugs?
20 A. Yeah, it was roach-infested.
21 Q. Did you get that taken care of?
22 A. Yes, I did. Yes, I did.
23 Q. Did you do anything to clean up the outside?
24 A. Yes, I cleaned the outside up, too, because the
25 windows on the front had trees that -- bushes, hedges that

1 grewed [sic] up that hid the windows. You couldn't see the
2 house because of big trees in the yard.
3 Q. Mm-hmm.
4 A. And it swung down over the doors and stuff because
5 I had a small porch like this and I had it expanded.
6 Q. Ma'am, was there -- were there shutters on the
7 house?
8 A. Yes.
9 Q. What condition were they in?
10 A. They was [sic] in bad condition.
11 Q. Did you get those repaired?
12 A. I got those repaired.
13 Q. Did you have to do any pressure washing of the
14 house?
15 A. I pressure washes [sic] it now because it'll turn
16 black and it'll turn green on the outside.
17 Q. Did you pay rent to your father?
18 A. Yes, I did.
19 Q. Pay him directly?
20 A. Yes, I did.
21 Q. Ma'am, there's a lease that's been identified in
22 this case. It is Plaintiff's 6. Do you recognize this?
23 A. Yes.
24 Q. Did you sign that?
25 A. Yes.

1 Q. Who prepared this document? If you know.
2 A. Frances Mitchell. Frances Barnett.
3 Q. Okay. That is the sister (inaudible) --
4 A. My aunt. Mm-hmm.
5 Q. Okay. And this is your signature on the back.
6 A. Yes, it is.
7 Q. Where was this signed, ma'am?
8 A. It was signed at Frances' house.
9 Q. Ma'am, what were the circumstances under which that
10 document was signed?
11 A. I had it to have -- my son is autistic, and I had
12 it to have -- to get his food stamps and verify his place --
13 resident -- place where he stay at [sic].
14 Q. I assume you might have also had to prove the
15 amount you were paying for rent?
16 A. Yes.
17 Q. Were you paying your father that amount before you
18 signed this document? The 450?
19 A. No.
20 Q. Okay. But you paid it afterwards.
21 A. Yes. I always gave my dad money, though, because
22 that was my dad.
23 Q. Ma'am, what understanding did you have -- did you
24 have an understanding of what was to happen to the house on
25 your father's death?

1 A. No, sir. My dad only told me -- well --
2 Q. I'm asking about your understanding, ma'am.
3 A. My understanding. No.
4 Q. You didn't have an understanding of what was to
5 happen to the house?
6 A. No.
7 Q. Okay.
8 A. I was just told to move in and don't move out.
9 Q. Okay. Was your father in good mind when he was --
10 when he moved you in to the house?
11 A. Yes, he was.
12 Q. Was he in good mind by the time he passed?
13 A. No, sir, he wasn't.
14 Q. What was his condition?
15 A. My dad didn't have a good state of mind when he
16 passed because he -- to my knowledge, my dad stayed asleep
17 off of morphine all the time.
18 Q. Ma-hm. When did that begin, ma'am? If you know.
19 A. The last time he come from Pineville.
20 Q. From where, ma'am? Oh, from --
21 A. From the hospital in Pineville.
22 Q. Okay.
23 A. He would stay asleep off of morphine. But before
24 then, my dad was -- had a good state of mind.
25 Q. Ma'am, when -- do you remember when your father

1 went to Pineville -- or to that hospital?
2 A. I think it -- he died in November. I think it was
3 in October. About the last of October.
4 Q. Of which year, ma'am? If you know.
5 A. Sir?
6 Q. What year was it when he went to Pineville, ma'am?
7 If you know.
8 A. 220 [sic].
9 Q. Okay. And what was his condition prior to that
10 time?
11 A. I really don't know because they didn't discuss
12 that with me.
13 Q. Who's "they"?
14 A. Ms. Marshall and Ms. Robinson.
15 Q. And why would it be those two people who would
16 discuss it with you?
17 A. They didn't want me to know. I mean, they wouldn't
18 even take me to see him. I mean, I asked them when -- you
19 can't go up there -- COVID out and all this right here, one
20 have to go in there at a time, you know.
21 Q. To see him.
22 A. To see him.
23 Q. Ma'am, did you pay property taxes on this house?
24 A. Yes, I did.
25 Q. Okay. Ma'am, I'm going to show you some documents

1 and ask you to identify them. (pause) Ma'am, I'm going to
2 show you these documents and ask you what they are.
3 A. This -- when I had the porch expanded, those are
4 the decks that I had put on it.
5 Q. Did you pay for those, ma'am?
6 A. Yes, sir, I did.
7 Q. What is this, ma'am?
8 A. That's what I paid for taxes.
9 Q. How many years did you pay taxes, ma'am?
10 A. I gave my dad -- well, I was there for, like, 13
11 years now, we'd give my dad half of the money from 2010, when
12 I moved in, up until 220 [sic], he had died.
13 THE COURT: Any objection, Mr. Burnette?
14 MR. BURNETTE: No objection, Your Honor.
15 THE COURT: All right. This will be No. --
16 MR. FOSTER: Ms. Caldwell, I believe you have some other
17 documents.
18 THE WITNESS: Yes, sir, I do.
19 MR. FOSTER: If you can get those (inaudible)
20 (background)
21 THE COURT: All right. I'm going to make the tax
22 information Petitioner's No. 7 and the repair information
23 Petitioner's No. 8.
24 (Petitioner's Exhibits No. 7 and 8 admitted into evidence)
25 MR. FOSTER: Your Honor, I believe -- and I apologize

1 for the delay -- Ms. Caldwell is trying to get these things
2 together.
3 THE COURT: That's fine. Again, do we need to take a
4 brief recess? Are we okay?
5 MR. FOSTER: Would that be -- how many -- do you have
6 many documents to get together, ma'am?
7 THE WITNESS: No, sir.
8 MR. FOSTER: Okay. Just these?
9 THE WITNESS: Ma-hm.
10 MR. FOSTER: Okay. Anything else, ma'am, that you --
11 well --
12 THE WITNESS: I got this one right here.
13 MR. FOSTER: Okay.
14 THE WITNESS: Those are the receipts that I have
15 (inaudible) to the house.
16 MR. FOSTER: Okay. Well, let me let you go back online,
17 ma'am. Pardon me. Go back on to the witness.
18 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
19 Q. Ma'am, what is this?
20 A. That's a receipt that come from Ace. I was fixing
21 on the pipes up under there.
22 MR. FOSTER: Okay. I only have one copy. If Counsel
23 wants to come up and look at these or I can hand them to him
24 later.
25 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:

1 Q. And, ma'am, what is this?
2 THE COURT: Well, why don't you just show them to him?
3 MR. FOSTER: Some of these may be (inaudible)
4 THE COURT: Okay. Just to clarify, Mr. Foster, this
5 receipt for property taxes, this is a duplication. Right?
6 This is just for the year 2021.
7 MR. FOSTER: That's what we have, ma'am.
8 THE COURT: All right.
9 MR. BURNETTE: I'm going to object that these aren't
10 authenticated and they're an out of court statement by
11 someone that's not here. We don't know who wrote these, who
12 prepared these, who signed these. I don't think there's
13 enough authentication support to let these in.
14 THE COURT: What is your response to that, Mr. Foster?
15 MR. FOSTER: Well, I believe my client's capable of
16 saying these are receipts I was given when I paid for them.
17 THE WITNESS: Yeah. I have --
18 THE COURT: Hang on. Hang on. Don't talk.
19 So, and they should come in why?
20 MR. FOSTER: I --
21 THE COURT: Are they receipts that were given to her for
22 money that she has --
23 MR. FOSTER: -- I presume that is what she will testify
24 to.
25 THE COURT: All right. I'm going to overrule the

1 objection. You can have her identify those and I'll just
2 hear -- I need to hear what the testimony's going to be.
3 MR. BURNETTE: Okay.
4 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
5 Q. Ma'am, as I understand it, (inaudible) identifying
6 these -- oop! Sorry. Now, you identified this one from Ace
7 Builders.
8 A. Yeah.
9 Q. Did you pay that 1390?
10 A. Yes, I did.
11 Q. And this one, ma'am, which seems to be from
12 (inaudible)
13 A. Yes.
14 Q. Did you pay that?
15 A. Yes.
16 Q. This I believe is a duplication of what the Court
17 has for the front deck.
18 A. Yes.
19 Q. I understand this indicates that the amount you
20 paid for materials is 915 --
21 A. Yes.
22 Q. -- 69.
23 A. Yeah.
24 Q. And the labor cost is \$800.
25 A. Yes.

1 Q. Did you pay those amounts?
2 A. Yes, I did.
3 Q. Ma'am, I have here what looks to be a receipt for
4 "new water and-" well, I'll say "--succinct line."
5 A. Yeah.
6 Q. I can't read it all. Water heater and some other
7 things.
8 A. Mm-hmm.
9 Q. \$3,000. Did you pay that?
10 A. Yes.
11 Q. Ma'am, here's one for (inaudible) ask about that.
12 A. Okay.
13 Q. Did you pay all these amounts, ma'am?
14 A. Yes, I did.
15 Q. Are there amounts you paid that you don't have
16 receipts for?
17 A. Those are the receipts that they gave me.
18 Q. Did you pay people who didn't give you receipts?
19 A. Yes, I paid people that didn't give me receipts,
20 but I had to get it professionally done.
21 Q. Ma'am, can you give us a total amount that you paid
22 in repair of the house?
23 A. I can say I paid about \$6 or 7,000.
24 MR. FOSTER: Okay. And I understand the Court's ruling
25 is that I can ask her about these, but they are not going to

1 be in evidence.
2 THE COURT: Correct.
3 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
4 Q. Ma'am, I understand you have no other documents --
5 or no other receipts.
6 A. No other receipts.
7 Q. Okay. Did any of your family know that you were
8 putting repairs in the house?
9 A. Yes.
10 Q. Who did?
11 A. My sister.
12 Q. Who?
13 A. Both sisters right there and my father.
14 Q. Well, ma'am, you have to say.
15 A. Oh. Sharon --
16 Q. Ms. Culp?
17 A. -- Culp knew that I was doing repairs to it and
18 Latrenda Reeder knew that I was doing repairs to it; so is my
19 brother, Sumter, and Lamont.
20 Q. Sumter is the one who is here; Lamont is the one
21 who is not.
22 A. Yes.
23 Q. Ma'am, is -- I presume the house is in livable
24 condition now.
25 A. Yes.

1 Q. Ma'am, I believe there's a mortgage on this
2 property.
3 A. No, sir, my dad -- well, I never heard of a
4 mortgage being on it.
5 Q. Okay. You haven't been asked to pay a mortgage.
6 A. No.
7 Q. And you had no understanding with your father as to
8 what was going to happen to the house after he passed.
9 A. No. He just told me to stay in it, don't move out
10 of it.
11 Q. Ma'am, I'm showing -- well, I'm showing you a copy
12 of what's in evidence, which is I guess 4, if I'm reading
13 correctly, your father's funeral bulletin. You've seen that
14 before, I assume.
15 A. Yes.
16 Q. Ma'am, that document recites brothers and sisters
17 of yours.
18 A. Yes.
19 Q. Did you have anything to do with preparing it?
20 A. Mm-hmm.
21 Q. Okay. Ma'am, I'm asking you to look -- pick it up,
22 look at the inside, see who's listed there as your brothers
23 and sisters. I'm asking --
24 A. All my brothers and sisters --
25 Q. Go ahead, ma'am. Go ahead, ma'am.

1 A. -- all my brothers and sisters are on this paper.
2 Q. Is there anyone listed there who's not a brother or
3 sister of yours?
4 A. Mm-hmm.
5 Q. Would you recite for us who's listed?
6 A. Randy Mitchell is here, Maxine, Yvette, Dennis,
7 Sharon, Lamont, and Sumter --
8 Q. That's --
9 A. -- and Latrenda.
10 Q. -- that's Thomas Lamont.
11 A. Thomas Lamont. Yes.
12 Q. Ma'am, is that correct recitation of who your
13 brothers and sisters are?
14 A. She ain't got them right -- she ain't got them
15 spelled right, but these are my brothers and sisters.
16 Q. Okay. Now, I understand Ms. -- well, I don't
17 understand -- Ms. Marshall testified in her deposition that
18 she prepared that document. Do you know that to be the case?
19 A. I know she did.
20 Q. Okay. Did she ever indicate to you that she had
21 any doubts about who the children of Mr. Sumter Mitchell
22 were?
23 A. She knew us all.
24 Q. She was your aunt.
25 A. She is my aunt. Yeah.

1 Q. Well, of course, being a mere southerner, I only
2 have aunts. But, yes, ma'am.
3 A. Okay.
4 Q. Ma'am, what is the mental condition of your
5 brother, Dennis?
6 A. My brother --
7 Q. If you know.
8 A. -- he -- yeah, my brother just got something wrong
9 with his heart and his leg. But, other than that, my brother
10 can carry on a conversation. He anticipate in the church.
11 He go to Nazarene, he anticipate in the church, and help do
12 church stuff.
13 Q. Did he go to school?
14 A. Yes, he went to school.
15 Q. How far did he get?
16 A. He didn't get far. He (inaudible). I could say he
17 went to about seventh or eighth grade.
18 Q. Okay. Is he mentally challenged?
19 A. It all depends on what you call "mentally
20 challenged."
21 Q. Well, let me ask you what you consider mentally
22 challenged. Would you say he is or is not?
23 A. He is.
24 Q. And where is he living currently?
25 A. On --

1 Q. If you know.
2 A. Yes. Yes.
3 Q. And where does he live?
4 A. On Twitty Court.
5 Q. Okay. Do you know what checks he receives?
6 A. He get an SSI check.
7 Q. Do you know how much?
8 A. He was getting nine-something. About 936.
9 Q. Would you -- do you know who takes care of his
10 affairs -- his finances?
11 A. Him and Rebecca stay together, so I would assume
12 it's, like, Rebecca.
13 Q. Mm-hmm. Do you know of any power of attorney he
14 has?
15 A. I don't. Only thing I know that Ms. Marshall go
16 get their money and bring it back, allowance it out to him.
17 Q. "They" being who? Brings back whose money?
18 A. She'll bring back Dennis's money and allowance it
19 out to him.
20 MR. FOSTER: Those are my questions, ma'am.
21 THE COURT: I want to go back to those receipts that you
22 had.
23 MR. FOSTER: Yes.
24 THE COURT: Hold on, Ms. Caldwell.
25 MR. FOSTER: Do you want me to hand them up?

1 THE COURT: Can you bring those up to me, please? The
2 ones that you had -- not the ones you said that were
3 duplicates and you were not going to ask about them, but the
4 ones that you asked her about. I'd like to look at those,
5 please.
6 MR. FOSTER: I pause the Court. Let me see what I can
7 find.
8 THE COURT: I didn't see what you did with them. Bring
9 those up here.
10 MR. FOSTER: (inaudible), ma'am. Some of these are
11 originals (inaudible)
12 THE COURT: All right. Tell me which ones are the ones
13 that you did not ask her about.
14 MR. FOSTER: I'm sorry, say again, ma'am?
15 THE COURT: You said that there were some you were not
16 going to ask her about. You (sic) were duplicates.
17 MR. FOSTER: No, ma'am, I didn't say that. I --
18 THE COURT: Well, you put them aside and you didn't ask
19 her about them.
20 MR. FOSTER: -- well, what I meant --
21 THE COURT: You said they were duplicates.
22 MR. FOSTER: -- what I meant to say was there were
23 duplicates, I believe.
24 THE COURT: Well, show me -- take the duplicates out.
25 MR. FOSTER: I believe (inaudible)

1 THE COURT: These are the -- are they duplicates to this
2 exhibit?
3 MR. FOSTER: That's my understanding.
4 THE COURT: All right.
5 MR. FOSTER: Oh, and I think this, too.
6 THE COURT: Okay. All right.
7 MR. FOSTER: I'm sorry.
8 THE COURT: That's okay. So, I don't want to look at
9 those, but I want to look at the other ones, please.
10 MR. FOSTER: Okay.
11 THE COURT: All right. Let me have that. Thank you.
12 All right. I'm going to change my mind about not
13 admitting these. I do want to admit these into evidence. I
14 think that they are -- they're not authenticated, but we get
15 testimony all the time from folks who are saying that they
16 paid. So, I'm admitting them for the purpose of her
17 testimony that this is what she said she paid.
18 MR. FOSTER: I understand, ma'am.
19 THE COURT: And this is going to be Petitioner's No. --
20 MR. FOSTER: (inaudible) Let me get this one.
21 THE COURT: Yeah, that one goes like -- I'll put it
22 back. Don't worry about it. I'll put it back.
23 (Petitioner's Exhibit No. 9 admitted into evidence)
24 MR. FOSTER: Ma'am, I do have -- Ms. Caldwell, I do have
25 a couple of other questions.

1 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
2 Q. Ma'am, you were a tenant in the house when you were
3 there. Is that correct?
4 A. Yes.
5 Q. That was before and after you executed this
6 document.
7 A. Yes.
8 Q. The lease, I mean. And that was done for the
9 purpose of food stamps for your son who is autistic?
10 A. Yeah, in his check. He get an SSI check, also.
11 Q. Okay. Ma'am, I presume you did some work in
12 cleaning up the house. Would that be correct?
13 A. I did.
14 Q. Did you install anything or put anything in to
15 clean it up?
16 A. Install?
17 Q. Well, I think you said the electrical outlets were
18 --
19 A. The outlets -- all -- my dad had a band and the
20 people in the band had electric guitars, amps, and all that,
21 and he hooked them up in the wall.
22 Q. Mm-hmm.
23 A. Which blew everything in the house, you know.
24 Q. And out of interest, ma'am, who were these people
25 who lived in the house before you?

1 A. Who lived in the house?
2 Q. Yes, ma'am.
3 A. Me and my son.
4 Q. No, I mean before you and your son, ma'am.
5 A. Oh. My dad, my brother --
6 Q. Which brother, ma'am?
7 A. Dennis. My dad and Dennis.
8 Q. Anybody else?
9 A. No.
10 Q. Do you know whether Dennis's rent at Twitty Court
11 is supplemented in any way by the County?
12 A. I don't know.
13 MR. FOSTER: Okay. That's what I had.
14 THE COURT: All right. Thank you. Mr. Burnette?
15 CROSS-EXAMINATION BY MR. BURNETTE:
16 Q. Ms. Caldwell.
17 A. Yes.
18 Q. So, you've testified that Sumter Mitchell verbally
19 agreed to give you this house?
20 A. Yes, he did.
21 Q. Okay. But there was a rental agreement in place.
22 Is that correct?
23 A. Yes, he did.
24 Q. And your testimony is that this rental agreement
25 was so that you would have additional funds to take care of

1 your son?
2 A. Yes. My -- I had to have a verification on where
3 we moved to so his check got -- could come there and he could
4 get his food stamps.
5 Q. Okay. Did he get more out of this check than he
6 would have if you had just been outright given this house?
7 A. I was in a house already.
8 Q. Well, let --
9 A. (inaudible)
10 Q. -- let me rephrase. You're paying 450 a month for
11 this house. Correct?
12 A. Yeah. I was also paying that with your dad.
13 Q. Did this arrangement of the 450 with Sumter
14 Mitchell, did that give you more than 450 a month to spend on
15 your child?
16 A. I don't understand what you're saying.
17 Q. Is it safe to say that Sumter Mitchell was
18 collecting \$450 as rent to get income for himself?
19 A. He got it for himself, I guess.
20 Q. Okay. But you're saying that all of this -- this
21 whole rental arrangement was to save you money?
22 A. No. I mean, I don't know why he wanted me to stay
23 in that house. I didn't -- I don't know why he wanted me to
24 stay in there because I was renting a house from Charles
25 Burnette and his -- the rent there was 450.

1 Q. Okay. So, you didn't save any money actually by
2 changing these houses?
3 A. I didn't save none [sic]. No.
4 Q. Okay. Do you understand that Sumter Mitchell took
5 care of children that were not his biological children?
6 A. Never heard of that in my life.
7 Q. Okay.
8 A. Never heard of that in my life.
9 Q. Okay. Did you understand that Sumter Mitchell had
10 paternity tests requested for some of these children?
11 A. I never heard of that.
12 Q. Okay. Did you understand before the death of
13 Sumter Mitchell that there was a contest over who were his
14 biological children?
15 A. I never heard of this stuff, Mr. Burnette [sic].
16 Never.
17 Q. Okay. Did you ever take any measures to prove
18 paternity?
19 A. I can. I never heard of it, but I can.
20 MR. FOSTER: I may be late in getting to say this.
21 Counsel, of course, can ask these questions, but I would note
22 that there is no basis for this so far.
23 THE COURT: Are you objecting to that line of
24 questioning?
25 MR. FOSTER: Yes, ma'am, to that extent.

1 THE COURT: All right. I'll sustain that. Go ahead,
2 Mr. Burnette.
3 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
4 Q. Is the basis -- your only basis of Sumter
5 Mitchell's paternity to you is this funeral bulletin?
6 A. No. That was my dad. My dad raised me.
7 Q. Do you have --
8 A. From a baby.
9 Q. -- do you have any evidence that he was your father
10 besides this funeral bulletin?
11 A. No.
12 Q. Okay. Did you have any conversations with Ms.
13 Marshall about writing his alleged children down in this
14 funeral bulletin?
15 A. No.
16 Q. Okay. Did you ever have any discussions with her
17 near or after his death about who his children were?
18 A. No. She knew. She know us. She know us all. She
19 know us.
20 Q. Is there a reason you haven't taken any steps to
21 prove paternity?
22 MR. FOSTER: I'm going to object to that --
23 THE WITNESS: My dad never asked me --
24 THE COURT: You have to stop talking when somebody
25 objects.

1 MR. FOSTER: I'm going to object to that extent. I
2 understand he is either asking her to state illegal grounds
3 or to state why she has not taken some legal action. She's
4 not a lawyer, so I don't think she can answer that question.
5 THE COURT: Well, I think she can answer whether she's
6 taken legal action or not, so I'll overrule that.
7 MR. FOSTER: Go ahead.
8 THE COURT: Go ahead and ask the question again, Mr.
9 Burnette.
10 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
11 Q. Is there a reason you haven't taken any steps to
12 prove paternity in regards to yourself and Sumter Mitchell?
13 A. My dad never asked me to take paternity test.
14 Q. Okay. Do you have any legal documents showing
15 paternity?
16 A. I don't.
17 Q. Okay. So, you understand that Sumter Mitchell
18 could not read or write. Correct?
19 A. Yes.
20 Q. Are you saying that he was of sound mind, though?
21 A. He was of sound mind.
22 Q. Okay. You've alleged in your complaint -- in your
23 petition to the Court that Sumter Mitchell was incapacitated.
24 Do you understand that?
25 A. What that mean?

1 Q. That he was not of sound mind.
2 MR. FOSTER: I'm going to object to that. I don't think
3 incapacitated is limited to that definition.
4 THE COURT: All right. Well, I think rather than
5 defining that for her, just ask her what she thought about
6 his state of mind. I think that's probably reasonable and
7 relevant.
8 MR. BURNETTE: Okay.
9 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
10 Q. Okay. So, do you believe that Sumter Mitchell was
11 or was not incapacitated -- or of sound mind?
12 MR. FOSTER: Same objection.
13 THE COURT: Well --
14 THE WITNESS: In --
15 THE COURT: Wait. What do you have to say about that,
16 Mr. Burnette? What are you trying to get at?
17 MR. BURNETTE: I mean, in the complaint, she alleges
18 that the decedent was incapacitated. I'm just asking for
19 that confirmation.
20 THE COURT: All right. I'm going to overrule that. Go
21 ahead and ask the question again, and then let's move on
22 after she answers the question.
23 MR. BURNETTE: Okay.
24 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
25 Q. Do you understand that in your complaint you have

1 alleged that the decedent is not of sound mind?
2 A. I don't know what you call sound mind because my
3 dad was my dad and me and my dad talked. When we talked, he
4 was like he knew what he was talking about.
5 Q. Okay. So, you're changing your testimony that he
6 was not -- that he was of sound mind?
7 MR. FOSTER: I'm going to object. I didn't hear any
8 change in testimony.
9 THE COURT: I'll overrule that. I think he's just
10 trying to clarify what the answer is.
11 Go ahead, Mr. Burnette. I'd like to clarify it, too.
12 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
13 Q. So, is there an inconsistency with your pleadings
14 that he was not of sound mind and your testimony now that he
15 was of sound mind?
16 MR. FOSTER: And, again, this is asking her to start --
17 say the legal proceedings, but --
18 THE COURT: I'll overrule that. Answer the question.
19 THE WITNESS: Yes.
20 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
21 Q. Okay. And you understand that you've also alleged
22 that Sumter verbally agreed to give you this property?
23 A. Yes.
24 Q. Okay. So, how could Sumter have not been of sound
25 mind, but also verbally agree to give you the property?

1 A. He just told me to move in and don't move out.
2 That's what he told me.
3 Q. Okay. And did you testify earlier that you believe
4 that he was of sound mind until he took morphine at the
5 hospital?
6 A. He was home. They was [sic] -- her and -- Ms.
7 Marshall and Miss Rebecca was [sic] giving him morphine, and
8 I asked Miss Rebecca not to give him morphine, you know,
9 because it slows your heart rate down. And they constantly --
10 -- every time he moaned, they probably gave him a shot with it
11 -- with the morphine.
12 But my dad just laid there. He kept his eyes closed at
13 all time. And he had to use the bathroom and he was telling
14 Ms. Marshall to move because he had to use the bathroom and
15 she started messing with him. He was like, "Move! Move!
16 Move!" You know? Like that.
17 Q. Okay.
18 A. It's --
19 Q. So --
20 A. -- my -- my --
21 THE COURT: That's an answer. Go ahead and ask the next
22 question.
23 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
24 Q. So, besides any pain medicine, otherwise he was of
25 sound mind?

1 A. I honestly can't say that.
2 Q. But you just testified --
3 A. As much as I wanted to say he was of sound mind, I
4 don't think he was. I apologize to the Court for saying he
5 was.
6 Q. Okay. So, your testimony is he was not.
7 A. He was not.
8 Q. Okay. And you're saying that he agreed verbally to
9 give you this property?
10 A. To my knowledge, yes, because he asked me to move
11 in it --
12 Q. Okay.
13 A. -- and not move out of it.
14 Q. Okay. But you also allege he was not of sound
15 mind. So, he could not have been of sound mind when he
16 agreed to give you the property?
17 A. I don't know.
18 MR. FOSTER: I believe that the lady's testimony had to
19 do with the time in which she said that was the case. If
20 that's an improper imposition, I apologize.
21 THE COURT: All right.
22 MR. BURNETTE: That kind of stuff's (inaudible) --
23 THE COURT: That's fine. I think, Mr. Burnette, it
24 would be very helpful if you would clarify the timeframes
25 here because I'm going to do it if you don't.

1 MR. BURNETTE: Okay.
2 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
3 Q. So, you believe that Sumter Mitchell, up until he
4 started taking morphine, was of sound mind?
5 A. When my dad asked me to move in that house, he was
6 in sound mind. He was in a sound mind.
7 Q. Okay.
8 A. Okay? Okay. As my dad went on through the years
9 with that -- where he was sick, like, he started losing it a
10 little bit. Like the old-timers or (inaudible) on him.
11 He'll be good one minute and the next minute, he'll be
12 talking like he don't [sic] know.
13 Q. And you believe that was due to the morphine?
14 A. Yeah.
15 Q. Okay. You understand that Ms. Marshall's goal is
16 for Dennis to move in to this property. Correct?
17 A. My dad put me in that house, told me not to move
18 out of that house. If he had wanted Dennis to stay there,
19 that's where Dennis would've been.
20 Q. Okay. So, it's your intention to stay in the house
21 and Dennis won't have any access to it?
22 A. Dennis can come home when he get ready.
23 Q. Okay. But Dennis will not be able to live there.
24 Correct?
25 A. He can come home. That's when I say he can come

1 home when he get ready. I wouldn't keep my brother out on
2 the street.
3 Q. Okay. Do you intend to make a room for him to move
4 in?
5 A. Yes.
6 Q. And you're going to live there yourself?
7 A. Yes.
8 Q. Okay. Did Sumter have knowledge of all these
9 repairs that you made to the house?
10 A. Yes.
11 Q. All of them?
12 A. Yes.
13 Q. Okay. Did Sumter pay for any of these repairs?
14 A. None of them because he didn't have the money. He
15 said that somebody would -- every time I'd give him 450, he
16 said -- well, every time I gave my daddy \$450, somebody would
17 go in his account when he'd get his check, taking them \$450
18 out. He said, "Somebody taking my money." And he took --
19 when Frances -- and when Frances died, she took over. But
20 she had it before Frances got to go in and get the money from
21 my dad. She used to go up there and get the money from my
22 dad and something happened. So, Frances died, took over my
23 dad's thing. And she -- Frances was going to get the money
24 and the bills was [sic] fine. Everything was fine.
25 Q. Okay.

1 A. But the minute Ms. Marshall took over, everything
2 fell apart.
3 Q. Do you have any evidence of missing funds?
4 A. That's what he said.
5 Q. Okay. Were there ever any bills of Sumter Mitchell
6 that were missed?
7 A. I don't know. I don't know. I just gave my dad
8 his money and I listened to his cries for help a lot.
9 Q. Okay. And with all the discovery that you have
10 with all the bank records, do you have any evidence that
11 money went missing?
12 A. Yes, I got a paper in my thing where the banks --
13 his bank papers would come to the house where I'm at. His
14 important papers would come to the house where I'm at, 1118
15 Green Street Extension. I got a paper in my file that he had
16 \$1200-and-something dollars in his banking account and
17 somebody took it all out except for \$107.
18 Q. Okay. Do you have -- can you show us any evidence
19 the funds were missing for anything improper?
20 A. Hmm?
21 Q. Do you have any records you can show us right now --
22 --
23 A. Yes.
24 Q. -- of funds that were missing?
25 A. Yes.

1 MR. FOSTER: Does the Court wish to take a break?
2 Because I assume this will take a bit.
3 THE COURT: We can take a break. It's 11:11. Let's
4 resume the hearing at 11:30.
5 MR. FOSTER: Thank you, ma'am.
6 THE COURT: And we're only going to go until 12:30 after
7 that.
8 MR. FOSTER: I'm sorry, ma'am?
9 THE COURT: We're going to break for lunch at 12:30.
10 MR. FOSTER: If need be.
11 THE COURT: You think you'll be finished before then?
12 MR. FOSTER: I hope.
13 THE COURT: Okay.
14 MR. BURNETTE: (inaudible) possible.
15 THE COURT: Go ahead. We're going off the record.
16 (OFF THE RECORD)
17 (ON THE RECORD)
18 THE COURT: All right. Where were we? You're still
19 under oath, Ms. Caldwell.
20 MR. BURNETTE: Okay.
21 THE COURT: Okay. Go ahead.
22 CROSS-EXAMINATION BY MR. BURNETTE CONTINUES:
23 Q. Ms. Caldwell.
24 A. Yes.
25 Q. So, your testimony is that you were not aware of

1 any mortgage on the property?
2 A. I wasn't.
3 Q. Okay. Sumter didn't tell you about any
4 responsibility to pay the mortgage or what --
5 A. He didn't tell me about none [sic] of that. He
6 always said he didn't own nothing [sic] on his house.
7 Q. Okay. But you understand that my client pays \$400
8 for the mortgage every month. Correct?
9 A. No, she don't [sic]. She never gave me a receipt
10 for it.
11 Q. Okay.
12 A. She ain't never told me nothing [sic] about -- she
13 took over that when she was -- after my dad died, my aunt
14 wanted me to give her \$600 a month for staying in the house
15 and I had fixed the house up already. And because I wouldn't
16 give her \$600, she wanted me to leave the house. She sunk
17 every -- went through every crooks and turn because she own
18 two houses in Charlotte, she know how to manipulate people on
19 foreclosure and shutting the house down and all that kind of
20 stuff. So, she starts sending me all kind of nationwide
21 letters. Okay, if I owed her mortgage on the house -- if he
22 owed her the mortgage on the house, why would Dennis get to
23 stay free and not have to pay?
24 Q. Okay.
25 A. If she owed the mortgage.

1 Q. You do not pay any mortgage on the house. Correct?
2 A. I gave my daddy 450. What he wanted.
3 Q. Okay. From the time that Sumter passed away until
4 the eviction proceeding in Magistrate Court, did you pay any
5 rent?
6 A. No, because she wanted \$600. I told her that I was
7 not giving her \$600. She stood in my dad's house and told a
8 fib. He come to me and get \$150 and my brother sat there and
9 looked at her like she was crazy. Never. My dad never asked
10 me for no \$600 for that -- to stay in that house and I done
11 fix the house up. He never. Because he told me he couldn't
12 help me with the house because somebody was taking his money.
13 Q. Did you pay the 450 under the lease agreement
14 during this time?
15 A. I paid his faithfully. Faithfully. She know that.
16 Q. Okay. But you aren't aware of any mortgage.
17 Right?
18 A. I ain't aware of no mortgage.
19 Q. Okay.
20 A. Ain't no mortgage.
21 Q. Sumter didn't tell you about any mortgage if he was
22 trying to give you the property?
23 A. It's not a mortgage. I don't have no -- nobody
24 never [sic] sent no paper there saying about the mortgage.
25 That's something she making up. That's something she's

1 saying to have her way. I know my aunt.
2 Q. Okay. So, you did visit Sumter Mitchell when he
3 was in the hospital in Rock Hill. Correct?
4 A. Yes, I did. A number of times. Me and my son.
5 Q. And you visited him towards the end of his life.
6 Correct?
7 A. Huh?
8 Q. You visited Sumter Mitchell towards the end of his
9 life in the hospital in Rock Hill. Correct?
10 A. Yeah. Every time he went to the hospital in Rock
11 Hill, I was there.
12 Q. And you brought documents, asking him to sign the
13 house over to you during this time. Correct?
14 A. Sir, I never had my hand on no [sic] kind of
15 documents. I don't even know what you're talking about when
16 you say "documents to a house," and I'm being all honest. I
17 don't have no [sic] kind of knowledge to it. Never tried to
18 force my daddy to give me nothing [sic] --
19 Q. Did you ask --
20 A. -- because --
21 Q. -- did you ask --
22 A. -- we grew up in the house I'm in.
23 Q. -- did you ask Sumter Mitchell to sign the house
24 over to you at any point?
25 A. No.

1 Q. Did Sumter Mitchell tell you he was going to sign
2 the house over to you, though?
3 A. No, he just said, "Don't move out it. Stay in it.
4 Don't move out it."
5 Q. Okay. You don't have any documentation showing
6 that he agreed to give you this house?
7 A. Nope.
8 Q. Okay. And, so, you don't have any arrangements for
9 Dennis Mitchell to move in to this house currently. Correct?
10 A. I mean, he can come on when he get ready. I'll
11 make some arrangement.
12 Q. Okay. But you believe that Sumter Mitchell did not
13 intend for Dennis Mitchell to live in this house?
14 A. I believe that.
15 Q. Do you believe Sumter Mitchell intended to give
16 Dennis anything?
17 A. Yes. Yes. Yes.
18 Q. So, you believe that Sumter Mitchell wanted you to
19 stay in this house over Dennis.
20 A. Yes. Yes. He wanted us to stay in it. Dennis
21 supposed to be in it with me. Me and Dennis both signed the
22 thing -- the paper. Dennis supposed to be in there with me,
23 and Dennis is such of a Daddy's baby, he went with Daddy.
24 Q. Is there a reason that Sumter never agreed to sign
25 it over to you during his life?

1 A. I don't know what reason it did. I guess because
2 my other sisters and brothers. He didn't want to do nothing
3 [sic] to hurt them.
4 Q. Okay. But he didn't want them to have any of this
5 house, either? Just you?
6 A. I don't know that. But I'm willing to share what I
7 got with my brothers and sisters.
8 Q. Okay. So, you believe he wanted you to have this
9 over his son, Dennis.
10 A. I do.
11 MR. BURNETTE: Okay. No more questions.
12 THE COURT: Follow-up, Mr. Foster?
13 MR. FOSTER: I have a few.
14 REDIRECT EXAMINATION BY MR. FOSTER:
15 Q. Ma'am --
16 MR. FOSTER: Can I have the documents, please?
17 MR. BURNETTE: Yes.
18 REDIRECT EXAMINATION BY MR. FOSTER:
19 Q. -- ma'am, the documents which Mr. Burnette asked
20 about, but didn't show you, can you identify these, ma'am?
21 A. Yes, sir. These came to my house.
22 Q. And what are they, to your knowledge, ma'am?
23 A. They're my dad's bank statement.
24 Q. And, ma'am, what do you understand to be the
25 situation about the money shown in these documents?

1 A. Well, on the last paper, it say my dad had a -- he
2 had a deposit come in for \$167 -- \$169, and it made his
3 deposit go to \$1275.24. Somebody went in on the 11th the
4 18th and made a withdraw and took it all out.
5 Q. What year, ma'am?
6 A. The year was the 11th the 18th of '20 -- 220 [sic],
7 I mean. '20, yeah.
8 Q. 2020?
9 A. Yeah.
10 Q. Okay. And you understand -- did you have any
11 understanding from dealings with him as to whether he got
12 that money?
13 A. My daddy died the 9th of November. How could he
14 take some money out the 18th?
15 Q. Okay. Let me have that, ma'am.
16 THE COURT: Are you going to ask to submit that into
17 evidence?
18 MR. FOSTER: Beg your pardon?
19 THE COURT: Are you going to ask to submit that -- ask
20 to submit that into evidence?
21 MR. FOSTER: Yes, ma'am.
22 THE COURT: Do you have any objection, Mr. Burnette?
23 MR. FOSTER: No objections.
24 THE COURT: Number 10.
25 (Petitioner's Exhibit No. 10 admitted into evidence)

1 REDIRECT EXAMINATION BY MR. FOSTER CONTINUES:
2 Q. Ma'am, one more question. Based upon your dealings
3 with your father, did you rely upon that in fixing the house
4 up?
5 A. No. My dad -- everybody say he was losing his
6 mind, but he wasn't losing his mind. My dad knew exactly
7 what he was talking about.
8 Q. Well, my question, ma'am, is this: you had dealings
9 with your father.
10 A. Yeah.
11 Q. You understood him to want you to stay in the
12 house.
13 A. Yes. Yes.
14 Q. On the basis of that understanding, did you make
15 the repairs you testified to?
16 A. I did. I did.
17 Q. Ma'am, one more matter which you've reminded me of.
18 And I don't think this needs to go into evidence because it's
19 part of the record. When Ms. Marshall sign- opened this
20 estate, she related four children, as I understand it.
21 A. She listed --
22 Q. Pardon me, I'm wrong. She listed only Dennis
23 Mitchell.
24 A. Yes.
25 Q. And then I believe somebody, Ms. Latrenda Reeder,

1 wrote her about the other family members.
2 A. Yes.
3 MR. FOSTER: Okay. I don't think I had anything
4 further.
5 THE COURT: Well, I'd just like to clarify that the
6 application for her probate, an appointment listed as
7 intestate heirs Dennis Mitchell and then Randy Mitchell, and
8 he was designated as deceased with no children, is what the
9 Court has in it's record.
10 MR. FOSTER: Thank you, ma'am.
11 THE COURT: All right. Couple questions I have for you,
12 Ms. Caldwell.
13 THE WITNESS: Yes, ma'am.
14 THE COURT: I was looking at the lease. It looks like
15 this began on December 30th of 2011.
16 THE WITNESS: Yeah.
17 THE COURT: And it looks like the term of the lease
18 states -- it's paragraph number three -- says, "The term of
19 the lease shall commence on 12/30/11 and expiration on the
20 blank day of something," and that's been whited out on this
21 copy. What was the expiration date of this lease?
22 THE WITNESS: I don't know. I don't know nothing [sic]
23 about --
24 THE COURT: Did you have anything to do with whiting out
25 this information?

1 THE WITNESS: No, ma'am. No, ma'am.
2 THE COURT: Did -- you said you paid the property taxes
3 on the house and you've submitted into evidence a tax bill
4 for --
5 THE WITNESS: Yes, ma'am.
6 THE COURT: -- the 2021 taxes.
7 THE WITNESS: Yeah. When my dad was living and had to
8 pay taxes, I had to give him half of the money for the taxes.
9 THE COURT: All right. For what years?
10 THE WITNESS: For all the ones that from the time I
11 moved in and up until the time that he deceased.
12 THE COURT: Do you know how much you gave him?
13 THE WITNESS: No, I don't know how much money I gave
14 him. Like, I'd give him \$100, sometimes \$200, sometimes 250.
15 You know, (inaudible), he had a tremendous bill that was like
16 700-and-something or 900-and-something. Anyway, I had to
17 give him half of that for it.
18 THE COURT: Okay. And this was taxes for 2021, which
19 were \$50.79.
20 THE WITNESS: Yeah, and then I got one at the place --
21 at the tax place under Bernice White, where I paid with my
22 card at. I couldn't get that one because Ms. Marshall had
23 went to the tax place and said contact her if anybody come up
24 there to pay taxes. I have to contact her.
25 THE COURT: All right. So, what year was that for?

1 THE WITNESS: That was for last year.
2 THE COURT: Okay. Well --
3 THE WITNESS: And she started that in 220 [sic].
4 THE COURT: -- all right. This is for last year, this
5 is 2021.
6 THE WITNESS: Okay.
7 THE COURT: All righty. Do you have a copy of your
8 birth certificate?
9 THE WITNESS: Yes, ma'am.
10 THE COURT: Is your father -- is Sumter Mitchell's name
11 on there as your father?
12 THE WITNESS: No, ma'am.
13 THE COURT: Okay. All righty. Were you ever reimbursed
14 by anyone for any of these expenses that you paid on the
15 house that you've submitted into evidence?
16 THE WITNESS: Nobody never [sic] gave me nothing [sic],
17 ma'am.
18 THE COURT: All righty.
19 THE WITNESS: Nothing.
20 THE COURT: And do you understand that if this Will is
21 invalid that whoever the children are of Mr. Sumter Mitchell
22 would be the heirs of his estate?
23 THE WITNESS: Yes, ma'am.
24 THE COURT: All right. And do you understand that if
25 you lived in that house that they would be able to ask you to

1 pay them rent?
2 THE WITNESS: Yes, ma'am.
3 THE COURT: Okay. And do you understand that, at any
4 time, any of them could partition for the sale of that
5 property?
6 THE WITNESS: Yes, ma'am.
7 THE COURT: All righty. Now, talk a little bit about
8 when your father was on morphine. You said he was on
9 morphine after he came back from Pineville.
10 THE WITNESS: Yes, and he --
11 THE COURT: What were the dates that he was in Pineville
12 that he was -- after which he was on morphine?
13 THE WITNESS: He stayed in Pineville for about two weeks
14 and --
15 THE COURT: What were the dates of that?
16 THE WITNESS: The date?
17 THE COURT: What dates was he there?
18 THE WITNESS: I don't know the date, ma'am. He died in
19 November.
20 THE COURT: So, he was on morphine until he died?
21 THE WITNESS: Yes, ma'am. Yes, ma'am.
22 THE COURT: For how long a period of time?
23 THE WITNESS: Well, he came home for two weeks. My
24 daddy died, like, the seventh day.
25 THE COURT: After he came home.

1 THE WITNESS: After he come home.
2 THE COURT: So, he was only on morphine from the time
3 that he was in the hospital in Pineville and then he came
4 home for about a week.
5 THE WITNESS: Yeah.
6 THE COURT: All right. And I think your testimony was
7 that before he was on morphine, he was of sound mind.
8 Correct?
9 THE WITNESS: I want to say my dad was of sound mind
10 because I wanted my dad to be perfect. It would be like he
11 was because that was my dad. I wanted him to be -- I didn't
12 want him to be sick at all. Not at all.
13 THE COURT: Well, the question is was he of sound mind
14 until he started taking morphine?
15 THE WITNESS: No, ma'am. And I apologize. No, ma'am.
16 THE COURT: All right. Do you have any proof of his
17 capacity prior to his taking morphine?
18 THE WITNESS: No, ma'am.
19 THE COURT: All right. Do you have any doctor's
20 information about any type of mental -- cognitive problems he
21 might have had?
22 THE WITNESS: No, ma'am.
23 THE COURT: Okay. Thank you. That's all I have. You
24 may step down. Thank you.
25 THE WITNESS: Yes, ma'am.

1 THE COURT: Next witness, Mr. Foster.
2 MR. FOSTER: We call Ms. Reeder.
3 THE COURT: Ms. Reeder, come on over, please. I'm going
4 to swear you in. Just remain standing while I swear you in.
5 Raise your right hand, please.
6 Do you swear or affirm to tell the truth and nothing but
7 the truth, so help you God?
8 THE WITNESS: Yes.
9 THE COURT: Thank you. Please be seated. And before
10 you get started, I don't know if Mr. Foster's going to ask
11 you this. What is your current and correct address?
12 THE WITNESS: It's 1036 North Wendover Road, Charlotte,
13 North Carolina 28211.
14 THE COURT: I'll repeat that back. 1036 North Wendover
15 Road, in Charlotte, at 28211.
16 THE WITNESS: Correct.
17 THE COURT: All right. Thank you.
18 Go ahead, Mr. Foster.
19 WHEREUPON:
20 LATRENDIA REEDER, having first been sworn, was examined
21 and testified as follows:
22 DIRECT EXAMINATION BY MR. FOSTER:
23 Q. Ma'am, state your full name.
24 A. My name is Latrendia Tashia Reeder.
25 Q. Okay. Ma'am, who are your parents?

1 A. Sumter Mitchell and Rose Whitter.
2 Q. Okay. Ma'am, do you know who your brothers and
3 sisters are?
4 A. Yes.
5 Q. Who are they?
6 A. Bernice Caldwell, Sharon, Lamonte, O'Neal --
7 Q. Let me stop you and get full names. Sharon?
8 A. Culp.
9 Q. Go ahead.
10 A. Lamonte -- forgot his last name.
11 UNKNOWN FEMALE: (in background) Davis.
12 THE WITNESS: Davis. Yeah. And O'Neal Mitchell.
13 DIRECT EXAMINATION BY MR. FOSTER CONTINUES:
14 Q. Okay. Are those --
15 A. And Dennis Mitchell.
16 Q. Okay. Now, ma'am, just procedurally, you're the
17 guardian in this case. We haven't asked you to ask any
18 questions of the people who have been on the stand. Did you
19 have any? Did you have any questions of Ms. Caldwell or Ms.
20 Marshall that you wish to ask?
21 A. Yes.
22 Q. Okay. Well, I'll let the judge take care of that
23 at the time.
24 Ma'am, did you go to Mr. Sumter Mitchell's funeral?
25 A. Yes, sir.

1 Q. Were you aware of the funeral bulletin that we've
2 been talking about?
3 A. Yes.
4 Q. Ma'am, does that document accurately state his
5 children's names? I'm going to show that to you. That is
6 Petitioner No. 4, if you'll at the second page.
7 A. Yes.
8 Q. Does that document accurately state the names of
9 his children?
10 A. Yes, it does.
11 Q. Okay. That would be including the dead children,
12 Randy and Yvette.
13 A. Correct.
14 Q. Ma'am, do you know who prepared that document?
15 A. Patricia Mitchell -- I mean, Marshall. I'm sorry.
16 Q. Did she ever indicate to you prior to the
17 deposition you were at that she was only doing that out of --
18 whatever you would call it -- courtesy?
19 A. Yes.
20 Q. When was that?
21 A. Today.
22 Q. Okay. But that's after. I'm asking about before.
23 A. Before?
24 Q. Before the depositions, ma'am, did you ever hear
25 Ms. Marshall, or someone on her behalf, say, "That's not

1 true. I don't know who those children are."
2 A. Correct.
3 Q. Okay. Ma'am, do you have any knowledge of the
4 dealings between Ms. Caldwell and her father as to the house
5 at 1118 Green Street Extension?
6 A. Yes.
7 Q. What is your knowledge?
8 A. My knowledge is my father wanted Bernice Caldwell
9 to stay there.
10 Q. Ms-hm. And, ma'am, do you have any knowledge of
11 the money that Ms. Caldwell spent improving the house?
12 A. Yes.
13 Q. What do you know, ma'am?
14 A. I know that she had got multiple things done in the
15 house.
16 MR. FOSTER: Okay. Ma'am, I thank you. I believe those
17 are my questions.
18 THE COURT: Mr. Burnette?
19 CROSS-EXAMINATION BY MR. BURNETTE:
20 Q. Do you have your birth certificate here today?
21 A. No, I don't have my birth certificate, and I also
22 called Columbia and they don't have it. After 10 years, it's
23 gone.
24 Q. Okay. Is there any legal documentation that Sumter
25 Mitchell --

1 A. After 10 years, it's gone.
2 Q. So, my question is is there any legal documentation
3 --
4 A. No, I don't have it on my birth certificate.
5 Q. Okay. So, there are no records Sumter Mitchell's
6 your father. Correct?
7 A. Say what?
8 Q. There's no record Sumter Mitchell is your father.
9 A. There's no record.
10 MR. BURNETTE: Okay. No more questions.
11 MR. FOSTER: Perhaps this is the point for me to get up
12 and say something legal, although I'm well aware it's the
13 Court's decision.
14 The language used by Ms. Marshall in her answer, when we
15 listed the people, said -- I want to be accurate here --
16 "Respondent denies Paragraph 3--" that's where we allege the
17 people we knew at the time --to the extent that Bernice
18 Caldwell is not an intestate heir of the deceased." She said
19 nothing about Ms. Robinson. It is our position -- and I
20 don't mean to interrupt the Court to make a legal argument in
21 the middle of this -- Ms. Marshall prepared a document
22 listing the heirs. The burden at this point is upon her to
23 disprove the heirs, not upon us to prove them.
24 (to Mr. Burnette) I take it that you had nothing more.
25 Ms. Reeder, ma'am, you can step down.

1 THE COURT: Hang on one second.
2 MR. FOSTER: Okay.
3 THE COURT: I'm writing notes here. So, is it your
4 testimony, Ms. Reeder, that you tried to get your birth
5 certificate and were told that you could not get it if it was
6 more than 10 years?
7 THE WITNESS: Yes.
8 THE COURT: Do you know that's totally inaccurate?
9 THE WITNESS: That's what they told me in Columbia,
10 They said they don't have it no [sic] more.
11 THE COURT: Okay. Well, that's just simply not true.
12 THE WITNESS: Okay.
13 THE COURT: All right. That's all I got. Thank you.
14 MR. FOSTER: Thank you. We call Ms. Sharon Culp.
15 THE COURT: All right. Ms. Culp.
16 UNKNOWN FEMALE: (in background) Your birth certificate
17 or your DNA?
18 MS. REEDER: My DNA, not my birth certificate.
19 THE COURT: All right. Hold on. Hold on. So, do you
20 have a copy of your birth certificate?
21 MS. REEDER: Yeah, I have a copy of my birth
22 certificate, but my dad's name is not on there.
23 THE COURT: Okay. Thank you.
24 Ms. Culp, come up. Thank you. Just remain standing
25 while I swear you in, please. Raise your right hand.

1 Do you swear or affirm to tell the truth and nothing but
2 the truth, so help you God?
3 THE WITNESS: Yes, ma'am.
4 THE COURT: Thank you. Please be seated.
5 Go ahead, Mr. Foster.
6 WHEREUPON:
7 SHARON CULP, having first been sworn, was examined and
8 testified as follows:
9 DIRECT EXAMINATION BY MR. FOSTER:
10 Q. Ma'am, would you state your name for the record?
11 A. My name is Sharon Culp.
12 Q. Ma'am, who are your parents?
13 A. Josie Wilson --
14 Q. Well, that's one --
15 A. -- and Sumter Mitchell.
16 Q. Okay. Ma'am, do you know the names of your
17 brothers and sisters?
18 A. Yes.
19 Q. Who are they?
20 A. Bernice Caldwell, Dennis Mitchell, O'Neal, and I
21 just met two of my siblings since the funeral, which is
22 Trends and Jamal.
23 Q. Who is Jamal?
24 (background)
25 A. Lamont. Sorry.

1 Q. Well, is Thomas Lamont Davis?
2 A. Yeah, Thomas Lamont.
3 Q. And O'Neal, I presume, is Sumter O'Neal Caldwell?
4 A. Yeah. Ma-hmm.
5 Q. Ma'am, are you aware of any of this talk that came
6 in, properly or not, as to a claim about DNA in Charlotte
7 involving your father?
8 A. In Charlotte. What are you telling --
9 Q. I'm asking whether you know anything about it.
10 A. No.
11 Q. Ma'am, to your knowledge, you know Ms. Patricia
12 Marshall.
13 A. Yeah, I know her. And I was shocked to hear her
14 say that she didn't know me because I can remember back from
15 a little girl, you know, she'd talk to me, come up to me,
16 very nice to me. The whole family was.
17 Q. Ma-hmm.
18 A. And, you know, I had been to her house and all of
19 that. And I was just shocked to hear her say that she didn't
20 know me.
21 Q. Okay.
22 A. Which I know she know me because I've been knowing
23 her for years and years now.
24 Q. Ma'am, do you know anything about the dealings
25 between the late Mr. Sumter Mitchell and Ms. Caldwell as to

1 1118 Green Street Extension?
2 A. He wanted her to stay in that house. And when she
3 first moved in there, she did a lot of fixing up on the
4 plumbing and all.
5 Q. You know this personally.
6 A. Mm-hmm.
7 Q. Okay.
8 A. Because I visit her on a regular basis.
9 Q. Okay.
10 A. We stay in contact.
11 MR. FOSTER: I have no further questions.
12 THE COURT: Thank you.
13 MR. FOSTER: Oh, ma'am, the gentleman --
14 THE COURT: Oh, I didn't see you leaving. Yes, Mr.
15 Burnette can ask you questions now and then I may or may not
16 have any.
17 CROSS-EXAMINATION BY MR. BURNETTE:
18 Q. Ms. Culp, do you have your birth certificate here
19 today?
20 A. No.
21 Q. Do you have any documentation that Sumter Mitchell
22 is your father?
23 A. No, but he know that I was his.
24 Q. Okay. Would you regularly visit him as an adult?
25 A. Yeah, and coming up I did.

1 Q. Okay. And you've never responded to any paternity
2 tests or made any --
3 A. No.
4 Q. -- efforts to prove paternity?
5 A. Mm-mm.
6 Q. All right. And you have no records, birth
7 certificate or otherwise, that he's your father?
8 A. No, sir.
9 MR. BURNETTE: Okay. No further questions.
10 THE COURT: Any follow-up, Mr. Foster?
11 MR. FOSTER: No, ma'am.
12 THE COURT: Okay. That's all. I don't have any. You
13 can step down.
14 All right. Next, Mr. Foster?
15 MR. FOSTER: I believe that is Plaintiff's case -- or
16 Petitioner's case, ma'am.
17 THE COURT: All righty. Thank you.
18 Mr. Burnette, I don't see anybody else in the courtroom.
19 Are you going to call a witness?
20 MR. BURNETTE: Yes, Your Honor. At this time, I'd like
21 to move for a directed verdict. I don't believe evidence has
22 established an incapacity, a verbal contract that would be
23 enforceable, paternity, or anything else that they've
24 alleged. I believe that it's not sufficient evidence to
25 invalidate this Will, anything improper was done, and I

1 believe that we should have a directed verdict, Your Honor.
2 THE COURT: All righty. Well, I do have -- I'm not
3 going to grant a directed verdict. I'm going to -- if
4 there's no other testimony, I'm going to take this under
5 advisement. But I have a couple of questions.
6 MR. FOSTER: I'm assuming, ma'am --
7 THE COURT: I have a couple of questions.
8 MR. FOSTER: I understand that. My question was I
9 assume they were to the attorneys.
10 THE COURT: Yes, to you, and I think I have one for Ms.
11 Caldwell.
12 So, I want to revisit the issue of -- is it -- whose
13 deposition was it I told you couldn't come in? Is it --
14 MR. FOSTER: Ms. Robinson, I believe.
15 THE COURT: Ms. Robinson. Was she a witness to the
16 Will?
17 MR. FOSTER: Yes, she was.
18 THE COURT: Okay. Now, why is she not available for
19 trial?
20 MR. FOSTER: Ma'am, I didn't find any of her testimony
21 to be germane to what we were talking about. As the lady
22 testified, she was called in after the event, after the --
23 THE COURT: But she's not unavailable for trial. She
24 could've been here had you chosen her to be here.
25 MR. FOSTER: No, she's not unavailable.

1 THE COURT: All right. Then it still doesn't come in.
2 All righty. Who are the alleged children of the
3 deceased alleged siblings, Mr. Randy Mitchell and Yvette.
4 MR. FOSTER: They are the persons listed in my -- to my
5 knowledge, ma'am --
6 THE COURT: In the obituaries?
7 MR. FOSTER: -- they are the persons listed --
8 THE COURT: Well, let me ask Ms. Caldwell.
9 Ms. Caldwell, you're still under oath. Are there any
10 other children of your father -- that would be your siblings
11 -- that are either alive or deceased --
12 MS. CALDWELL: No, ma'am.
13 THE COURT: -- than the people that have been named in
14 the petition and the people that now -- allegedly Randy and
15 Yvette -- are also children? Any there any others?
16 MS. CALDWELL: No, ma'am.
17 THE COURT: All right. Who are -- and the children --
18 are there any other children of Yvette other than the ones
19 that are listed in the obituary or the funeral?
20 MS. CALDWELL: (inaudible)
21 THE COURT: No other children besides those?
22 MS. CALDWELL: No other children.
23 THE COURT: Are there any other children of Randy other
24 than the ones that are listed in his funeral and obituary?
25 MS. CALDWELL: Only two.

1 THE COURT: All right. Thank you. Oh, and one other
2 question. Do you have any kind of a written agreement with
3 your father about making repairs to the house?
4 MS. CALDWELL: No, ma'am, he just told me I had to fix
5 it up.
6 THE COURT: Okay. All right. Thank you. You may sit
7 down. Thank you very much.
8 All right. Mr. Foster, do you have any closing
9 argument?
10 MR. FOSTER: Ma'am, we've handed up our brief, and in
11 response to what Mr. Burnette is arguing, Ms. Marshall has
12 admitted the children by her preparation -- her admitted
13 preparation of the funeral bulletin. If, at this point, she
14 wishes to deny it, it is our position that she has the burden
15 of doing so. It is not a matter of my clients having to
16 prove who they are. It has been admitted.
17 That's all.
18 THE COURT: All right. Mr. Burnette?
19 MR. BURNETTE: Your Honor, the fact that they're banking
20 on this funeral bulletin as proof of paternity shows that
21 they do not have legal documentation or any legal proof of
22 paternity.
23 The only thing my client admitted was that out of
24 respect to Sumter Mitchell taking care of these children,
25 that she listed them just out of respect to them. Not that

1 they are his biological children, not that they are in any
2 way entitled to an interest in this Will. He simply took
3 care of them, and that's the explanation. There's no
4 admission these are his children, and they have no legal
5 documentation, which you think out of three people, at least
6 one would have.
7 There's no evidence of incapacity, there's no evidence
8 of this agreement to give real estate to the petitioner, and
9 I see none of their causes of action proven here. Your Honor.
10 THE COURT: I want to ask Ms. Marshall -- and you're
11 still under oath, Ms. Marshall -- is your testimony that the
12 respondents in this case are not the children of your
13 brother, Sumter Mitchell?
14 MS. MARSHALL: My response is that I don't know --
15 THE COURT: (inaudible)
16 MS. MARSHALL: -- because we all lived in a neighborhood
17 together; my brother took care of children; my mother took
18 care of children; like I said, I'm a foster mom. I can't say
19 for sure.
20 THE COURT: So, your testimony is that you do not know.
21 MS. MARSHALL: I do not know.
22 THE COURT: Okay.
23 MS. MARSHALL: I do not know.
24 THE COURT: All right.
25 MS. MARSHALL: And he never told me.

1 THE COURT: All right. That's enough. I gotcha.
2 All right. Well, unless the attorneys have anything
3 else that they wish to bring up?
4 MR. FOSTER: I would mention one thing, ma'am. Though
5 it's unnecessary for the Court, should all else be set aside,
6 there is a question of something I have only seldom dealt
7 with, which is the question of betterment. Which is the fact
8 that my client has put sizeable sums into this property and,
9 therefore, is entitled to remedies in, if I can cite it
10 correctly, I'm quite correct, § 27-27-10 Exec. I believe
11 that our thing has brought us that.
12 One more thing I would say -- and I don't wish to keep -
13 - try the Court's patience -- Mr. Burnette competently has
14 latched upon this thing about whether Mr. Mitchell was
15 competent. Now, that, of course, is an issue. I'm not
16 disputing that. I think my client's testimony was she said
17 what she knew. So, I don't know that it's been -- there's
18 any issue at hand.
19 However, our contention is, as I have said, before, we
20 have a document. Ms. Marshall is the scrivener. She is the
21 only person who explained this to Mr. Mitchell and she is the
22 total -- she is the only heir. I've handed up the law on
23 that.
24 I thank the Court for it's patience.
25 THE COURT: All right. Thank you.

1 Mr. Burnette, anything else?
2 MR. BURNETTE: (non-verbal response)
3 THE COURT: There's a memorandum that I don't know if
4 you've see or not.
5 MR. FOSTER: I've given him a copy.
6 THE COURT: All right. I'm going to give you an
7 opportunity to prepare a memorandum contra, if you wish. Do
8 you wish?
9 MR. BURNETTE: Yes, Your Honor. Would that be something
10 to submit to the Court in the coming days?
11 THE COURT: Yes.
12 MR. BURNETTE: Yes, Your Honor, I would --
13 THE COURT: I mean not, like, right now. But, yeah, I'd
14 like you to get that to the Court within the next week or
15 two?
16 MR. BURNETTE: Yes, Your Honor.
17 THE COURT: And provide a copy to Mr. Foster.
18 MR. BURNETTE: Yes, Your Honor, I'll take that
19 opportunity.
20 THE COURT: All right. And, again, I'll take it under
21 advisement. Thank you both for being here. Thanks to the
22 parties for being here. I appreciate the testimony and I
23 will get back to you. Thank you.
24 MR. BURNETTE: Thank you, Your Honor.
25 MR. FOSTER: Well, if I may do some apple polishing, I

1 thank the Court.
2 [END OF RECORDING]
3 [END OF TRANSCRIPT]

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C E R T I F I C A T E P A G E

1
2 I, Angela P. Ferreire, Transcriptionist,
3 do hereby certify that this transcript
4 is a true and accurate record of the
5 electronically recorded proceedings,
6 transcribed under my direction
7 this 13th day of January, 2023.

8 *Angela P. Ferreire*
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ANGELA P. FERREIRE

1 STATE OF SOUTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 2 COUNTY OF YORK CIVIL DISTRICT COURT
 3 C.A. NO. 2021-ES-46-00206
 4
 5 **ORIGINAL**
 6 BERNICE CALDWELL,
 7 Petitioner,
 8 vs.
 9 PATRICIA MITCHELL, et al.
 10 Respondents.

11
 12 PETITIONER'S MOTION TO AMEND JUDGMENT
 13 (Digitally Recorded)
 14
 15 HEARING BEFORE: HONORABLE CAROLYN E. WOODRUFF
 16 DATE: September 28, 2022
 17 TIME: Unknown
 18 PLACE TAKEN: York County Probate Court
 19 2 South Congress Street
 20 York, South Carolina 29745
 21
 22
 23 TRANSCRIBED BY: ANGELA P. FERREIRE
 24
 25

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1 I N D E X
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 3 ARGUMENTS:
 4 By Mr. Foster.....5, 13
 5 By Mr. Burnette.....10
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1 P R O C E E D I N G S
 2 THE COURT: This is a hearing on a motion filed by Mr.
 3 Foster pursuant to Rule 59, I believe. Yes. This is -- to
 4 back up a little bit, the Court issued an order on August the
 5 16th -- signed and filed on August the 16th; Mr. Foster filed
 6 his motion to alter or amend the judgment on August the 26th;
 7 the Notice of Hearing and proof of delivery of the Notice was
 8 filed on September 12th of this year.
 9 Y'all make sure your microphones are on. It looks like
 10 they are. And, Mr. Foster, if you want to sit down, it's
 11 easier for that microphone, if you pull it over closer to
 12 you, to pick up what you're saying.
 13 Mr. Foster --
 14 MR. FOSTER: I thank the Court for it's courtesy.
 15 THE COURT: Well, any time you're fine sitting down.
 16 Mr. Foster has his client, Ms. Caldwell, with him, and
 17 Ms. Reeder is here, as well. Is this Ms. Culp back there,
 18 too?
 19 MS. CULP: Yes.
 20 THE COURT: Okay. So, this is your motion, Mr. Foster.
 21 MR. FOSTER: Thank you.
 22 First of all, ma'am, in light of what the Court had to
 23 say about return envelopes, is the Court satisfied with the
 24 notice that has gone out in this matter?
 25 THE COURT: Yeah.

1 MR. FOSTER: Okay. Very well. I'll go ahead, ma'am.
2 Ma'am, the Court issued it's order, and I will say to
3 begin with I believe that I may have done a poor job in
4 presenting what I believe to be the basis of what we're here
5 about today.
6 THE COURT: Okay.
7 MR. FOSTER: There is no dispute that the late Mr.
8 Sumter Mitchell signed this Will. There's no dispute that he
9 told two witnesses that it was his signature. Now, some of
10 this, ma'am, as I recall, came out; we did not call those
11 witnesses because we don't dispute that.
12 Our dispute here today is quite simply did he understand
13 what he signed. I have some very old law to cite for the
14 Court, and if I may, ma'am, if I can approach and pass up
15 what I'm going to discuss.
16 THE COURT: Yes, you may.
17 MR. FOSTER: I have handed a copy of this to Mr.
18 Burnette.
19 THE COURT: Thank you.
20 MR. FOSTER: Ma'am, we've combined our brief with our
21 motion, but what I'm mainly going to talk about today --
22 because it covers the same thing -- is the South Carolina
23 case in question and the case it cites.
24 Our court, in 1828, was faced with a situation like
25 this. I'm going to I hope not try the patience of the Court

1 to read the headnotes here. "Where--" this is from the fourth
2 down --where the capacity of the testator at the time of
3 execution is any degree doubtful, there must be proof
4 instructions or reading over." We are not claiming that Mr.
5 Mitchell was mentally incompetent. We are claiming -- and
6 this was not disputed -- that he was illiterate. He could
7 sign his name; this was agreed to. He could do nothing more.
8 Could not read or write beyond that fact.
9 Let me pause at this point and remind the Court, if I
10 may, of what I believe are the undisputed facts in this case.
11 Ms. Mitchell testified that Mr. Mitchell -- pardon me.
12 Let me be sure I'm getting my names right. Ms. Mitchell --
13 THE COURT: Ms. Marshall. Are you talking about Ms.
14 Marshall?
15 MR. FOSTER: I'm sorry. Ms. Marshall. Thank you,
16 ma'am.
17 THE COURT: Okay.
18 MR. FOSTER: Ms. Marshall testified that Mr. Mitchell
19 appeared with the document that has been presented as his
20 Will. That document is, on it's face, a draft.
21 She admitted that he could not read and write,
22 therefore, he obviously -- and I think the Court can take
23 notice of this -- could not have used the Internet. She did
24 not know where the matter came from.
25 She filled the Will out except for his signature, as I

1 recall her testimony. She claimed to have explained to him
2 what the thing meant; he signed it. She is the only heir.
3 Going back to the early case of Tompkins and Tompkins,
4 is there proof of instructions or reading over. There is her
5 testimony.
6 Moving on, reading again the headnotes, "The presumption
7 is strong against a party preparing a Will who takes an
8 interest under it, and although the Court will not presume
9 fraud, nor (inaudible) have we proclaimed it, it will require
10 strong evidence of intention."
11 Going on to the next footnote -- or headnote, "If the
12 party who prepared the Will takes by it the interest of
13 guardian, the residuary legatees--" which I believe is broad
14 enough to include being the heir --he falls within the
15 suspicions on which the rule requiring strong evidence of
16 intention is founded, and such a case proof that private
17 instructions were given to him by the testator is not
18 sufficient without evidence of what the instructions were or
19 other proof that the testator was acquainted with the
20 specific contents of the Will."
21 At the risk of repeating myself, ma'am, and hoping that
22 I do not try the patience of the Court, the only evidence we
23 have that Mr. Mitchell knew what he was signing is the fact
24 that Ms. Marshall said, "I explained it to him and he agreed
25 to it." My terms, not hers, but that's what she said. That

1 is the total evidence. She testified there were other people
2 who knew what he wanted to do and that it matched the Will;
3 they were not presented.
4 Ma'am, this being 1828, our Court cited a case from
5 English Law, which I've handed up. That is Billinghamst vs.
6 Vickers --
7 THE COURT: Ms-hmm.
8 MR. FOSTER: -- which is from 1810. This was obviously
9 another world than the one we're living in.
10 In that case -- I'm reading toward the bottom -- I'm
11 trying to find the right place to start, ma'am.
12 THE COURT: Go ahead. Take your time.
13 MR. FOSTER: "Considering that the capacity of the
14 deceased was extremely doubtful at time of execution--" I
15 pause to say to the Court we do not dispute his mental
16 ability, we dispute his ability to read and write and what
17 that -- which made him dependent on other persons -- going
18 on, "that there is a total absence of proof in the
19 instructions for these legacies, or anything that can be
20 considered as substitute for instructions, that these
21 legacies were in the handwriting of one of the legatees, that
22 the whole transaction was conducted by two interested
23 parties, it would be extremely dangerous to accept
24 declarations, however probable and circumstantial, made by
25 those very persons after the deceased's death as the any and

1 only evidence to supply the (inaudible) of instructions being
2 wholly unsupported by any sort whatsoever testimony and
3 declarations or of the recognitions made by the deceased
4 himself."

5 Ma'am, we've cited a lot of law in our brief. There is
6 some dispute about whether, in these circumstances, the
7 burden has been shifted to the heir -- the heir who prepared
8 and script made -- made herself the scrivener of the case.
9 However, in this case, we have no evidence except her
10 testimony as to those facts.

11 We've cited in our brief cases to the effect that, "an
12 illiterate testator had knowledge -- proof that he had
13 knowledge and necessary proof that he had knowledge has to be
14 satisfactory," we cite a New Jersey case. "Full and
15 satisfactory," we cite a Tennessee case. "Clear and
16 satisfactory," we cite an Illinois case. "Strong," we cite a
17 New York State case. We also cite Am. Jur. 2d and ALR.

18 Ma'am, in this case, the validity of this Will hangs
19 entirely upon the question of whether it is enough for the
20 heir and scrivener to stand up in front of this Court -- or
21 sit, I suppose -- and say, "He knew what he signed." I
22 suggest to this Court and argue it that is totally
23 insufficient. Whether we talk about burdens or not, it is --
24 there is no credible or no sufficient evidence to say that
25 Mr. Mitchell knew what he was signing. They had the option

1 to bring forward someone who could have given independent
2 evidence; they did not. The Will is void.

3 That is my understanding, ma'am, under the laws we've
4 cited and the cases we've found, and I might say to the Court
5 at the risk of trying patience, I have found no evidence to
6 the contrary, no cases to the contrary. The only variation
7 in what I have found is the varying discussions of the
8 degrees of proof.

9 In this case, as in the English case, there was nothing
10 on the other side. There's simply the fact that the lady got
11 up and said, "What I say is the truth." We believe the Court
12 should alter or amend this judgment accordingly.

13 Ma'am, that's where we're at.

14 THE COURT: Thank you very much, Mr. Poster.

15 Mr. Burnette, what is your response?

16 MR. BURNETTE: Thank you, Your Honor.

17 First, I disagree that this case shifts the burden for
18 the respondent to have to prove that the decedent knew the
19 contents of the Will. I believe that it is still their
20 overall burden, and there is a presumption that he was of
21 sound mind and that he did know the contents of his Will.

22 And as far as evidence that came out supporting that he
23 knew the contents of the Will, I think there was plenty that
24 came out in the hearing. It was essentially admitted that he
25 was of sound mind. Really the only testimony that he was of

1 unsound mind was that he was on morphine to an extent at some
2 times at the later stages of his life. But, otherwise, it
3 was essentially admitted that he was of sound mind and did
4 know what he was doing up until the end of his life.

5 As for evidence about whether he knew about the contents
6 of the Will, first I'd point to all the evidence about Dennis
7 Mitchell. And there was a lot of independent evidence, and
8 it was said by the petitioner that the decedent did have an
9 intention for Dennis Mitchell to live in this house, there
10 was evidence of that on the lease agreement and by the
11 witnesses, that there was concern for Dennis Mitchell by
12 Sumter Mitchell and that he did want to care for him.

13 And as the respondent testified, Your Honor, there was --
14 this wasn't one event where she sat down with the decedent
15 and he told her what to write and she wrote it. It was over
16 time. He came to her and he told her provisions over a
17 period of time as it came in and she did write those down,
18 and that he did verify to the witnesses that this is what he
19 intended and that this is what he signed. And the only
20 reason that the respondent was in charge of preparing this
21 Will wasn't because of any inability to understand or
22 anything like that, it was just because he could not write it
23 down. He needed someone to do that and the respondent was
24 the one who did it. She, of course, had a power of attorney,
25 she had written other legal documents for him, and had acted

1 in his place reliably over a long period of time, and that's
2 what she did in this case. That was his typical protocol, as
3 someone who could not read or write, was to have the
4 respondent write these things for him.

5 And as far as the intention, I believe it does match up
6 with what the testator would have wanted was for the house to
7 be fixed up and for Dennis Mitchell to move in there. I
8 would say there was a constructive trust in that regard in
9 that there was evidence supporting that that was, in fact,
10 his intention. And with that evidence and with, really, any
11 lack that he had -- any lack of testamentary capacity, in
12 fact, it was essentially confirmed otherwise is the way that
13 I would see how the evidence came out.

14 I think it was clear he understood what he was doing,
15 this was his method to prepare his Will, and there is plenty
16 of independent verifying evidence for that. And I don't see
17 any failure to show that or any burden that would be shifted
18 that wasn't otherwise overcome. I believe that we showed the
19 evidence that this was his Will, his intention, his
20 signature, and I don't think anything changes with that, Your
21 Honor.

22 THE COURT: Have you had a chance to read the cases that
23 Mr. Poster handed up?

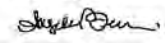
24 MR. BURNETTE: Not the ones he just handed up.

25 THE COURT: Okay.

1 MR. FOSTER: Those were handed over before argument,
 2 ma'am.
 3 THE COURT: Just --
 4 MR. FOSTER: I don't want to prejudice Mr. --
 5 MR. BURNETTE: I've read the Tompkins case.
 6 THE COURT: Okay. All righty. Any follow-up, Mr.
 7 Foster?
 8 MR. FOSTER: Very briefly, ma'am.
 9 I want to be very clear. We do not maintain -- and I do
 10 not believe there is any credible evidence -- Mr. Mitchell
 11 was mentally impaired. That's just not an issue here.
 12 THE COURT: Ms-hmm.
 13 MR. FOSTER: The question is what evidence do we have
 14 that he understood what he was signing. We have one thing:
 15 the scrivener and the heir. And I would argue to this Court
 16 in all reasonable likelihood the producer of this document
 17 says he did. By every law, by every decision I can find that
 18 is simply insufficient. We could've had outside testimony;
 19 we could've had people coming in to say, "Yes, Mitchell
 20 talked to me about this." "Yes, he was going to do this."
 21 Nothing.
 22 That's where we're at.
 23 THE COURT: Okay. All right. Your client seems to want
 24 to tell you something.
 25 MR. FOSTER: I'm sorry?

1 THE COURT: Your client seems to want to tell you
 2 something.
 3 (background)
 4 MR. FOSTER: Thank you, ma'am. (inaudible)
 5 THE COURT: Good to go? Okay. All righty. Very good.
 6 Thank you for being here.
 7 Mr. Foster, you certainly, you know, present an
 8 interesting argument and so do you, Mr. Burnette. I'm going
 9 to read the cases and I'll get back to you.
 10 MR. FOSTER: And, ma'am, if there's anything I'm sure
 11 either one of us can provide and if -- as I say, if Mr.
 12 Burnette feels he's been blindsided, I'm happy to allow him
 13 to respond in writing.
 14 THE COURT: Well, you're welcome to do that, Mr.
 15 Burnette --
 16 MR. BURNETTE: Thank you, Your Honor.
 17 THE COURT: -- but I think I have enough information.
 18 MR. BURNETTE: Thank you, Your Honor.
 19 THE COURT: Thank you.
 20 (OFF THE RECORD)
 21 (ON THE RECORD)
 22 THE COURT: Let me get back on the record. Go ahead.
 23 UNKNOWN FEMALE: I feel like you know how you go home
 24 and you just think about all the things that's been said in
 25 court? I feel like she painted my dad a whole different

1 person that he wasn't. And my dad love us and I feel like --
 2 THE COURT: Well, I don't want to hear -- this is all
 3 argu- this is a hearing on a motion. This is not for any
 4 follow-up testimony to be given. You've not been sworn in.
 5 I hear what you're saying, but this is just not the
 6 appropriate forum for that. That's over. The opportunity
 7 for that is over.
 8 UNKNOWN FEMALE: Okay.
 9 THE COURT: I heard the evidence, I heard the witnesses,
 10 I judge their credibility. All right? So, we're done.
 11 Thank you.
 12 MR. BURNETTE: Thank you, Your Honor.
 13 MR. FOSTER: Thank you, ma'am.
 14 [END OF RECORDING]
 15 [END OF TRANSCRIPT]
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1 C E R T I F I C A T E P A G E
 2
 3 I, Angela P. Ferreire, Transcriptionist,
 4 do hereby certify that this transcript
 5 is a true and accurate record of the
 6 electronically recorded proceedings,
 7 transcribed under my direction
 8 this 13th day of January, 2023.
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 12 ANGELA P. FERREIRE
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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM YORK COUNTY PROBATE COURT

The Honorable Carolyn E. Woodruff, Judge of Probate

Probate Case File No. 2021-ES-46-00206
Case No. 2022-CP-46-_____

In the Matter of SUMTER MITCHELL,

BERNICE CALDWELL,

Appellant,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

Of whom PATRICIA MITCHELL,
in her own right and as Personal Representative, is the

Respondent.

NOTICE OF APPEAL

BERNICE CALDWELL appeals the following Orders of the Probate Court: By _____



a) that Order issued on August 15, 2022, filed August 16, 2022 and received by counsel for Appellant on August 18, 2022; and

b) that Order Denying Motion to Amend or Reconsider issued and filed on October 12, 2022 and received by counsel for Appellant on October 14, 2022.

FILED RECEIVED

2022 OCT 26 P 12:50

CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

Copies of the above Orders are attached hereto and incorporated herein.

/s/ John Martin Foster
Attorney for Appellant
SC Bar No. 2086

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October 22, 2022

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ John Martin Foster

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Attorney for Appellant

November 1, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Circuit Court

The Honorable Carolyn E. Woodruff, Judge of Probate
The Honorable Daniel D. Hall, Circuit Judge

Appellate Case No. 2024-00259

BERNICE CALDWELL,

Appellant,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative,
DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS,
SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON,

of whom PATRICIA MITCHELL,
in her own right and as Personal Representative, is the

Respondent.

CERTIFICATE OF SERVICE

The undersigned, as counsel for Movant herein, hereby certifies that on November 1, 2024, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Record on Appeal, and this Certificate of Service

on the following counsel or persons of record by serving the following lawyers admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System, as allowed by Section (e) of the Order of the Supreme Court entitled "RE:

Service by E-Mail in the Trial Courts” (As effective May 6, 2022).

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Rock Hill, South Carolina

November 1, 2024