THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

Certiorari to the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch
Probate Judge

Appellate Case No. 2024-001115

RECEIVED
Dec 12 2024
S.C. SUPREME COURT

Julia B. Brooker,……Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually and as a Beneficiary of the Janet B. Brooker Trust,……Petitioners

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

Before addressing the core disputes in this case, it is important to acknowledge that there are multiple issues on which the parties agree. For example, none of the parties dispute that the Settlor/Mother, Janet Brooker ("Janet" or "Settlor"), wanted her three children, Beacham Brooker ("Beach"), Ellen Corontzes ("Ellen"), and Julia Brooker ("Julia"), to be treated as equally as possible. Additionally, the parties all agree and acknowledge that the new estate plan Janet executed in 2007 established an aggressive gift-giving program that had not been in existence previously, because it was not needed prior to 2007. What changed, leading to the full revision of the estate plan in 2007, was the exponential increase in market value of the securities held such that the total value of the estate exceeded the $2 million exclusion from the Federal combined estate and gift tax of 55% of the estate's value. Thus, the Brooker family requested the assistance of Todd & Johnson regarding strategies to reduce the potential amount of tax owed. Those strategies included establishing a 529 plan for the grandchildren's college tuition, personal residence trusts on Janet's home and beach condo, a family LLC to which Janet contributed Lockheed Martin stock as part of her capital contribution, and, most importantly for present purposes, the accelerated annual gifting plan where she would gift up to the federal annual gift tax exclusion (which increased over the period from $12,000 to $13,000 to $14,000) to all available family members, including for the first time the non-blood relatives—the spouses of Beach and Ellen. Further, the parties do not dispute that, because Julia was not married and had no children, a provision was included in the new estate plan requiring an equalizing distribution to Julia to "true up" Julia for gifts given to Beach's and Ellen's children and spouses.

Thus, the sole impetus for the equalization clause for Julia was the accelerated gifting program which did not exist prior to the 2007 estate plan. The pre-2007 estate plan had no such

clause. As Mr. Johnson testified when he spoke with Janet, the only gifts to be considered in the calculation of the equalization distribution are the gifts made after the Trust's execution in 2007. (App. 448-49.)

Where the parties disagree—and indeed, the fundamental issues in this case—are (1) the meaning of the phrase "[f]rom the date of this trust forward" in the equalization provision and (2) the weight to be afforded Mr. Johnson's testimony on that matter. Julia has no legally valid argument to explain the "[f]rom the date of this trust forward" language. She claims it means the date that Beach's trustee duties arose. However, by operation of law, Beach's duties did not arise until he signed the trust document, along with Janet, the settlor. S.C. Code Ann. § 62-7-801. Under Julia's argument, there is no need for the language of "[f]rom the date of this trust forward" because the imposition of trustee's duties occurred when Beach accepted being a trustee when he signed the Trust Agreement on October 16, 2007. The inability to present a legally valid explanation of the meaning of "[f]rom the date of this trust forward" is problematic for Julia.

Additionally, the parties disagree as to the weight to be afforded the testimony of W. Steven Johnson, Janet's estate planner. Mr. Johnson was "in the room"—he has first-hand knowledge of Janet's intent. Julia, however, when faced with Mr. Johnson's clear and unambiguous testimony that runs contrary to her position, would rather this Court look at the actions of Mr. Johnson's staff, specifically: the creation of a codicil by a paralegal that Mr. Johnson rejected because it did not capture Janet's intent; and a note from another paralegal that references collecting the number of gifts given to the grandchildren and spouses from May 1997 onward.[1] Julia's understanding of

[1] Mr. Johnson testified this note was made in error. Further, this note does not support Julia's argument that all gifts to spouses and grandchildren given during Janet's lifetime should be counted because the purported start date is May 1997—years well after the spouses and grandchildren entered the picture. Starting to calculate transfers in May of 1997 does not buoy Julia's argument.

Mr. Johnson's discussions of Janet's intent is of no moment. Rather, the direct testimony of Mr. Johnson is of import—and indeed, the crucial testimony in the record. This Court should reverse the Court of Appeals and enter judgment in favor of Beach and Ellen.

FACTUAL BACKGROUND

Prior to the 2007 estate plan amendments, Janet, the Settlor, had established trusts for each of her grandchildren at their birth and funded those trusts annually for a number of years through transfers of common stock. (App. 421:1–9; 444:25–445:1.) In addition, Janet paid the private school tuition for her grandchildren for a number of years. (App. 464:6–9.) None of this information was hidden from Julia. At the September 25, 2007 meeting Janet and the children had with Mr. Johnson, Mr. Johnson discussed private school tuition and 529 plans to reduce the estate value. (App. 578 (Mr. Johnson's notes referring to 529 plans and "private school – being done (emphasis in original)).[2] In an attempt of fairness toward Julia, Janet paid for a number of international trips for the two of them including to China, Africa, Peru and the Galapagos Islands, and Europe. (App. 518:23–519:23.)[3]

[2] Julia's repeated arguments that she was kept in the dark is not borne out by the record. She claims she did not learn of the Hammond (private school) tuition until she retained counsel. (Resp't Br. 8, n. 7.) This cannot be true. She relies heavily on the notes prepared by Mr. Johnson on the September 25, 2007 family meeting. In fact, she copies and pastes a copy of the note in her brief on page 4, which explicitly refers to the 529 plans and that private school is already "being done." Similarly, she tries to sully Beach by saying his opening offer was $300,000. (Resp't Br. 7). But Mr. Johnson clarified that answer by saying that number was a preliminary number that was later refined after addressing tax issues. (App. 474:15-19.) Julia spins a good story, but it is only that—a story. The record is devoid of evidence to support her contention.

[3] Julia takes issue with this position. (Resp't Br. at 14.) However, the testimony is clear that Julia's trips were more numerous and exotic (Peru, Galapagos Islands, Japan, Bali, Hong Kong, Spain, and Kenya) than any trips allegedly given to her siblings (Disney World, Grand Canyon, and Yellowstone). (App. 519-520.) Undeniably, Janet was generous with trips to her children.

Julia focuses on (a) her "understanding" of what Mr. Johnson purportedly told her and (b) paltry documentary evidence in an effort to avoid the clear testimony of Mr. Johnson. Regarding her "understanding," it is, at best, secondhand evidence. But, more importantly, this Court has the direct, firsthand evidence from Mr. Johnson, himself, which contradicts her "understanding." As for the documentary evidence, Julia focuses on (1) a draft codicil by office staff that was never used or shown to Janet, (2) notes purportedly taken by Mr. Johnson during the September 25, 2007 family meeting,[4] and (3) notes from Mr. Johnson's paralegal that referred to gifts from 1997. Regarding the codicil, Mr. Johnson testified that he was hoping it would be a quick fix to address the equalization issue, but realized the software that generated the codicil would not allow him to properly convey Janet's intent. (App. 463:18–464:4; 467:25–468:10.) There is no evidence that Janet reviewed the codicil, much less executed it. In fact, her ignorance of the codicil and resulting failure to sign it is evidence, in and of itself, that the codicil does not reflect her intent. Second, the only references to equalization or lifetime gifts in Mr. Johnson's notes (App. 578-79) are "(1) Do codicil – with equalization provision" on the first page and "equalization clause" on the second

[4] In a footnote, Julia also suggests that because Mr. Johnson did not use "future gifting" or "acceleration of gifting" in a time entry in which he wrote "discuss gifts of assets to children" then Mr. Johnson must mean that he discussed more than "future gifts" which presumably was gifts made in the past. (Resp't Br. at 3 n.1.) Julia is seeking perfection in a lawyer's description of his time spent. Quite frankly, Mr. Johnson's use of "discuss gifts of assets to children" does not mean that he spoke about any gifts other than the ones Janet was about to aggressively pursue. In fact, if these narratives are taken literally, these notes indicate that only gifts to Beach, Julia, and Ellen were discussed.

In fact, Julia's own Return suggests that Mr. Johnson was not talking about prior gifts. In her Return, Julia places emphasis on the fact that Mr. Johnson had no explicit knowledge of the alleged approximately $900,000 worth of gifts. (Resp't Br. *passim*.) But this emphasis is without merit. His alleged lack of knowledge of the amount of "gifts" given by Settlor is of no moment. What is of moment is his explicit knowledge of Janet's intent with respect to her estate plan and the equalization distribution. Julia is looking for meaning when none exists, other than the fact that Mr. Johnson discussed "gifts of assets to children."

page. There is nothing regarding lifetime gifts or that Julia should receive gifts from the early 1990s. It is a stretch to say that anything beyond an equalization provision was discussed. Finally, Mr. Johnson's paralegal was "simply mistaken" when she referenced another year (1997) for the collection of gifts, rather than 2007. (App. 475:14–476:2.) Moreover, the paralegal's notes do not support Julia's position as the paralegal says "[n]eed to know the amount of ***annual exclusion gifts*** to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, ***beginning in May of 1997***." (App. 636 (emphasis added).) Julia's position includes many more gifts than "annual exclusion gifts." She includes any transfer of cash or stocks to the grandchildren and spouses, not simply the annual exclusion gifts. And these transfers do not start in May of 1997. They start in 1992 (App. 552-56). Julia's reliance on this paralegal's mistake is misguided.

Next, Julia takes issue with Beach and Ellen's treatment of George DuRant, Julia's expert. Specifically, she argues that Beach and Ellen cannot complain about Mr. DuRant when they agreed to his numbers during the trial. (Resp't Br. at 14–15.) Additionally, Julia asserts they cannot complain about the nature of the alleged "gift"—whether it was a true gift or simply a transfer of funds—when they agreed to Mr. DuRant's calculations. (*Id.*) First, the probate court informed the parties that it was going to rule in favor of Beach and Ellen with respect to the issue of lifetime gifts consisting of those only from 2007 forward, *i.e.*, the gifts from the aggressive gifting plan. (App. at 36 ("This Court also indicated to the parties that only after Trust gifts were being considered.")) Consequently, there was no need to challenge Mr. DuRant's calculations or characterization of gifts pre-2007, which were much more varied and not consistent across the board like they were post-2007. (App. 552-56.) The calculations to which Beach agreed were those presented by both parties at the trial where the judge asked for the amount of post-2007 gifts with interest running to the date of the Trustee's tender to Julia. (App. 523:6–524:5.) Mr. DuRant

presented $732,235.86 (App. 638), while the Trustee presented $744,644 (App. 666-668)—a number larger than the number of Mr. DuRant, Julia's expert. Second, Beach and Ellen's complaint against Mr. DuRant's work product is that he simply listed all transfers to the spouses and grandchildren without investigating whether it was a gift or if an equal offsetting gift had already been made to Julia.

In sum, the testimony of Mr. Johnson and the Trust Agreement provide that lifetime gifts were only prospective and consisted of those gifts from October 2007 forward. Mr. Johnson's testimony and the Trust Agreement were the only competent testimony in front of the probate court regarding Janet's intent. This Court should reverse the Court of Appeals.

ARGUMENT

I. SETTLOR'S INTENT IS NOT FOUND IN JULIA'S INTERPRETATION OF THE TRUST.

Julia contends that she should be made whole from all the gifts given to Janet's grandchildren and children's spouses from the dates of their birth or marriage, respectively, to the date of Janet's death. From a commonsense perspective, this interpretation of Janet's intent is nonsensical because Janet could not have intended Julia to receive a "credit" in her column for every birthday gift given to each grandchild or every meal she may have bought for another sibling's family. Of course, Settlor wanted each child, including Beach and Ellen, to be treated equally, but within reason.

Julia looks to (1) the use of "equal shares" in the trust agreement, (2) the preamble to the equalization distribution clause which states that Settlor "previously made gifts" and the use of past tense in the equalization clause to indicate that pre-2007 gifts were to be used; and (3) the evidence at trial, including testimony that Julia was not to be disadvantaged and treated equally, that Mr. Johnson did not know about gifts worth approximately $900,000 before 2007, and that

Mr. Johnson's staff created documents with incorrect information as discussed above. But none of these reasons, alone or collectively, trumps the solid and consistent testimony of Mr. Johnson that Janet wanted lifetime gifts to refer to those made only after the creation of the Trust. And both sides agree that Janet's intent is of paramount concern. Mr. Johnson clearly and succinctly provided the probate court with what Janet's intent was—to equalize Julia with gifts from the Trust forward. The testimony has been continually ignored, including by the Court of Appeals, in violation of this Court's precedent.

Regarding the "equal shares" argument, no one disputes that Janet wanted her children to be treated equally. But Julia's reliance on the use of "equal shares" ignores the fact that the Settlor previously had a will and trust with the same provisions and, under that plan, had attempted to treat her children equally. She had set up and funded trusts for the grandchildren, funded them with minimal contributions, and made tax-advantaged payments[5] for the grandchildren's private school tuition. To compensate Julia, Janet paid for several expensive overseas trips for herself and Julia. Had she believed this was not adequate compensation, she would have paid Julia an equal share contemporaneously, as would have been the advice of Mr. Johnson. (App. 473.) Prior to the 2007 change in estate planning, Janet had never given federal gift tax annual exclusion gifts to non-blood relatives (the spouses of Beach and Ellen).[6] (App. 552-55.) The landscape of Janet's

[5] The Estate and Gift tax element emphasizes another inequity in the probate court's order. The equalization amounts the Court ordered are to be paid in post-tax dollars thus disregarding the fact that Julia benefits from the gifting program's tax savings of 55% of the amount of those gifts while Beach and Ellen do not.

[6] Janet did give the spouses the annual exclusion gift for 2007 days before the Trust was signed. But Janet made the gifts in contemplation of the aggressive gifting program and wanted to ensure she captured the 2007 tax exclusions.

estate plan changed with the aggressive gifting program; thus, Janet's new concern of Julia being disadvantaged.

Next, regarding the preamble/use of past tense argument, Julia argues that verb tense evidences the intent for Janet to include pre-Trust gifts. (Resp't Br. at 11–12.) However, this argument ignores the language "[f]rom the date of this trust forward" in subparagraph (2)(a) of the equalization clause. Importantly, the phrase of "[f]rom the date of this trust forward" dictates how the equalization distribution is to be calculated. This phrase appears only once in the trust—in the equalization clause—indicating a differing timeline for that clause than other duties imposed by the trust on the Trustee. Janet had always been fair in her gifting and included an equalization clause to make up for the accelerated gifting to grandchildren and non-blood relatives under the 2007 Trust. Those gifts and the equalization payment were to be made ***under*** and ***from*** the Trust which did not exist prior to 2007.

Next, Julia repeats her argument that, in reference to the Trustee's duties, use of the past tense of the verb "to make" indicates an intent to include all gifts made during Settlor's lifetime. However, the trust language is referring to a duty to be performed ***in the future*** (after death) to compensate for actions done ***in the past*** (from 2007 until death). The past tense is appropriate and says nothing about the date from which gifts were to be calculated. That part of the instruction is contained in the phrase, "[f]rom the date of this trust forward." That phrase must be given meaning. If Julia's argument means it refers only to the beginning of the Trustee's duties, then it causes those words to be redundant and superfluous and violates the rule of construction that, "A construction rendering a provision, term, or part meaningless, superfluous, surplusage, useless, inexplicable, or nugatory should be avoided." 17A CJS, *Contracts*, §§399–400, pp. 289–91; *see also Stevens Aviation, Inc. v. DynCorp Int'l, LLC*, 407 S.C. 407, 416–17, 756 S.E.2d 148, 153

(2014) ("'[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.'")

Julia tries to avoid the import of "[f]rom the date of this trust forward" by arguing that the Court should not be constrained by formal rules of construction when there is other evidence of Janet's intent. However, Julia forgets that the only competent evidence of Janet's intent, besides the Trust Agreement itself, is the testimony of Mr. Johnson, which undeniably provides that lifetime gifts were to be post-Trust and that Janet had no desire to include pre-Trust gifts in the equalization distribution calculation. This is not a "form over substance" argument. This language serves to capture Janet's intent that only post-Trust gifts are to be considered.

Finally, Julia argues that all children are treated equally under the probate court's interpretation, and therefore, the probate court's construction was correct. First, the children are not being treated equally as Julia is receiving credit for transfers to grandchildren prior to the Trust, which is not contemplated by the Trust as testified to by Mr. Johnson. (App. 473). Second, Julia argues that because the probate court did not award her everything she asked for, and therefore, did not receive a windfall, the probate court's construction must be correct.[7] This cannot be the law.

II. Johnson's Testimony Is of Utmost Value.

At best, Julia advances her opinion that Steve Johnson, the estate's attorney, was confused about his client's intentions in revising her estate plan. At worse, Julia argues that Mr. Johnson was not telling the truth to the probate court. Julia argues in the negative that Janet never expressed

[7] At trial, Julia argued that the Trust language required her to be paid the sum of all gifts to Ellen's spouse and children, plus all gifts to Beach's spouse and children. In other words, if Beach's family was paid $100 and Ellen's family was paid $100, Julia should receive $200–an obvious windfall to Julia.

to him a desire that pre-2007 gifts be excluded from the equalization calculation. (Resp't Br. at 17.) The point is, however, that Janet never said anything to the effect that, "I feel that I have been treating Julia unfairly, and I want a clause causing the Trustee at my death to go back in time and determine the gifts I have given during my life to Beach's and Ellen's spouses and children." Logically, Janet, the Settlor and gift-giver, who long retained accountants and estate attorneys, was in a better position than the newly appointed Trustee to calculate those amounts. She could have simply written a check to Julia or transferred stock to make up the difference instead of placing the burden on the Trustee to do such an investigation at an undetermined date in the future.

Julia argues that Mr. Johnson's testimony was not ignored because he testified that Settlor wanted her children to be treated equally. From the beginning of this litigation, everyone has agreed that the Settlor wanted the children to be treated equally, and as a result, she did not want Julia to be disadvantaged. The contention that the probate court relied on the testimony for Mr. Johnson for this proposition is hollow. Julia relies on this contention to say that Mr. Johnson's testimony was not ignored, and therefore, it is error to rely on the litany of caselaw cited in Beach and Ellen's brief in chief that supports the position that it is error to ignore the testimony of the estate drafting attorney.

Then, Julia cites a case out of the Surrogate's Court in New York (the equivalent of the South Carolina Probate Court system)[8] to argue that the estate plan drafter's testimony should not be considered due to bias or motive of the drafting attorney. (Resp't Br. at 20.) The New York Surrogate Court case is too far afield in this matter. It involves "preprinted form living trusts, which are now being heavily marketed in New York State" in an "especially disturbing" case

[8] New York Courts, Courts Outside New York City, Surrogate's Court https://www.nycourts.gov/courts/cts-outside-nyc-Surrogates.shtml (last accessed Dec. 4, 2024).

where the "trust takes the form of loose pages contained in a three-ring binder" with no clear nomination of the fiduciary, "one of the most fundament elements of [the decedent's] estate. . . ." *In re Estate of Pozarny*, 677 N.Y.S. 714, 716 (N.Y. Sur. 1998). Describing the preprinted trusts at issue, the Surrogate Court stated "[o]ne of the dangers of such a system . . . is that it leads participant franchisees, who may have little if any experience in sophisticated estate and tax planning to consider themselves competent to 'draft' complex instruments and purvey them on a large scale . . . such 'drafting' appears no more than piecing together various sections from the forms, often in a seemingly feckless, haphazard manner." *Id.* at 717. The court goes on to say "[i]ndeed, this Will and trust agreement collectively represent the most egregious example of maladroit 'drafting' this court has encountered." *Id.* Thus, it makes perfect sense not to allow a "draftsman"—not necessarily an attorney—to testify about intent. *Id.* at 718.

Here, Mr. Johnson is a certified specialist in Trust and Estate Planning by this Court, not a non-lawyer draftsman. The estate plan is a complex document, unlike the preprinted trust in the form of loose pages in a three-ring binder. South Carolina courts have long held that drafting attorneys can testify about the intent of the Settlor. *Hanahan v. Simpson*, 326 S.C. 140, 152, 485 S.E.2d 903, 910 (1997) (stating "testimony of the attorney preparing the will is generally held admissible on the ground that the attorney is not an 'interested person'"), *superseded by statute related to other matters*. There is no need to stray from well-established South Carolina law, and Mr. Johnson is the sole competent witness to testify. It was error to ignore his testimony.

Additionally, Julia argues Mr. Johnson testified that Janet never expressed a desire for lifetime gifts made prior to the Trust to be excluded from the calculation of the equalization provision. However, this attempt at a negative inference is clearly contradicted by Mr. Johnson's testimony at trial.

> Q. Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c), which is denominated equalizing distribution to the Settlor's daughter Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by paragraph (a)'s language, "From the date of the trust forward"?
>
> A. That is correct.

(App. 449:5-13.)

In an effort to combat Mr. Johnson's testimony, Julia argues that Mr. Johnson was impeached during his trial testimony. A review of Mr. Johnson's trial testimony, and Julia's counsel's attempt to impeach, shows that no impeachment occurred. The colloquy occurs on pages 470 through 473 of the Appendix. Mr. Johnson's testimony should have been considered and given great weight by the probate court and the Court of Appeals.

Next, Julia again argues that certain internal memoranda and draft instruments obtained through discovery from Mr. Johnson's office are competent evidence of Janet's intent that the equalization clause apply to lifetime gifts preceding the 2007 trust. These documents include a draft of a codicil and the notes discussed above. This argument must be rejected for at least three reasons: 1) the codicil was rejected by Mr. Johnson because it did not capture Janet's intent and the notes from the second paralegal were simply wrong; 2) the law firm's non-lawyer employees never met or corresponded with Janet, the Settlor, and are not qualified to express her intentions in legal instruments; and 3) to the extent that their work product may contradict the plain language of the trust, that evidence is barred by the doctrine of merger.

Regarding the first and second reasons, Mr. Johnson, a member of the Bar of this State, is the only individual within his firm who may represent the wishes of his client, Janet. Employees of his office serve under his direction, and he may freely accept or reject their work. In this case, he obviously rejected it. (App. 467-68.) Additionally, he testified that his paralegal's notes were simply in error. (App. 475-76.)

Regarding the third reason, South Carolina's well recognized merger doctrine precludes consideration of these erroneous drafts and notes. As expressed by this Court:

> The doctrine of merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreement prior to performance. The execution, delivery, and acceptance of a deed varying the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed.

Shoney's Inc. v. Cooke, 291 S.C. 307, 310, 353 S.E.2d 300, 303 (Ct. App. 1986) (*quoting Charleston & Western Carolina Rwy. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957)) (internal citations omitted). Thus, even if the codicil draft represented a negotiated instrument with the client, it was superseded by the trust instrument itself and merged into it. Julia claims merger does not apply because this case does not involve deeds or a real estate transaction. (Respt's Br. at 22.) She offers no support for this proposition, but the larger point is the codicil was rejected by Mr. Johnson and never presented to Janet.

Finally, in addition to (1) Mr. Johnson's testimony about children being treated equally and (2) the paralegals' documents, Julia argues that her *own* testimony supports the probate court's findings. (Respt's Br. at 23–24.) First, her testimony falls into the teeth of the Dead Man's Statute. S.C. Code § 19-11-20. Second, it is of no import what "she was led to believe" by Mr. Johnson. Mr. Johnson was present, knows Janet's intent firsthand, and testified to it at the trial. Again, Julia presents an undercurrent of untruthfulness by Mr. Johnson—that he told her one thing and then told and enacted another thing with Beach. There is no evidence of this. It is simply a story. It leads to the question of "to what end?" for Mr. Johnson. He has no incentive to advocate for Beach's construction or Janet's construction. He is an officer of the court and testified truthfully as to Julia's intent. There is no reason to believe there is any substance behind the insinuations Julia is making.

In sum, the Court cannot ignore or discount the testimony of Mr. Johnson. He was there, present with Janet when she discussed her intentions, and then he put them into writing, which Janet signed, indicating her agreement with his words. He captured her intent. Considering the Court of Appeals and the probate court found the Trust Agreement ambiguous, the only other avenue to determine Janet's intent is through Mr. Johnson, Janet's estate planner. Employees' erroneous documents and notes do not change the clear testimony of Mr. Johnson.[9] The weight of their testimony, along with the construction of the Trust Agreement, requires a reversal of the Court of Appeals.

III. The Award and Amount of Attorney's and Professional Fees Are In Error.

Petitioners rely on their argument in their brief in chief and maintain that Julia did not win the case *in toto*, which could have led to a judgment worth several more millions of dollars. Justice and equity do not require Julia to receive all of her attorney's fees and expert fees, especially when her conduct adds to the substantial fees accrued by her attorneys and expert.

CONCLUSION

For the above-stated reasons and for those stated in the Brief of the Petitioners, this Court should reverse the Court of Appeals and probate court and enter judgment in favor of the Petitioners.

[9] Julia is asking this Court to put more weight behind a (1) codicil that was never presented to or signed by Janet and (2) notes of Todd & Johnson's paralegals, who did not appear before the probate court, over the testimony of Mr. Johnson, a dean of the South Carolina trust and estate Bar. Stated simply, Julia wants this Court to believe that Mr. Johnson was not telling the truth on the witness stand and that the codicil and her own interpretation of the paralegals' notes tell the true story of what Janet's intent was. Mr. Johnson told the truth on the stand. The probate court never questioned Mr. Johnson's veracity in court or in its orders. Mr. Johnson's employees' errors should not call into question his integrity.

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