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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY PROBATE COURT

Case Number 2019-ES-22-0397

Appellate Case Number 2024-001808

The Honorable Leigh Powers Boan
Probate Court Judge

IN THE MATTER OF:
HUBERT LEON CLODFELTER, Decedent

Irene K. Clodfelter,Appellant,

v.

Karen Leigh Chappell and Lynda Faye Clinger, Respondents.

RECORD ON APPEAL

s/ J. Clay Hopkins

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STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GEORGETOWN)

CASE NUMBER: 2019-ES-22-00397

IN THE MATTER OF:)
HUBERT LEON CLODFELTER)
(Decedent))

Karen Leigh Chappell and)
Lynda Faye Clinger)
Petitioners)

ORDER

vs.)

Irene K. Clodfelter, Nicholas Torontali,)
Matthew Torontali, Chris Chappell,)
Michael Chappell, Rachel Clinger,)
Gospel Fellowship Association, Inc. a/k/a)
Gospel Fellowship Association a/k/a)
Gospel Fellowship Association Missions,)
Yvonne Clodfelter and Bob Jones)
University,)
Respondents.)

PROBATE COURT
2021APR16PM4:55
GEORGETOWN SC

This matter comes before the Court upon competing Petitions regarding the Estate of Hubert Leon Clodfelter (hereinafter "Decedent") who was a resident of Georgetown County at the time of his death. The competing Petitions before the Court were filed by his wife, Irene K. Clodfelter (hereinafter "Spouse" or "Respondent") and his only surviving Children, Karen Leigh Chappell and Linda Faye Clinger (hereinafter "Children" or "Petitioners").

On July 22, 2019, the Court admitted to probate a Will of the Decedent dated August 20, 2008 ("2008 Will") and informally appointed the Spouse as Personal Representative. On July 30, 2019, the Children filed a Petition for Formal Probate and Formal Appointment ("Petition") based on a Will of the Decedent dated October 1, 2014 ("2014 Will"). The Petition also states a claim against Spouse under the Slayer Statute ("S.C. Code §62-2-803") seeking to prevent her from inheriting from the Decedent.

On September 11, 2019, Spouse filed an Answer and Counterclaim ("Answer") to the Petition. The Answer raised affirmative defenses of lack of testamentary capacity and undue influence against the 2014 Will, and disqualification by conflict of interest and self-dealing against appointment of Children. The Spouse also counterclaimed for an accounting by the Children of property of the Decedent and for a ruling determining the assets of the probate estate.

On September 13, 2019, Spouse filed a Summons and Petition for Elective Share ("Elective Share Petition") against the Decedent's estate.

On October 8, 2019, Respondents filed a Reply ("Reply") to Spouse's Answer and Counterclaims. The Reply raised affirmative defenses of failure to state allegations with sufficient particularity, failure to state a cause of action, S.C. Code §62-2-803, misrepresentation and fraud by Spouse, waiver by Spouse, equitable defenses, and breach of contract.

On October 8, 2019, Respondents filed an Answer to the Elective Share Petition ("Elective Share Answer") re-asserting their defenses from the Reply, asking for an accounting from Spouse, alleging that she has property belonging to the estate and is an Executor de son Tort under S.C. Code §62-3-619, and unjust enrichment.

In the Elective Share Answer, counsel for Children stated that the document was on behalf of Children, Nicholas Torontali, Matthew Torontali, Chris Chappell, Michael Chappell, and Rachel Clinger. These are the grandchildren of the Decedent and they did not otherwise appear or defend the matters raised in this case. Gospel Fellowship Association, Inc. a/k/a Gospel Fellowship Association a/k/a Gospel Fellowship Association Missions, Yvonne Clodfelter (Decedent's ex-wife), and Bob Jones University also did not appear or otherwise defend the matters raised in this case.

As an initial matter, the Court finds based on its file that all parties named in the pleading have been properly served with Summonses and copies of pleadings sufficient to support personal jurisdiction. The Children are Petitioners for several purposes in the case, and Respondents for others. Spouse is a Respondent for most purposes, and is Petitioner on the Elective Share Claim. To minimize confusion, this Order will endeavor to refer to those parties as previously indicated (Children/Petitioners and Spouse/Respondent). In addition, all pleadings were consolidated under the above referenced caption.

All the above causes of action and defenses were tried before the Court in a virtual hearing starting on Friday December 18, 2020 and completed following a second day of trial on January 8, 2021. The parties who were present at the call of this case were the Petitioners, Karen Leigh Chappell and Linda Faye Clinger with their counsel, Davis Inabnit, Jr., Esq. and the Respondent, Irene K. Clodfelter with her counsel, Ron Gaynor, Esq. and John Hilliard, Esq.

Prior to the presentation of evidence, the parties appearing before the Court stipulated to the admission of the 2014 Will. However, this Stipulation, reserved the right of the Spouse to assert her claim for a Special Administrator and/or Third Party to be appointed as Personal Representative.

Facts

Based on the testimony and evidence submitted at the trial of this matter the Court makes the following findings of fact:

1. Hubert Leon Clodfelter was born May 13, 1934 and died in June 2019, at the age of 84.
("Decedent")

2. The Petitioners, Karen Leigh Chappell and Linda Faye Clinger are the Decedent's only surviving children ("Children" or "Petitioners"), and were nominated as co-personal representatives pursuant to the 2014 Will.
3. The Respondent, Irene K. Clodfelter was married to the Decedent at the time of his death ("Spouse" or "Respondent"). They were married on November 3, 2004 in the State of Florida and she was nominated as personal representative pursuant to the 2008 Will. She is not the Petitioners' mother.
4. Respondent and Decedent met in approximately 1999-2000 and began living together in Florida in approximately 2000-2001. They were engaged in the summer of 2003.
5. Shortly before the marriage, Irene K. Clodfelter and Decedent executed a Prenuptial Agreement dated October 27, 2004 ("Prenup"). The Prenup was prepared by an Attorney in Florida and executed in Florida. It contained the signatures of both the Decedent and Respondent. Each signature was also accompanied by the signatures of the same two witnesses and a Notary Public for the State of Florida.
6. The Prenup contained a disclosure of the parties' financial positions. Specifically, it set forth the amount of Decedent's assets as \$5,880,000.00 and Irene K. Clodfelter's assets as \$18,829.38. The itemized assets comprising these values were detailed on separate exhibits attached to the Prenup.
7. All pages of the Prenup and attached exhibits contained the initials of the Decedent and Respondent.
8. The Prenup provided that it was to be governed by the laws of the state of Florida, and that the agreement could only be amended, modified or terminated by the written mutual consent of both parties.

9. The Prenup also provided that the Decedent and Respondent had reviewed the terms of the agreement, considered them to be fair and reasonable and that they were advised of their right to legal counsel regarding the examination and execution of the agreement.
10. The Prenup directed the Decedent and Respondent's rights upon death of either party or the dissolution of the marriage. Specifically, Decedent and Respondent would not share in the assets of the other unless specifically arranged. Paragraph 11 of the agreement provided for a \$25,000.00 payment to Respondent as non-modifiable alimony in the event there was a filing of an action for dissolution of marriage after the first year of marriage. Paragraph 19 was a release of all rights by Decedent and Respondent to any exempt property or elective share in the estate and property of the other.
11. After the marriage, on January 5, 2005, Respondent and Decedent executed a postnuptial agreement ("Postnup") which mirrored the Prenup excepting, a modification as to a particular parcel of property which is not at issue. The Postnup also contained the mirrored disclosure of the Decedent and Respondent's financial positions except no exhibits detailing the financial disclosures were attached to the Postnup submitted at trial. The Postnup contained the signatures of both the Decedent and Respondent and each page was initialed by them. Each signature on the Postnup was accompanied by the signature of two witnesses which differed for each signature.
12. Later in 2005, Decedent filed a Petition against the Respondent for the dissolution of their marriage. The petition was filed in Brevard County, Florida with Case NO.: 05-2005-DR-65126 ("Clodfelter Petition for Divorce").

13. In an effort to resolve the matters at issue in the Clodfelter Petition for Divorce, A Mediation Settlement Agreement ("Mediation Agreement") was executed by both Decedent and Respondent, their respective counsel and the mediator on March 20th, 2006.
14. The first paragraph of the Mediation Agreement is quoted below in full:

"The Petitioner [Decedent] shall pay to the Respondent [Irene K. Clodfelter] the total sum of \$50,000 within thirty (30) days from today's date or upon entry of a Final Judgment of Dissolution of Marriage, which ever [sic] is earlier. Said payment shall be made in full settlement and accord and satisfaction of any and all claims raised by either party, or that could have been asserted, incident to or otherwise arising of the parties' marriage of November 3, 2004, as well as a certain Pre-Nuptial Agreement executed on October 27, 2004 and a Post-Nuptial Agreement dated January 5, 2005, and any claims that either party could ever asserted thereunder, including, but not limited to, any claim for alimony, equitable distribution of marital assets, rights of inheritance, or any claim against any property rights of either party including, but not limited to, real or personal property, rental income, future interest, or any other assets".
15. Paragraph three (3) of the Mediation Agreement contained a provision that Respondent would be entitled to the return of some personal property.
16. Paragraph four (4) of the Mediation Agreement addressed the parties tax obligations and was subsequently superseded by a Post-Mediation Agreement executed by the Decedent and Respondent on October 16, 2006.
17. Paragraph five (5) and six (6) clarified the Mediation agreement of Decedent and Respondent to execute any and all documents necessary to effectuate the purpose and intent of the Mediation Agreement including but not limited to, the execution of necessary Quitclaim Deeds. It further provided for the release and waiver of any claim to any interest in the other party's real property.
18. Per the Mediation Agreement the Decedent did pay to the Respondent Fifty-Thousand Dollars (\$50,000.00) and the Respondent did obtain her personal property.

19. Prior to any entry of final Judgment on the Dissolution of the marriage, the Decedent and Respondent reconciled and the divorce proceeding was abandoned. It was eventually dismissed by the Court, in 2016, for failure to prosecute.
20. Decedent and Spouse moved to North Carolina and were residents of North Carolina when the 2008 Will was executed. In addition to naming Spouse as Personal Representative, the 2008 Will provided for several devisees including friends, Decedent's ex-wife, Bob Jones University, The Gospel Fellowship Association (a/k/a not listed), his children and grandchildren. The 2008 Will also made some specific devises to the Spouse.¹ On the same day the 2008 Will was executed, the Decedent executed a Power of Attorney in favor of Spouse which was recorded in Cumberland County, NC, on August 22, 2008 ("2008 Power of Attorney").
21. William Davis, Esquire was the attorney who prepared the 2008 Will and 2008 Power of Attorney. He testified that he represented decedent on other land transactions including a Quit Claim deed from Respondent to Decedent executed and recorded in 2010 for property known as Gallberry Farms, Section Two.
22. The 2014 Will was also executed in North Carolina with the help of William Davis, Esquire. The 2014 Will substantially revised the 2008 Will. It named the Children as Personal Representatives and it no longer provided for Decedent's friends, his ex-wife, Bob Jones University or Spouse. It specifically stated that no provision was made for his Spouse, Irene K. Clodfelter, and referenced that all her rights to his property were set out in and controlled by "Prenuptial Agreements" dated October 2004 and January 5, 2005. On the same date the 2014 Will was executed, the Decedent executed a Power of Attorney

¹ Provisions in the 2008 Will appear consistent with the Prenup, Postnup and Mediation Agreement.

in favor of his Children (“2014 Power of Attorney”). The 2014 Power of Attorney was not recorded by Decedent nor his attorney. It was subsequently recorded by Children on March 29, 2019.

23. Attorney Davis testified that he prepared the 2014 Will and 2014 Power of Attorney at the request of Decedent. Attorney Davis understood from Decedent that the marriage wasn’t going very well and Decedent wanted to make sure that things went the way “he wanted” and that his wife would not receive anything other than property her name was on.
24. Subsequently, the Decedent informed Mr. Davis that he wanted to go ahead and execute deeds transferring to the Children certain real properties. On April 28, 2015 Decedent executed several North Carolina General Warranty Deeds in favor of Children. All of these deeds referenced that Spouse was not required to join in the conveyance pursuant to the Prenup which was recorded in Cumberland County North Carolina. The Prenup reflects a filing in Cumberland County, NC, on May 4, 2015. Mr. Davis was under the impression that the Decedent wanted to transfer this property to ensure that his Children got it and not Respondent. Mr. Davis instructed Decedent that this would change his estate plans set forth in the 2014 Will and that he should consult with a tax professional regarding any tax issues associated with transferring the property in this manner. Decedent indicated to Mr. Davis that he did not want the Deeds recorded at that time because he wasn’t sure exactly how he was going to transfer the properties.
25. All of the Deeds prepared by Mr. Davis have derivation clauses which evidence Decedent’s ownership of these properties prior to his marriage to Respondent with the exception of the deed transferring Gallberry Farms, Section Two.² The deeds were not

² The Gallberry Farms, Section Two property is not at issue in this matter as it was deeded to non-parties by decedent on May 10, 2016.

recorded at the time of execution on April 28, 2015 but instead kept in a safe deposit box shared with Karen Leigh Chappell (All Deeds except the one transferring Gallberry Farms, Section Two, are hereafter referred to as "NC Deeds". This comprised a total of five (5) deeds. All properties transferred by these deeds except Gallberry Farms, Section Two, are hereafter referred to as "NC Property").

26. The Children were aware of their father's wishes for them to receive the NC Property and of his concern about Respondent trying to assert rights in his assets. There was testimony from Children that the Decedent was suspicious about Respondent and he was concerned about his life. Specifically, in 2015, the Decedent told the children about the deeds and titles signed over to them being kept in a safe deposit box. He told them if something happened to him or they were suspicious that something happened to him, they were to access the documents in the safe deposit box.
27. After December 2016, the Children testified that they were no longer able to reach and/or communicate with their father. Ultimately, the Children contacted Respondent in attempts to reach their father, to which Respondent would tell the Children various reasons why they could not speak to their father, ranging from he was traveling, to he was hiding from the police.
28. Karen Leigh Chappell testified that at the beginning of 2019 she became so concerned that she could not reach Decedent that she contacted law enforcement.
29. In March of 2019, the children accessed the safe deposit box and removed its contents with the exception of a note they left for Decedent.
30. The deeds and the 2014 Power of Attorney were recorded in the respective counties in North Carolina on March 29, 2019 by the Children.

31. On or around June 14, 2019 the Children met with the Sherriff and detectives regarding their missing father. The Children subsequently found the Decedent's body wrapped in a plastic trash bag under the deck of a mobile home in Myrtle Beach, SC.
32. The Death Certificate indicated that the manner of death was homicide and it was caused by a gunshot wound to the head. The date of death was listed as June 2019.
33. The Respondent admitted she found the Decedent's body and she covered the body in a plastic trash bag and did not notify law enforcement at the time. She provided inconsistent statements to the police regarding her involvement.
34. The Respondent was criminally charged with three counts: desecration of human remains, accessory after the fact to a felony, and obstruction of justice. The charge of desecration of human remains has been dismissed. The remaining charges were still pending at the time of the trial.
35. The Court in reaching its conclusions had opportunity to judge the demeanor and credibility of the parties to this action which is summarized as follows:
 - Petitioners: The Petitioners appeared credible. Petitioners were genuinely concerned for the Decedent. There was testimony that both the Decedent and Petitioners desired and maintained good relationships with each other until communications stopped in 2016. The Petitioners did not seem financially motivated in their pursuits of this matter. Prior to the circumstances giving rise to the murder of the Decedent, the Petitioners did not appear to hold any animosity towards the Respondent and had a functioning familial relationship.
 - Respondent. The Respondent did not appear credible. She presented as a person who is easily confused and has trouble remembering dates and details. However,

this presentation is inconsistent with other evidence showing her to be experienced in litigation and business dealings. The testimony established that she was competent in the management of the mobile home park owned by Decedent. She could effectively handle collection of rents, payment of expenses, complaints, manage employees and the non-payment or late payment of tenants including evictions. Additionally, her prior litigation history did not stand with her testimony that she did not understand what she was signing when executing the Prenup and Postnup. Her handling of the Children's concern over not being able to reach their father was odd to say the least. Her claims to have told Decedent to contact his Children did not seem credible. It did not appear to the Court this was a result of confusion or a lack of information but rather a lack of compassion, an attempt to foster a breakdown in communications between Decedent and his Children, and/or it was an attempt to hide something. Her statements to the Police do not appear to the Court as statements made by someone in a traumatic state but rather someone trying to cover up something.

Rulings and Conclusions of Law

I. Date of Death

S.C. Code §62-1-507 instructs this Court on the determination of the date of death. Based on the evidence submitted this Court finds that the Decedent's death is June 2019. Due to the fact that the Decedent's death was the result of a murder, the exact date of his death is unknown. The Decedent's Death Certificate provides the Decedent's "actual or presumed date of death" as June 2019. The Respondent's testimony that she last saw the Decedent alive in the spring of 2019 when he was walking across the golf course to their home to wash laundry, does not contradict the

coroner's findings. Although no exact time was provided for the time of death for the Decedent, the evidence submitted is sufficient to establish that he did not die any time prior to June 2019. Having no evidence to the contrary, this Court finds that the Decedent's date of death was June 2019.

II. Appointment of Person Representative(s):

The Decedent pursuant to the 2014 Will (having been admitted for Probate as stipulated hereinabove), appointed his Children, Karen Leigh Chappell and Linda Faye Clinger to serve as co-personal representatives of his estate. The Probate Code of this State expressly recognizes that persons who are nominated by a decedent's will to serve as personal representative have priority over other interested parties unless disqualified. *S.C. Code* §62-3-203.

Karen Leigh Chappell and Linda Faye Clinger having been nominated as co-personal representatives are entitled to be appointed as personal representatives of their father's estate unless they are otherwise disqualified. This Court "may deny administration to the person first entitled under the statute if upon the showing made before him, he is satisfied that such person is not properly qualified for the position..." Parkman v. Hanna, 311 S.C. 20, 426 S.E.2d 743 (S.C. 1992). In the case at bar, no evidence has been presented that either Karen Leigh Chappell or Linda Faye Clinger are in any respect unfit or unqualified to carry out the respective duties of a personal representative. To the contrary, the testimony presented was that both Children have college degrees and/or post graduate degrees, they both have steady employment, and no evidence has been presented which would indicate that either Karen Leigh Chappell or Linda Faye Clinger are incapable of discharging the duties of personal representative.

Respondent's assertion that their interest is adverse to her interest and thus justifies a Special Administrator and/or Third Party to be appointed as Personal Representative is without

Mr. Hilliard testified on direct examination about the current status and standing of the criminal litigation pending against Respondent. He testified that in his work for Mrs. Clodfelter, no one in law enforcement had accused her of the Decedent's death. The Petitioners assert that Mr. Hilliard opened the door to his communications with the Respondent when he answered a question regarding whether or not he had any contact or communications with any individual that would indicate Respondent was responsible for the death of Decedent. The Court finds that this line of questioning and Mr. Hilliard's testimony was related to his interaction with law enforcement and others outside of his relationship with Respondent. He was speaking to work conducted for Respondent not his work with her. To otherwise view Mr. Hilliard's testimony would require the Court to take out of context the nature and scope of his testimony. The Court finds this was not a waiver of the Attorney Client privilege.

IV. S.C. Code §62-2-803 "S.C. Slayer Statute"

Petitioners assert that Respondent is barred from recovery from this estate because of S.C. Code §62-2-803 ("Slayer Statute"). The Slayer Statute provide in pertinent parts:

SECTION 62-2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations.

(a) An individual who feloniously and intentionally kills the decedent is not entitled to any benefits under the decedent's will, trust of which the decedent is a grantor or under this article with respect to the decedent's estate, including, but not limited to, an intestate share, an elective share, an omitted spouse's share or child's share, a homestead allowance, and exempt property, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

happened. Circumstantial evidence is admissible, but the inferences must be convincing by a preponderance of the evidence. They must "lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for a legal inference, and not for mere speculation". Gastineau v. Murphy, 323 S.C. 168, at 178, 473 S.E.2d 819 (S.C. App. 1996). The focal point of the testimony and evidence is whether enough evidence exist to find that it is more likely than not that the Respondent herself or conspiring with other(s) are responsible for the murder of the Decedent.

The Respondent discovering the body, wrapping the body in a plastic trash bag and not calling the police is a shocking act. The motivation behind that concealment is highly suspect. Further suspicions are raised by the inconsistency in her statements and testimony, including but not limited to telling the Children he was hiding from the Police, accusing her predeceased son of Decedent's murder, and the vague details on when she had last seen the Decedent alive. These suspicious actions by the Respondent and the overall tone of the evidence and testimony presented in this matter certainly raise a credible inference that Respondent was involved with the murder of the Decedent. However, the Court does not find this inference is established by a preponderance of the evidence.

There was no evidence presented direct or circumstantial, placing Respondent at the murder scene or in possession of the murder weapon. There was no evidence presented that implied she participated in any part of the act of murder. The offense of accessory after the fact to murder which Respondent is charged with precludes culpability for the actual act. The testimony established that the murder did not occur where the body was found. With the exception of a generalized date of death assigned by the Coroner (June 2019), there was no testimony on when the murder actually happened as compared to when the body was found. Additionally, there

was a large gap in evidence regarding the Decedent's whereabouts and his personal and business dealings for approximately two and a half years before his body was found.

Looking at the facts presented in this case and even considering the lack of Respondent's credibility, the Court cannot conclude by a preponderance of the evidence that the Respondent was directly or indirectly responsible for the murder. Although her involvement in the murder is a possible inference there is just not enough evidence to conclude it was probable or more likely than not.

V. Claims for Recovery of Personal Property and Real Property to Probate Estate

The Petitioners concede that any real or personal property which was titled in the Decedent's name as of June 1, 2019 is subject to this Court's determination of ownership. Respondent has asserted claims that property owned by the Decedent but later transferred to the Children should be returned and accounted for as a part or portion of the Decedent's probate estate.

This Court has subject matter jurisdiction including the "determination of property in which the estate of a Decedent or a protected person has an interest..." *S.C. Code §62-1-302(A)(1)*. The "estate of a Decedent", a/k/a the Probate Estate, means the Decedent's property passing under the Decedent's will plus the Decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims. *S.C. Code §62-2-202*.

A. NC Property

The NC Deeds, transferring the ownership interest in the NC Property from Decedent to Petitioners, were recorded in their respective counties in North Carolina prior to Decedent's death. The Respondent seeks to have this Court invalidate these transfers of real estate. Petitioner's assert that pursuant to *S.C. Code §62-1-302*, this Court does not have jurisdiction to affect the title or

contract, South Carolina courts apply the substantive law of the place where the contract is made. Team IA v. Lucas, supra; Lister v. NationsBank of Delaware, N.A., 329 S.C. 133, 494 S.E. 2d 449 (S.C. App. 1997). This Court will, therefore, defer to Florida law to determine issues presented as to the validity and interpretation of the Prenup, Postnup, Mediation Agreement or Post Mediation Agreement. Estate of Nicole Santos, In re, 648 So.2d 277 (Fla. App. 1995) (The laws of the place where the agreement is made shall govern matters of execution, interpretation and validity).

Florida's legislature has codified considerations of what must be considered when a party contest the validity of a pre-nuptial agreement. See, *Fla. Stat. Ch. §732.702 (Waiver of spousal rights, for purposes of probate)* and, *Fla. Stat. Ch. §61.079 (Premarital agreements)*. *Fla. Stat. Ch. §61.079* provides in pertinent parts:

(7)

(a) A premarital agreement is not enforceable in an action proceeding under the Florida Family Law Rules of Procedure if the party against whom enforcement is sought proves that:

1. The party did not execute the agreement voluntarily.
2. The agreement was the product of fraud, duress, coercion, or overreaching; or
3. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
 - a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
 - c. Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital

dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

“The critical test in determining the validity of marital agreements is whether there was fraud or overreaching on one side, or, assuming unreasonableness, whether the challenging spouse did not have adequate knowledge of the marital property and income of the parties at the time the agreement was reached.” Casto v. Casto, 508 So.2d 330 (Fla. 1987).

A. Validity of the Prenup and Postnup

Applying these standards, Respondent signed both the Prenup and Postnup freely and voluntarily and with full financial disclosure. The Respondent asserts that she wasn't sure what the specifics of the Prenup and Postnup contained and that she felt like she was in some manner forced to execute the Prenup and Postnup agreement. The Court finds Respondent's testimony to be unpersuasive and disingenuous.

The Respondent was particularly suited to understand the purpose of the Prenup and Postnup and the rights she was being asked to waive. This was Respondent's fourth marriage. She had prior experience with the division of marital assets and marital support obligations from two prior divorces. Shortly before marrying the Decedent she was involved in contested litigation regarding her right to share in her previously deceased spouse's estate. Her testimony about her relationship with the Decedent reflected a mutually agreed upon business type relationship. This was so from the outset of the marriage and evidenced, in part, by her testimony that the date they were married was chosen to take advantage of a tax break. The request for her to sign a Prenup did not appear to the Court to be a last minute request by the Decedent but rather something the Decedent and Respondent discussed prior to agreeing to marry. This is consistent with the

testimony about the Decedent proceeding cautiously with this marital relationship. This is also evidenced, in part, by the itemized list of her assets included as an exhibit to the Prenup which would have been provided by her to either the Decedent or the attorney that prepared the agreement before it was signed.

Respondent's execution of the Postnup several months after the Prenup further discredits her assertion that she did not know what she was signing or that she did not have an opportunity to review the documents with her own counsel prior to executing. Additionally, the carved out property provision contained in the Postnup evidences her understanding of the decedent's assets and of a bargained for position. The separate witnesses accompanying her signature on the Postnup implies that she had an opportunity to review and execute the document in front of individuals different than those witnessing Decedent's signature. Even assuming she did not have an opportunity to review the Prenup with her own counsel prior to executing it she signed the mirrored Postnup several months later evidencing her agreement to the terms of the Prenup.

Any claims that there was not full financial disclosure is without merit. The Court does not find any substantial abuse in the financial disclosures that were made. The clear disparity of assets appeared on the face of both the Prenup and Postnup. Any failure to disclose a specific asset was not material to the execution of the documents or the parties' rights thereunder. The failure of the Postnup to have the exhibits attached to the Prenup is also not material. The values contained in both documents mirrored each other. Unlike the Prenup, the Postnup reserved a right for the Spouse to a specific property evidencing not only an understanding of the Decedent's assets but also Spouse's bargained for arrangement. The Court finds that Spouse failed to show any material misrepresentation as to the financial disclosures of the Decedent that would warrant voiding the Prenup or Postnup.

Mediation Agreement⁷ (hereinafter collectively referred to as "Mediation Agreements"). In determining the effects of Mediation Agreements, the terms of the agreement must be viewed to determine whether they can be considered a modification, or potentially a termination of the prior Prenup and Postnup.

Cox v. Cox, 659 So.2d 1051 (Fla. 1995), sets forth the validity and effect of the Mediation Agreements which are executed prior to a subsequent reconciliation of the marriage.⁸ The Court in Cox held, "that reconciliation or remarriage abrogates the executory provisions of a prior marital settlement agreement unless there is an explicit statement in the agreement that the parties intended otherwise." This court held that the executed provisions of a prior marital settlement agreement were not affected by reconciliation or remarriage absent a reconveyance or a new written agreement to the contrary. Cox, at 1054.

In this case, the Mediation Agreements were executed after Decedent filed for divorce and were intended to provide the framework for the dissolution of the marriage. The Mediation Agreements made no provisions for reconciliation. The Mediation Agreements follow, in principle, the terms of the Prenup and Postnup. The Fifty Thousand Dollar (\$50,000.00) lump sum payment from the Decedent to the Respondent required by the Mediation Agreements is presumably the payment obligations under the Prenup and Postnup added together. Like the Prenup and Postnup, the Mediation Agreements barred any claims for alimony, equitable distribution, "*rights of inheritance, or any claims against any property rights of either party*

⁷The Post Mediation Agreement incorporated the entire Mediation Agreement except for a modification of a single provision regarding the handling of real and personal property and taxes thus it is appropriate to consider these documents as a singular agreement.

⁸ There does not appear to be any cases directly on point from Florida.

and Postnup. Specifically, it provides for the release of “any and all claims raised by [Respondent or Decedent] or that could have been asserted, incident to or otherwise arising out of the parties’ marriage on November 3, 2004 ..” It goes on to provide for the release by Respondent and Decedent of “any claims that either party could ever asserted thereunder, including, but not limited to, any claim for alimony, equitable distribution of marital assets, **rights of inheritance**, or any claim against any property rights of either party including, but not limited to, real or personal property, rental income, future interest, or any other assets (emphasis added).” The Court finds the use of the word “thereunder” refers to not simply the Prenup and Postnup but also to the “parties’ marriage of November 3, 2004.” Additionally, the Court finds the phrase “could ever asserted” has an insignificant clerical error in the tense used which does not preclude the Courts interpretation of this provision. This Court, therefore, finds there is a clear and unequivocal waiver by Respondent to any rights of inheritance she could ever assert by virtue of her marriage to the Decedent. This waiver was done by Respondent with the benefit of counsel. There is no evidence that there wasn’t full financial disclosure and considering the financial disclosures included in the Prenup and Postnup executed a little over a year before the Mediation Settlement Agreement, this element is met. Therefore, the Mediation Agreements constitutes its own enforceable waiver of Respondent’s elective share which is independent of the Prenup and Postnup.

In light of the foregoing analysis, Respondent’s Claim for an Elective Share is barred. The Prenup, Postnup and Mediation Agreements each constitute a valed and enforceable wavier of Respondent’s rights to share in this Estate. This is so under both Florida and South Carolina Probate Laws (*Fla. Stat. Ch. §732-702*; S.C. Code §62-2-204).

VII. Executor de son Tort, Unjust Enrichment and Accounting.

The Probate Code of the state requires that a personal representative for the estate to complete an Inventory and Accounting of the probate estate of the decedent. In the exercise of this obligation and/or duty, the personal representative has the right and obligation to seek the return of funds or property in the hands of others and to accurately inventory and account for said property so that proper administration and distribution of the same can be had. Therefore, in light of the statutory obligations to perform an accounting, I find that an accounting shall be completed for items of real and personal property in the possession of both Petitioners and Respondent which is part of the probate estate.

I further find that any claims under *S.C. Code §62-3-619* "Executor de son Tort" or for Unjust Enrichment are dismissed without prejudice. Upon completion of the Inventory and/or Accounting, if sufficient justification should exist, the Petitioners may institute a new Petition for the claims for "Executor de son Tort" or for Unjust Enrichment.

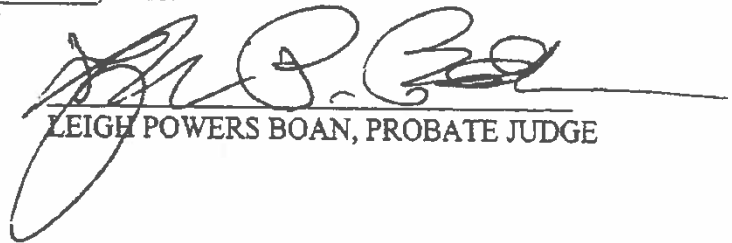
Conclusion

NOW THEREFORE, based on the findings of fact and conclusions of law set forth hereinabove, IT IS HEREBY ORDERED that:

1. The 2014 Will is admitted to probate as the Decedent's Last Will and Testament;
2. Petitioners are appointed as Personal Representatives and Respondent is removed as Personal Representative;
3. The Respondent is not barred by the Slayer Statute;
4. The Respondent's claim for an Elective Share is barred by waiver;
5. The Respondent's request to set aside the NC Deeds is dismissed;

6. Any real or personal property which was titled in the Decedent's name as of June 1, 2019 is subject to this estate and this Court's determination of ownership. In addition, the Myrtle Beach mobile home transferred by Children was not effected by Decedent and is therefore subject to this estate and this Court's determination of ownership;
7. Petitioner's request for Attorney-Client communications is denied;
8. Claims for Attorney's fees is held in abeyance pending submission to the Court of Attorneys' Fees Affidavits and any objections to the same.

Executed this 16th day of April, 2021.


LEIGH POWERS BOAN, PROBATE JUDGE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell and)
 Lynda Faye Clinger)
)
 Petitioners)
 vs.)
)
 Irene K. Clodfelter,)
)
 Respondent.)

IN THE PROBATE COURT
 CASE NUMBER: 2019-ES-22-00397

ORDER

PROBATE COURT
 GEORGETOWN COUNTY, SC

This matter comes before the Court upon petitioners Karen Leigh Chapelle and Linda Faye Clinger's petition filed September 10, 2021, regarding the estate of Hubert Leon Clodfelter (hereinafter "Decedent") who was a resident of Georgetown County at the time of his death. The Petition asserts causes of action for "Executor de son Tort", Accounting, Breach of Contract, and Unjust Enrichment. Respondent's Answer to this petition was filed on October 29, 2021.

The petitioners, Karen Leigh Chapelle and Lynda Faye Clinger are the duly appointed Personal Representatives of the decedent's estate and the daughters of the Decedent. The respondent, Irene K. Clodfelter was the spouse of Decedent (hereinafter "spouse" or "respondent") and she was the initial Personal Representative of the Decedent's estate.

Prior to the claims that are presently before the Court the Petitioners and Respondent were previously before the Court on competing petitions filed by the Petitioners and the Respondent, respectively, on July 30, 2019, and September 13, 2019 ("2019 Petitions"). The 2019 Petitions were tried before me on December 18, 2020, with a second day of trial on January 8, 2021. An Order of this Court was issued in that matter on April 16, 2021 (hereinafter the "2021 Order").

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 ATTEST: 
 JUDGE OF PROBATE
 GEORGETOWN COUNTY, SC
 Clerk of Court, Probate Court

FINDINGS OF FACT

When considering the evidence and testimony received in the present action, the Court must also consider its 2021 Order which makes several findings of fact and conclusions of law that are conclusive and which are relevant to holdings in this case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding that an unappealed ruling is the law of the case). Since the 2021 Order was not appealed, the findings of fact and conclusions of law that were finally determined apply to the present case. In addition to those facts set forth in the 2021 Order, the Court makes some additional findings relevant to the rulings in this matter:

1. The marital agreements validated in the 2021 Order would preclude any right of Respondent to claim property of Decedent acquired before the marriage and after the marriage unless the item was purchased in joint names or the appropriate declarations evidencing joint ownership was made in writing concerning property.

2. The Respondent and Decedent jointly owned with rights of survivorship, a home in Murrells Inlet, SC within Georgetown County. There was no mortgage on this home. The Respondent sold that home in November, 2021 for Six Hundred Eighty Thousand Dollars (\$680,000.00). Respondent initially testified that she did not receive much out of the sale of the house because the attorney's fees she owed were deducted from her proceeds. However, Respondent later admitted on cross examination that she netted around Four Hundred Thousand Dollars (\$400,000.00).

3. After the entry of the Court's 2021 Order, which required the Respondent to Inventory and/or Account for assets in her possession, the Respondent failed to comply with this Court's

directive. The Respondent testified that she only responded to the Petitioner's request for an accounting after being served with the Petition in the present matter and that her response consisted of making notes on the list of items that were specifically included as an Exhibit to the Petition.

4. Respondent collected and delivered to her prior attorney, an unknown sum of funds that was previously deposited at BB&T in the Decedent's "Town and Country" mobile home park account. Respondent allowed items belonging to the Estate to be taken from storage. Respondent sold items out of the marital home just prior to the closing on the sale of the jointly owned home in Murrells Inlet.

5. No inventory or accounting has been provided as to funds that were obtained by Respondent from the Decedent's business account which Respondent admitted the Decedent was the owner thereof, or for the specific items which she sold or allowed to be taken from storage.

6. Respondent testified that starting in 2015 she and Decedent lived in the Georgetown County home together. She stated that the Decedent was back and forth from this home and work in Fayetteville, North Carolina, but she spent all of her time in this home, and she concedes that she and the Decedent were the only people with access to this home.

7. After December 2016, the Petitioners testified that they were no longer able to reach and/or communicate with their father. Petitioners were last inside the Georgetown County home in June of 2016, at which time the Petitioners both testified that they saw the Remington Statues, Persian rugs, the Ford Model A, and other items they have specifically requested to be accounted for and returned to their possession.

8. Witness Doug Smith was last inside the Georgetown County home in late June 2016 at which time he saw the Ford Model A, lawn tools and equipment. Mr. Smith last saw and communicated with Decedent in December of 2017 at a restaurant in Conway, South Carolina.

9. The Court in reaching its conclusions has now had a second opportunity to judge the demeanor and credibility of the parties to this action which is summarized as follows:

- Petitioners: The Petitioners again appeared credible. Petitioners were genuinely concerned for the Decedent and in trying to perform their obligations to faithfully administer their father's estate. As both Petitioners testified, many of the items for which they have sought to recover by the present Petition are sentimental in nature. This is bolstered by the level of detail of their ability to describe those particular items and the location of those items the last time they were seen by the Petitioners.
- Respondent: The Respondent again did not appear credible. She did not provide much information or details of when she last saw or noticed items that were located in her home or her possession. However, this presentation is inconsistent with her other testimony, such as the specificity by which she could recall certain jewelry allegedly being given to Petitioners at a prior family dinner in November 2015. It did not appear to the Court this was a result of actual confusion or a lack of information but rather an attitude of indifference, lack of compassion, and a deliberate attempt to conceal, hide and/or convert assets which were in her possession.

RULINGS AND CONCLUSION OF LAW

ISSUE PRECLUSION

This Petition seeks relief originally asserted, in part, by Petitioners in the prior matter ruled on by this Court in the 2021 Order. Respondent asserts that the relief presently requested by Petitioners is precluded by the prior action and the finality of the 2021 Order. Prior to addressing the merits of this Petition, the Court will first address this defense.

The Respondent has asserted that the Petitioners' claims should be barred as they either were or could have been asserted in the prior matter and the 2021 Order is conclusive on all such issues. While the Petitioners' did previously assert the causes of action at issue in the present petition such claims were not ripe for adjudication.

The Respondent was appointed informally as Personal Representative by this Court on July 22, 2019 pursuant to a Will that was initially probated by Respondent. Respondent's informal request for appointment was approximately one month after the Decedent's body was found by Petitioners and even longer from the discovery and concealment of the body by the Respondent. She served in this role for almost two years knowing from the outset the contested nature of the matter. She did not relinquish this appointment in favor of the Petitioners. The 2021 Order removed the Respondent as Personal Representative and appointed the Petitioners to serve in this role. The 2021 Order defined the framework by which the parties' ownership rights in Decedent's assets would be determined. These rulings, resulted in a need to clarify estate transactions and probate assets consistent with the 2021 Order. Thus, the 2021 Order required, in part, an accounting be completed for items belonging to the estate including real and personal property that was in the possession of both Petitioners and Respondent.

In light of this Court's directive to provide an accounting, the 2021 Order held that claims under S.C. Code §62-3-619 "Executor de son Tort" and for Unjust Enrichment were dismissed with leave to restore. Specifically, the 2021 Order held, if sufficient justification for these claims existed after an Inventory and/or Accounting was prepared by both the Petitioners and Respondent then a new Petition asserting these claims could be brought. Additionally, in the 2021 Order, the Court held in abeyance the claims for attorney's fees from the prior matter pending submission to the Court of Attorneys' Fees Affidavits and any objections to the same. Further, the evidence

introduced at trial in this matter was also related to the failure of Respondent to account for Estate assets in her possession as directed by the 2021 Order. The Respondent's alleged failure to do so is certainly subject to review by this Court in the present matter. Finally, to the extent that Respondent, in the present action, claims any ownership of Decedent's assets inconsistent with the marital agreements validated in the 2021 Order, a new basis exists for Petitioners' breach of contract cause of action. Therefore, rather than being barred by the doctrines of issue preclusion or res judicata, the Court finds that the 2021 Order expressly preserved the Petitioners' rights to pursue the relief requested in the present Petition.

RULING ON MERITS

Respondent's assertions that Decedent's frequent buying and selling behaviors is the reason she doesn't have any information about the items at issue is not genuine. Although the Decedent did buy and sell property routinely, the missing items do not fit into this pattern. Many of the items at issue appeared to be sentimental and meaningful to the Decedent. Some of the items were specifically promised to loved ones. The Court does not find it likely that these items would be liquidated by Decedent for value.

Further, there was no evidence that Decedent was in need of cash such that he would readily discard these meaningful items. Many of these items were in plain view in the Georgetown County home and the subject of discussions with visitors and family, all admiring the same. The inability of Respondent to offer any testimony about when she noticed these items were missing from the home where she resided and where only she and the Decedent had access is disingenuous.

The Respondent at no time prior to the filing and service of the present action made any attempt to either account for or inventory any assets of the Estate. Even prior to the directive of this Court in the 2021 Order, the Respondent as the initial Personal Representative was under a

duty to inventory and account for Decedent's assets. *S.C. Code §62-3-701, et. seq.* Despite the contested nature of this matter from the outset, Respondent did not take steps to preserve, protect or account for property of the Decedent. Contrary to this duty, she allowed items to be taken from storage without consideration of the Decedent's estate and the contingent beneficiaries. Further, such action was in direct violation of the restrictions placed on her by this Court on July 24, 2019. She did not take reasonable measures to document and inventory items in the marital home knowing the contested nature of this matter. She sold assets from the marital home without providing any documentation, inventory or accounting for such assets knowing the ongoing dispute over items kept in this home.

Based upon the forgoing facts and the inferences drawn therefrom, the Court concludes and determines that Respondent breached her fiduciary duties to the estate. The Court further concludes that the specific items of personal property which Petitioners seek an Accounting for in the present action were probate assets. Specifically the Court finds as to those items of personal property as follows:

1. This Court finds the golf cart was an asset of this Estate worth Five Thousand Dollars (\$5,000.00) that should have been preserved and protected by the Respondent. The Court does not find credible the Respondent's testimony that this was not an asset of the estate because this was her golf cart. The golf cart at issue in this matter was kept at real property owned by the Decedent in Horry County.

The Petitioners placed this golf cart in storage after Decedent's death along with other assets from the Horry County real property owned by the Decedent. This was done for the Respondent, who at the time, was the personal representative of the Decedent's Estate. The golf cart had a S.C. golf cart permit registration affixed

to it in the name of Decedent only. There was nothing in writing evidencing this golf cart belonged to Respondent or was intended to be joint property.

The Respondent, while appointed as Personal Representative, did not preserve and protect this asset. The Respondent testified that she allowed her prior attorney to access this storage unit and take the golf cart. She denied that this exchange was for payment of her attorney's fees but offered no other reason as to why she gave it to them. Respondent's allowing the removal of the golf cart by others was in violation of her obligations as personal representative in general and specifically the restrictions placed upon her authority by this Court. This action was to the detriment of the Estate.

2. The Model A Ford was an asset of this Estate worth Twenty-Six Thousand Dollars (\$26,000.00) that should have been preserved and protected by the Respondent. The Court does not find credible the Respondent's testimony that this asset was disposed of by Decedent prior to his death. The Title of this asset remains in the Decedent's name. While the Petitioners testified that the Decedent has taken them for a ride in the vehicle, the Respondent testified that the vehicle did not work. This vehicle was last seen in June 2016 by Petitioners and a corroborating witness, Doug Smith, in the garage of the Georgetown County home where Respondent resided. There was testimony that this was an asset that Decedent admired and appreciated. Decedent and Respondent lived in a gated community where moving a non-operational, antique vehicle would likely not go unnoticed.

The Respondent's inability to provide any information about when she noticed this large asset was no longer at the home where she resided is highly

suspect. Further, there was no showing that Decedent was unloading assets for money or acting in a way to divest himself of sentimental, treasured or valuable items like this vehicle. Additionally, the Decedent was familiar with the requirements to properly transfer a motor vehicle and there was no evidence that he ever accessed the title to properly transfer the vehicle as it was located in the safe deposit box which was jointly owned by the Decedent and the Petitioners. Instead, the Court finds it likely that Respondent did something with this vehicle or allowed someone to take possession of this vehicle at the expense of the Decedent's Estate. Respondent was the person with access. Respondent's actions surrounding the death of her husband, the giving away of his golf cart, the sale of items in the home they owned jointly and what appears to be her need for money, all lend itself to the reasonable conclusion that she did not act prudently in preserving and protecting this asset of the Decedent.

3. The Oriental Rugs were assets of this Estate worth Ten Thousand Dollars (\$10,000.00) and should have been preserved and protected by the Respondent. Her claims that the Oriental Rugs were never in the Georgetown County home but rather, the subject of a prior insurance claim is lacking in detail and not believable. She provided no details explaining the need for such an insurance claim. She testified that she did not sell any rugs out of this home but provided no explanation as to what happened to the rugs that were seen by the Petitioners in the Georgetown county home. She failed to provide any accounting or documentation of assets sold out of this home. This Court finds it likely that Respondent did something to

dispose of these rugs or allowed someone to take possession of these assets at the expense of the Decedent's estate.

4. As to the remaining assets that were last seen by Petitioners and/or Doug Smith in the Georgetown County home, the Court, for reasons stated above, finds it likely that Respondent did something to dispose of these assets or allowed someone to take possession of these assets at the expense of the Decedent's estate. The values associated with the Remington Statues was not clear to the Court and no other values were given for the other assets.

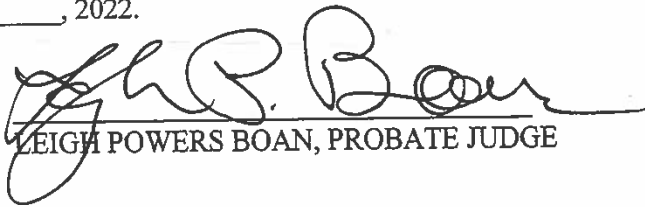
In summary, the Court will grant the relief requested by Petitioners including damages asserted against Respondent in the amount of Five Thousand Dollars (\$5,000.00) for the golf cart, Twenty-Six Thousand Dollars (\$26,000.00) for the Model A Ford, and Ten Thousand Dollars (\$10,000.00) for the Oriental Rugs. No monetary damages are awarded as to the other missing items.

The Petitioners' request for attorney's fees to be assessed against Respondent is also granted. I have reviewed the Petitioners' Counsel's Affidavit of Attorneys fees and have determined that total fees and costs incurred and reasonably anticipated to be incurred in the Sum of Forty-One Thousand Two Hundred Eighty-Seven and 56/100 Dollars (\$41,287.56) through the submission of the Petitioners' proposed order are fair and reasonable under the six (6) factors articulated by the Supreme Court in *Strickland v. Strickland*, 376 S.E.2d 268 (S.C. 1989). This award of fees is allowed pursuant to S.C. Code Ann. §62-1-111. S.C. Code Ann. §62-1-111 provides general authority to assess costs and expenses including reasonable attorney's fees, to any party to be paid by another party or from the estate that is the subject of the controversy. The Court believes that justice and equity supports this award of fees and costs assessed against the

Respondent. The Petitioners were in large measure successful on their 2019 Petitions and in the present Petition. This success was a benefit to the Estate. The Court found wrongdoing on the part of the Respondent which was detrimental to the Estate. The Estate and Petitioners as the beneficiaries should be made whole for Respondent's failure to prudently act with regard to decedent's assets.

IT IS SO ORDERED

Executed this 20th day of July, 2022.


LEIGH POWERS BOAN, PROBATE JUDGE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell and)
 Lynda Faye Clinger)
)
 Petitioners)
 vs.)
)
 Irene K. Clodfelter,)
)
)
 Respondent.)

IN THE PROBATE COURT

CASE NUMBER: 2019-ES-22-00397

**ORDER ON RESPONDENT'S
 MOTION TO RECONSIDER,
 ALTER, AND/OR AMEND**

PROBATE COURT
 2022SEP28 4:15:50
 2022SEP28 4:15:50

This matter comes before the Court upon Respondent's Motion to Reconsider, Alter, and/or Amend this Court's Order dated July 20, 2022. A Reply to this Motion was filed by Petitioners. The Court has reviewed the file and submissions in this matter and is rendering judgment on this Motion based on the written submissions.

The Court denies the Respondent's request to alter the award of damages and attorney's fees set forth in the Order dated July 20, 2022. The Court finds that there is evidentiary support for the rulings set out in the Order dated July 20, 2022. The Order dated July 20, 2022 stands as written. However, the Court does find that clarification of the award of attorney's fees is warranted. Therefore the remainder of this Order will serve to clarify the specific factors considered in awarding the attorney's fees.

STANDARD FOR AWARD OF ATTORNEYS FEES

S.C. Code Ann. § 62-1-111 provides general authority to assess costs and expenses including reasonable attorney's fees, to any party to be paid by another party or from the estate that is the subject of the controversy.

Our Supreme Court set forth the standard for determining an award of attorneys' fees in numerous cases including *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Strickland v. Strickland*, 376 S.E.2d 268 (S.C. 1989); *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991); and *E.D.M. v. T.A.M.*, 307 S.C. 471, 477, 415 S.E.2d 812, 816 (1992).

Based on a review of this case law the following six (6) factors are to be

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 GEORGETOWN COUNTY, SC
 Clerk of Court, Probate Court

considered: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling.

In addition, E.D.M. v. T.A.M., id., speaks of a few additional factors for the Court to consider. Those factors are as follow: 1) the party's ability to pay his/her own attorney's fee; (2) the beneficial results obtained; (3) the parties' respective financial conditions; (4) effect of the attorney's fee on each party's standard of living.

APPLICATION OF STANDARD

1. Applying the six factors set forth above, the Court finds the following:

Nature, Extent and Difficulty of Legal Services Rendered.

In this case, this litigation was made unnecessarily complex by the Respondent. The Respondent was appointed informally as Personal Representative by this Court on July 22, 2019 pursuant to a Will executed in 2008 that she submitted to the Court for probate. Respondent's informal request for appointment and probate of the 2008 Will, was approximately one month after the Decedent's body was found by Petitioners and even longer from the discovery and concealment of the body by the Respondent. She served in this role for almost two (2) years knowing from the outset the contested nature of the matter. She did not relinquish this appointment in favor of the Petitioners despite their presentment eight (8) days later of a Will executed in 2014 which appeared valid on its face.

The validity of this 2014 Will was ultimately conceded by Respondent but not until the call of the case, approximately fifteen (15) months after its filing. Despite the 2014 Will being conceded as valid, the Respondent would not consent to the appointment of the Petitioners as Personal Representatives as provided in the Will. It was not until this Court issued the 2021 Order that Respondent was removed as Personal Representative and the Petitioners were appointed.

The Respondent at no time prior to the filing and service of the present action made any attempt to either account for or inventory any assets of the Estate. Even prior to the directive of this Court in the 2021 Order, the Respondent as the initial Personal Representative was under a duty to inventory and account for Decedent's assets. S.C. Code §62-3-701, et. seq. Despite the contested nature of this matter from the outset, Respondent did not take steps to preserve, protect or account for property of the Decedent. Contrary to this duty, she allowed items to be taken from storage without consideration of the Decedent's estate and the contingent beneficiaries. Further, such action was in direct violation of the restrictions placed on her by this Court on July 24, 2019. She did not take reasonable measures to document and inventory items in the marital home knowing the contested nature of this matter. She sold assets from the marital home without providing any documentation, inventory or accounting for such assets knowing the ongoing dispute over items kept in this home.

In addition, the Respondent failed to provide any meaningful prosecution on the elective share she asserted. The marital agreements were consistent in barring Respondent's right to collect from the Decedent's estate. The pursuit of an elective share despite the known waivers set out in the marital agreements further complicated this Estate and the need for legal services.

Time and Labor Necessarily Devoted to the Case.

The time and labor expended on Petitioners' behalf by their counsel was reasonable and not duplicative. Per this Court's directive Mr. Inabnit was to file with the Court the detailed invoices which supported the Affidavit of Attorney's fees and associated testimony submitted at the April 6, 2022, hearing. Respondent's counsel would have twenty days from receipt of same to raise any specific objections to the itemized charges. On May 26, 2022, the Court received a letter from Mr. Inabnit directed to opposing counsel which included the invoices. The amount requested in attorney's fees is adequately justified on the invoices presented to the Court and appears consistent with the evidence that was submitted at both trials in this matter. The objections raised by Respondent as to the attorney's fees does not challenge the actual fees charged but

rather, the assessment of these fees against Respondent. The Court finds that Counsel's efforts were largely spent in response to non-meritorious allegations made by the Respondent and Respondent's failure to preserve, protect or account for property of the Decedent.

Professional Standing of Counsel.

Petitioner's counsel, Davis Inabnit, Jr., is an experienced trial lawyer in good standing in the legal community.

The Contingency of Compensation.

This is not a contingency case.

Fees Customarily Charged in the Locality for Similar Services.

The fees charged are those customarily charged in this legal community.

Beneficial Results Obtained.

Finally, the benefits obtained for Petitioners were significant. As previously stated in the Court's Order dated July 20, 2022, the Petitioners were in large measure successful on their 2019 Petitions and in the present Petition. Specifically, the Petitioners successfully 1) challenged Respondent's informally submitted 2008 Will in favor of the later dated 2014 Will; 2) removed Respondent as Personal Representative; 3) received the appointment as Personal Representative; 4) defeated the Respondent's claim for elective share in this estate or any share in this estate; 5) defended transfers of Personal and Real Property made by the Decedent prior to his death; and 6) asserted damages against the Respondent for the mismanagement of Estate assets. Although, Respondent did defeat the Petitioners' assertion of the slayer statute as a bar to her recovery from this estate, such defense did not result in any added benefit to the Estate. The value added to Respondent from this defense was to keep the jointly owned home in Georgetown County which passed outside of Probate. Additionally, any success Respondent may have had challenging a few transfers of mobile homes and the RV was not something that resulted in any added benefit to her

and was of minimal impact on the Estate.

2. Applying the additional E.D.M. v. T.A.M factors set forth above, the Court finds the following:

In addition to the Attorney's Fees incurred by the Petitioners, they have also incurred significant personal expenses in this matter. Given the Respondent's concealment of the Decedent and unwillingness to account for assets, the Petitioners have invested significant time and traveled numerous times to this County, Horry County and North Carolina in an effort to find their father, his assets and secure those assets for the Estate or the intended beneficiary. These personal expenses further burden their ability to pay their own attorney's fees. Considering this and the assets of this Estate, payment of these attorney's fees from the estate or the Petitioners would not be fair or equitable to the Petitioners' and result in an inequitable financial burden on them.

On the other hand, the record reflects that Respondent has the ability to pay these fees and costs, as well as her own out of the jointly owned home in Georgetown County that she received after the death of Decedent. There was no mortgage on this home. The Respondent sold that home in November, 2021 for Six Hundred Eighty Thousand Dollars (\$680,000.00). Respondent initially testified that she did not receive much out of the sale of the house because the attorney's fees she owed were deducted from her proceeds. However, Respondent later admitted on cross examination that she netted around Four Hundred Thousand Dollars (\$400,000.00). Respondent was charged criminally in this matter and would have incurred attorney's fees associated with the same in addition to the fees incurred in this litigation. However, the Court does not find it fair or equitable to allow these additional attorney's fees she incurred as a result of criminal charges asserted against her to be considered as an offset to her ability to pay. This is so regardless of the outcome of the criminal charges.

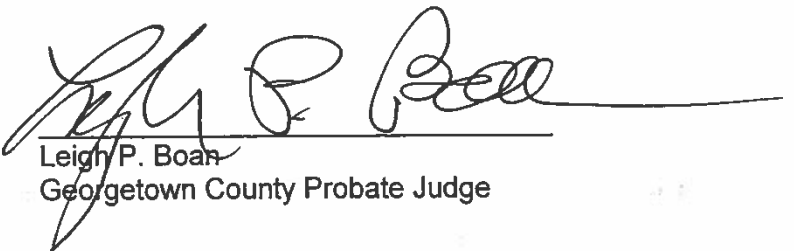
Petitioners' counsel has a right to be paid reasonable fees and costs for bringing this action on behalf of Petitioners. The fees requested are reasonable under the

circumstances. Respondent and Petitioners both have funds available to pay the fees and costs, but ultimately the Respondent, not the Petitioners, should bear the responsibility for the cost of this litigation. Justice and equity require that Respondent personally be assessed these fees and costs. See, S.C. Code § 62-1-111.

Given the forgoing, Respondents standard of living is not unfairly burdened by these cost. The marital agreements established that after the marriage she would receive assets which were designated in writing as jointly owned and those she held individually. No matter how she may describe her financial status as a result of decedent's death, it is consistent with the provisions in the martial agreements. Further, the Petitioners' standard of living is not unfairly advantaged by this award of attorney's fees especially given the personal expenses they have incurred and the beneficial results gained in this matter.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Court's Order dated July 20, 2022 is confirmed and this Order serves to clarify this Court's findings as to the specific factors considered by this Court in its prior award of the Attorney's fees and cost. Respondent, shall be and is hereby ordered to pay Petitioners' the damages set forth in this Court's Order dated July 20, 2022 within thirty (30) days from the entry of this Order.

AND IT IS SO ORDERED.



Leigh P. Boan
Georgetown County Probate Judge

Georgetown, South Carolina
September 26, 2022

(Probate Court, Summons to Show Cause, filed: March 2, 2023)

WHEREAS, on July 20, 2022 this Court entered an Order wherein Respondent, Irene K. Clodfelter was ordered to pay damages to this estate in the amount of Forty-One Thousand and no/100 Dollars (\$41,000.00) together with the Petitioners' Attorney's Fees and Costs in the amount of Forty-One Thousand Two Hundred Eighty-Seven and 56/100 Dollars (\$41,287.56). The July 20, 2022 Order was entered in response to Respondent's failure to inventory and account for property as directed by this Court's Order filed April 16, 2021; and in direct violation of the restrictions placed on the Respondent by this Court on July 24, 2019 during her appointment as personal representative of the Decedent's estate. The total sum of Eighty-Two Thousand Two Hundred Eighty-Seven and .56/100 Dollars (\$82,287.56) reflects the total damages to the Estate caused by the actions of the Respondent and thus owed by her. These damages were assessed by Order of this Court filed July 20, 2022 and reaffirmed by Order of this Court filed September 26, 2022 which denied Respondent's Motion for Reconsideration of this Court's July 20, 2022 Order. The September 26, 2022 Order also clarified the factors considered by the Court in its award of Attorney's fees and ordered the payment of the assessed damages within 30 days of the filing of the September 26, 2022 Order.

STANDARD OF REVIEW

"The determination of contempt ordinarily rests within the sound discretion of the [probate court]." *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the [probate court] has abused [its] discretion." *Stone v. Reddix-Small*s, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before determining if contempt is appropriate under the circumstances of this case, it must first be determined whether the contemptuous conduct was civil or criminal in nature. "The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed." *Poston v. Poston*, 331 S.C. 106 at 111, 502 S.E.2d 86 at 88. "The purpose of civil contempt is 'to coerce the defendant to do the thing required by the order for the benefit of the complainant.'" *Id.* (quoting *Gompers v. Buck's Store & Range Co.*, 221 U.S. 418, 441 (1911)). "In civil contempt cases, the sanctions are conditioned on compliance with the court's order." *Poston*, at 112, 502 S.E.2d at 89. "The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do." *Id.* (quoting *Hicks*, 485 U.S. at 633).

"The case of *Curlee v. Howie*, 277 S.C. 377, 287 S.E.2d 915 (1982), is a paradigm of an academic and scholarly review of the law of contempt. *Curlee* edifies:

... The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. *McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979); *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955)... Contempt results from the willful disobedience of an order of the court, and before a person may be held in contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based. *Edwards v. Edwards*, 254 S.C. 466, 176 S.E.2d 123 (1970); *Bigham v. Bigham*, 264 S.C. 101, 212 S.E.2d 594 (1975)."

Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514 (S.C. App. 2002). In the case at bar, the Respondent, Irene K. Clodfelter, was ordered by this Court's Order of July 20, 2022 to pay compensatory damages to this estate in the amount of Forty-One Thousand and no/100 Dollars (\$41,000.00) as the value of the property removed, withheld or which the Respondent failed to account

for to the Estate, together with Petitioners' Attorney's Fees and Costs in the amount of Forty-One Thousand Two Hundred Eighty-Seven and 56/100 Dollars (\$41,287.56). These damages assessed by this Court were subsequently reaffirmed by Order of this Court filed September 26, 2022, wherein the Respondent's Motion for Reconsideration was denied. Respondent, Irene K. Clodfelter was to pay the total damages no later than 30 days after the Court's September 26, 2022 Order.

"When ... property of an individual is taken or destroyed in contempt of the court's order, those interested have a right to ask of the court its restoration or payment of its value at the hands of the offender, and the court requires such restoration as part of the punishment." *Cheap-O's Truck Stop, Inc.*, 350 S.C. at 607 (quoting, *Lorick & Lowrance v. Motley*, 69 S.C. 567, 48 S.E. 614, 615 (1904))

"It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." *Id.* 350 S.C. at 607 (citing *State v. Harper*, 297 S.C. 257, 376 S.E.2d 272; *Spartanburg County Dep't of Social Services v. Padgett*, 296 S.C. 79, 370 S.E.2d 872 (1988); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982)). "A willful act is defined as one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *Id.* 350 S.C. at 608 (citing *Padgett*, 296 S.C. at 82-3, 370 S.E.2d at 874).

The Respondent testified that she was aware of the damages assessed against her at the time of the filing of the Court's Order on July 20, 2022, but Respondent's testimony that she "didn't think she had to pay" was not credible. At the April 18th hearing, the Respondent again acknowledged that she had the ability to pay these fees and costs, as well as her own attorney's fees and cost out of the net proceeds she received from the sale of the home she co-owned with the decedent, as joint tenants with rights of survivorship. This home was sold in November 2021 for the sum of Six Hundred Eighty

Thousand and no/100 Dollars (\$680,000.00). Furthermore, she acknowledged that at the time of the Court's Order issued on July 20, 2022, and at the time of the subsequent Order issued on September 26, 2022, the Respondent was not incarcerated, and she had placed her net proceeds from the sale of her home in a joint account with her daughter at Wells Fargo. By her own admission, Irene K. Clodfelter was unable to provide any plausible reason or justification for her failure to comply within 30 days of the Court's Order of September 26, 2022. Irene K. Clodfelter, without justification, voluntarily, intentionally, and "with a bad purpose either to disobey or disregard the law" failed to comply with this Court's Order. *Cheap-O's Truck Stop, Inc.*, 350 S.C. at 608 (citations omitted).

"In civil contempt cases, the sanctions are conditioned on compliance with the court's order." Poston, 331 S.C. at 112, 502 S.E.2d at 89. "The conditional nature of the punishment renders the relief civil in nature because the contemnor 'can end the sentence and discharge himself at any moment by doing what he had previously refused to do.'" Id. (quoting Hicks, 485 U.S. at 633).

NOW THEREFORE, based on the foregoing findings of fact and conclusions of law, that the Respondent willingly and in complete disregard for this Court's prior Orders, is hereby found to be in Contempt of Court;

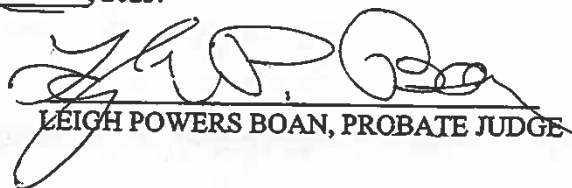
IT IS HEREBY ORDERED that Respondent, Irene K. Clodfelter is hereby sentenced to six (6) months confinement to be served consecutively (at the end of and in addition to her current incarceration) with the South Carolina Department of Corrections or other appropriate institution/facility; however said sentence shall be subject to being purged by payment of the total sum of Eighty-Two Thousand Two Hundred Eighty-Seven and 56/100 Dollars (\$82,287.56) as previously ordered. This sum is to be paid to the Petitioners, Karen Leigh Chappell and Lynda Faye Clinger and the Estate of Hubert Leon Clodfelter.

IT IS FURTHER ORDERED that the total sum of Eighty-Two Thousand Two Hundred Eighty-Seven and 56/100 Dollars (\$82,287.56) previously ordered to paid by Respondent shall

also be entered as a civil judgment against the Respondent, Irene K. Clodfelter with the Clerk of Court for Georgetown County, and may be transcribed and/or recorded in any other jurisdiction as a general judgment.

AND IT IS SO ORDERED.

Executed this 20th day of June, 2023.


LEIGH POWERS BOAN, PROBATE JUDGE

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GEORGETOWN)	FIFTEENTH JUDICIAL CIRCUIT
)	
Irene K. Clodfelter,)	Civil Action No.: 2023-CP-22-00783
)	
Appellant,)	
)	
v.)	
)	ORDER ON APPEAL
Karen L. Chappell, & Lynda F. Clinger,)	
)	
Respondents.)	
)	
)	

This matter was before the Court on August 22, 2024, by way of an Appeal from an order of contempt against Irene K Clodfelter (hereinafter “Appellant”) issued by the Probate Court of Georgetown County, South Carolina. This Court, having been fully apprised of the judgment from the Honorable Leigh P. Boan, Presiding Judge, and having considered all relevant legal and factual issues raised by Appellant, finds there is no legal or factual error presented and the Probate Court’s issuance of an order of contempt against Appellant is Affirmed.

PROCEDURAL AND FACTUAL HISTORY

This case centers around the Will of Hubert Leon Clodfelter (hereinafter “Decedent”). Appellant is the former spouse of the Decedent; Karen Chappell and Lynda Clinger (hereinafter “Respondents”) are the two adult children of the Decedent. Initially, after Decedent’s Will was probated, Appellant was named as the personal representative of the estate. In July 2019, Respondents filed a petition against Appellant asserting Executor de son Tort, Accounting, Breach of Contract, and Unjust Enrichment. (Appellant’s Br. 1.). After a trial, the Probate Court issued an order which: (1) removed Appellant as the personal representative of the Decedent’s estate; (2) appointed Respondents as the personal representatives of the estate; and (3) concluded

that Appellant and Decedent jointly owned with rights of survivorship, a marital home in Murrells Inlet, South Carolina. *Id.*

Respondents filed an additional petition with the Probate Court in September 2021, asserting the same causes of action as above. *Id.* at 2. In its order dated July 20, 2022, the Probate Court found that the Appellant sold the marital home she owned in November 2021 for Six Hundred Eighty Thousand Dollars (\$680,000.00). (R. at 20). Appellant netted a Four Hundred Thousand Dollar (\$400,000.00) profit. *Id.* The Probate Court granted Respondent's request for relief and assessed Forty-One Thousand Dollars (\$41,000.00) in items missing from Decedent's estate, plus Forty-One Thousand Two Hundred Eighty-Seven and Fifty-Six cents (\$41,287.56) in attorney's fees for Respondents. (R. at 28). On August 1, 2022, Appellant filed a Rule 59(e) motion to reconsider the Probate Court's July 2022 Order. (R. at 30-40). The Probate Court denied Appellant's motion. In addition, the Probate Court ordered Appellant to pay the sum noted in its July 2022 order (total figure = \$82,287.56). (R. at 53-54). Payment was to be made within thirty days of September 26, 2022. (R. at 54).

Appellant did not pay the outstanding sum. Respondents filed a Petition for a Rule to Show Cause on November 30, 2022. (R. at 56-59). A contempt hearing was held on April 18, 2023. On June 20, 2023 the Probate Court issued its order holding the Appellant in contempt. (R. at 110-113). Appellant timely filed this appeal to that order.

STANDARD OF REVIEW

Appeals to the Circuit Court from the Probate Court are subject to the South Carolina Probate Code. *Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). South Carolina law states that "The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. Code § 62-2-308(i) (2014). "According

to the rules of law” means “according to the rules governing appeals.” *Howard*, 315 S.C. at 360, 434 S.E.2d at 257. “...if there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that this Court or the Court of Appeals would apply where the appeal taken directly to either of them.” *Id.* at 361.

Holding a party in contempt of is a power vested in all courts as a way to preserve order, enforce judgments, and administer justice. *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). “A determination of contempt ordinarily resides in the sound discretion of the trial judge.” *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). “On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion.” *Hook v. South Carolina Department of Health and Environmental Control*, 439 S.C. 52, 72, 885 S.E.2d 442, 453 (Ct. App. 2023) (quoting *Stone v. Reddix-Small*s, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988)). “An abuse of discretion arises in cases in which the judge issuing the order was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support.” *Stewart v. Floyd*, 274 S.C. 437, 440, 265 S.E.2d 254, 255 (1980).

DISCUSSION

Based upon the testimony, Appellant had sufficient funds in her bank account to satisfy the amount owed to Respondents. Appellant offered no explanation for failure to satisfy payment. Appellant suggests that since the funds she had available came from the sale of real property which was previously awarded to her earlier in this action, that there was an attempt by the Respondent to relitigate the ownership of the real property. That contention is unfounded. The Appellant is correct that the real property was determined to belong to her. Thereafter, Appellant could do with the real property as what she pleased. At such time as the real property

was sold it was converted into liquid assets. The availability of such liquid assets to satisfy was properly considered in her ability to pay such obligations pursuant to the Probate Court.

“Civil contempt must be proven by clear and convincing evidence.” *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). “Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based.” *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). “A willful act is one which is ‘done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.’” *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 759-60 (Ct. App. 2007) (quoting *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001)). See *Matter of Estate of Combis*, 439 S.C. 485, 493, 888 S.E.2d 1, 5 (Ct. App. 2023).

The standard to hold a person in contempt is there must be clear and convincing evidence that the party willfully violated or disobeyed a valid court order, the record supports that. There was a court order obligating Appellant to pay \$82,287.56. The Appellant acknowledges receipt of the order. The order was not appealed and became the law of the case. Appellant had the ability to pay based upon her own testimony and Appellant offered no explanation or extenuating circumstances which could have allowed the Probate Court to determine she was otherwise unable to satisfy her obligation.

As set forth above, the Probate Court’s decision was supported by the evidence. Further, there has been no showing that the Order was controlled by an error of law. Therefore, the order of the Probate Court is Affirmed.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

AND IT IS SO ORDERED!

The Honorable Dale E. Van Slambrook

September 20, 2024
Moncks Corner, South Carolina

ELECTRONICALLY FILED - 2024 Sep 23 4:35 PM - GEORGETOWN - COMMON PLEAS - CASE#2023CP2200783

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NO. 2023-CP-22-00783**

Irene K. Clodfelter
PLAINTIFF(S)

Karen L. Chappell, & Lynda F. Clinger
DEFENDANT(S)

Submitted by: <u>The Court</u>	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--------------------------------	--

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 _____.
- 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:

Please see attached order Affirming the Judgment of the Probate Court.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
<small>Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.</small>		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2781
Judge Code

9/20/2024
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Georgetown Common Pleas

Case Caption: Irene K Clodfelter , plaintiff, et al VS Karen Leigh Chappell ,
defendant, et al
Case Number: 2023CP2200783
Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

Electronically signed on 2024-09-23 16:31:19 page 8 of 8

ELECTRONICALLY FILED - 2024 Sep 23 4:35 PM - GEORGETOWN - COMMON PLEAS - CASE#2023CP2200783

STATE OF SOUTH CAROLINA)
)
COUNTY OF: GEORGETOWN)

IN THE PROBATE COURT

IN THE MATTER OF:)
HUBERT LEON CLODFELTER)
(Decedent))

COPY

CASE NUMBER: 2019-ES-22-00397

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

*KAREN LEIGH CHAPPELL AND LYNDA FAY CLINGER,

Petitioner(s)

vs.

*IRENE K. CLODFELTER, NICHOLAS TORONTALI, MATTHEW TORONTALI, CHRIS CHAPPELL, MICHAEL CHAPPELL, RACHEL CLINGER AND GOSPEL FELLOWSHIP ASSOCIATION, INC. A/K/A GOSPEL FELLOWSHIP ASSOCIATION A/K/A GOSPEL FELLOWSHIP ASSOCIATION MISSIONS,,

Respondent(s)

PROBATE COURT

2019 JUL 30 PM 12:52

GEORGETOWN SC

APPLICATION FOR INFORMAL
 PROBATE OF WILL
 APPOINTMENT

(check any that apply)

*PETITION FOR FORMAL
 TESTACY
 APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to SC Rules of Civil Procedure.

*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

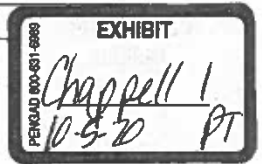
1. Applicant/Petitioner(s): Karen Leigh Chappell Lynda Faye Clinger
Address: 4527 Clarksdale Ct., Orlando, FL 32812 6614 Hillbriar Dr., Dallas, TX 75248
Telephone (Work): _____
(Home): _____
(Cell): 407-538-6110 214-789-8874
Email: _____
Relationship to Decedent: Daughters

2. Decedent Information:

Full Legal Name
(including all known names): Hubert Leon (Lee) Clodfelter
Date of Birth: May 13, 1934
Date of Death: Unknown, presumed date: June 2019--See Death Cert.
Age at Date of Death: 84

3. Venue for this proceeding is proper in this County because:

Decedent was domiciled in this County at date of death:



TRUE AND CORRECT COPY
ATTEST: *[Signature]*
CLERK OF THE PROBATE COURT
GEORGETOWN, SOUTH CAROLINA

Address: 4490 COLUMBINE CT., MURRELLS INLET, SC 29576 County: GEORGETOWN State: South Carolina.

Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death at:

Address: County: State: South Carolina

Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

4(a). Names and addresses of beneficiaries (devises) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Karen Leigh Chappell	1961	4527 Clarksdale Ct., Orlando, FL 32812	Daughter
Lynda Faye Clinger	1962	6614 Hillbriar Dr., Dallas, TX 75248	Daughter
Nicholas Torontali	1985	PO Box 774 Verdi, NV 89439	Grandson
Matthew Torontali	1996	4049 Conway Place Cir., Orlando, FL 32812	Grandson

See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Irene K. Clodfelter	1944	4490 Columbine Ct., Murrells Inlet, SC 29576	Wife

See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

YES NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

NO YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

NO YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

NO YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

NO YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

NO YES If yes, please state details, including names and addresses on page 3.

Estate of Hubert Leon Clodfelter:

4(a) Additional Devisees:

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Chris Chappell	1987	4527 Clarksdale Ct., Orlando, FL 32812	Grandson
Michael Chappell	1989	800 Wavecrest Dr. Orlando, FL 32807	Grandson
Rachel Clinger	1999	6614 Hillbriar Dr., Dallas, TX 75248	Granddaughter
Gospel Fellowship Association, Inc. A/K/A Gospel Fellowship Association A/K/A Gospel Fellowship Association Missions		1700 Wade Hampton Blvd. Greenville, South Carolina 29614	

10. Have more than ten (10) years passed since the Decedent's death?

NO YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a). Did the Decedent own probate real estate?

NO YES If yes, an approximate value of \$TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

NO YES If yes, an approximate value of \$TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. Have you made a diligent search for a Will of the Decedent?

YES
 NO If no, please explain on page 3 below.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- The original is attached.
- The original is in the Court's possession.
- An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
- An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
- The original of the Will is lost, destroyed, or otherwise unavailable, however, a copy or a description of its contents is attached. (for formal proceeding, explain below or attach supplemental pleadings)

2. The execution date of the Will was: 10/1/2014

Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property pursuant to 62-2-512?

NO YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

YES NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

NO YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

The Petitioners are aware that the respondent Irene K. Clodfelter, has filed a petition for probate of a prior Will which was revoked by the attached will. Additionally the petitioners request and seek to set aside any deeds conveyances or benefits Irene K. Clodfelter, may seek to claim as a result of the decedents death pursuant to S.C. Code Section 62-2-803 (SC Slayer Statute).

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - named as Primary Personal Representative in Will
 - named as Alternate Personal Representative in Will
 - nominee of Primary Personal Representative in Will
 - nominee of Alternate Personal Representative in Will
 - surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - other devisee of Decedent (describe): _____ or nominee of said devisee
 - surviving spouse of Decedent or nominee of said spouse
 - other heir of Decedent (describe): _____ or nominee of said heir
 - creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
 - other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.


VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 23rd day
of July, 20 19

[Signature]
Notary Public for South Carolina Florida
My Commission Expires: 5/26/2021

Signature of
Applicant/Petitioner: Karen Leigh Chappell

 Tina Althoff
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG102435
Expires 5/26/2021

SWORN to before me this _____ day
of July. 20 19

Notary Public for South Carolina
My Commission Expires: _____

Signature of Co-
Applicant/Co-Petitioner: _____

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - named as Primary Personal Representative in Will
 - named as Alternate Personal Representative in Will
 - nominee of Primary Personal Representative in Will
 - nominee of Alternate Personal Representative in Will
 - surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - other devisee of Decedent (describe): _____ or nominee of said devisee
 - surviving spouse of Decedent or nominee of said spouse
 - other heir of Decedent (describe): _____ or nominee of said heir
 - creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
 - other (describe): _____
3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

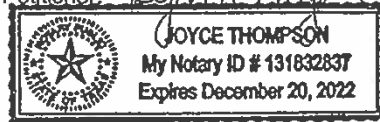
VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 23rd day
of July, 20 19

Signature of Applicant/Petitioner: Lynda Faye Cliegg

Joyce Thompson
Notary Public for South Carolina
My Commission Expires: 12/20/2022



SWORN to before me this _____ day
of July. 20 _____ 19 _____

Signature of Co-Applicant/Co-Petitioner: _____

Notary Public for South Carolina
My Commission Expires: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed _____ and
 Codicil executed _____ and

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed _____ and

- Codicil executed _____ and
- Memorandum

be informally GRANTED DENIED.

Executed this _____ day of _____, 2_____.

, Probate Court Judge

For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond

- Fiduciary Bond in the amount of \$ _____
- Bond not required for Personal Representative nominated by Will
- Bond not required as Personal Representative is sole heir or sole devisee
- Bond not required as Personal Representative is state agency, bank, or trust company
- Bond waivers filed
- See order dated _____
- Other: _____

Notice to Creditors

- Required
- Not Required

Executed this _____ day of _____, 2_____.

, Probate Court Judge

For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: Karen Leigh Chappell
Print Name: Karen Leigh Chappell
Address: 4527 Clarksdale Ct.
Orlando, FL 32812
Telephone (Work): _____
(Home): _____
(Cell): 407-538-6110
Email: _____

Signature: _____
Print Name: Lynda Faye Clinger
Address: 6614 Hillbriar Dr.
Dallas, TX 75248
Telephone (Work): _____
(Home): _____
(Cell): 214-789-8874
Email: _____

*Attorney: Davis Inabnit, Jr.
Address: 1004 Buck Street
Conway, SC 29526
Telephone: 843-248-2089
Email: davis@inabnitlaw.com

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

Signature: _____
Print Name: Karen Leigh Chappell
Address: 4527 Clarksdale Ct.
Orlando, FL 32812
Telephone (Work): _____
(Home): _____
(Cell): 407-538-6110
Email: _____

Signature: Lynda Faye Clinger
Print Name: Lynda Faye Clinger
Address: 6614 Hillbriar Dr.
Dallas, TX 75248
Telephone (Work): _____
(Home): _____
(Cell): 214-789-8874
Email: _____

*Attorney: Davis Inabnit, Jr.
Address: 1004 Buck Street
Conway, SC 29526
Telephone: 843-248-2089
Email: davis@inabnitlaw.com

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE MATTER OF:
HUBERT LEON CLODFELTER
(Decedent)

)
)
)
)
)
)
)

IN THE PROBATE COURT

CASE NUMBER: 2019-ES-22-00397

Irene K. Clodfelter

Petitioner(s)

vs.

*PETITION FOR ELECTIVE SHARE

Karen Leigh Chappell, Lynda Fay Clinger,
Nicholas Torontali, Matthew Torontali, Chris Chappell,
Michael Chappell, Rachel Clinger and
Gospel Fellowship Association, Inc. a/k/a
Gospel Fellowship Association a/k/a
Gospel Fellowship Association Missions,
Yvonne Clodfelter, and Bob Jones University
Respondent(s)

PROBATE COURT

2019SEP13PM2:05

The undersigned hereby alleges:

GEORGETOWN SC

1. I married the Decedent on November 3, 2004. (See the attached certified copy of the Marriage License or the certified copy of the Court Order declaring the existence of a Common Law Marriage between the Decedent and me.)
2. I was still married to the Decedent when he/she died on Unknown, presumed dated: June 2019. I am informed and believe that a Will executed by Decedent on August 20, 2008 is being probated in this Court.
3. I elect to take my elective share of the Decedent's Estate
4. This election is made within the later of (a) eight (8) months after the date of the Decedent's death, (b) six (6) months after the Informal or Formal Probate of the Decedent's Will, or (c) thirty (30) days after I was served with a Summons and Petition to set aside an Informal Probate or to modify or vacate an Order for Formal Probate of the Decedent's Will.

Executed this 10th day of September, 2019.

Signature: 

Print Name: Ronald S. Gaynor, Counsel for Petitioner

Address: P.O. Box 128

Pawleys Island, SC 29585

Telephone (Work): 843-237-8915

(Home): _____

(Cell): _____

Email: _____

Attorney: _____

Address: _____

Telephone: _____

Email: _____

***NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**



Department of Health - Vital Statistics
STATE OF FLORIDA
MARRIAGE RECORD
 TYPE IN UPPER CASE
 USE BLACK INK



STATE OF FLORIDA - COUNTY OF ORANGE

CLERK OF COUNTY

MARRIAGE RECORDS

DATED: 11/03/2008

INSTR. 20040/1870
 CIV. NO. 07674 PG. 413 PGS.
 MARRIAGE RECORDS
 COUNTY OF ORANGE
 STATE OF FLORIDA

GROOM'S NAME (Last, First, Middle Initial)			
HUBERT LEON CLODFELTER			
1. RESIDENCE - CITY, TOWN, OR LOCATION	2. COUNTY	3. STATE	4. BIRTHPLACE (State or Foreign Country)
ORLANDO	ORANGE	FLORIDA	NORTH CAROLINA
5. MARRIAGE LICENSE (Date and State)			
GLAY			
6. DATE OF BIRTH (Month, Day, Year)			
1944			
7. PLACE OF BIRTH (State or Foreign Country)			
WEST VIRGINIA			



WE HEREBY CERTIFY THAT THE ABOVE NAMED GROOM AND BRIDE WERE JOINED BY ME IN MARRIAGE BY ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA ON THIS RECORD IN ACCORDANCE TO THE BEST OF OUR KNOWLEDGE AND BELIEF. THIS MARRIAGE WAS PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF A LICENSE TO AUTHORIZE THE SAME AS ISSUED TO US BY THE STATE OF FLORIDA.

10/15/2004
 DEPUTY CLERK

10/15/2004
 DEPUTY CLERK

10/15/2004
 LICENSE TO MARRY

(I HEREBY CERTIFY THAT THE ABOVE NAMED GROOM AND BRIDE WERE JOINED BY ME IN MARRIAGE BY ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA)

21. DATE OF MARRIAGE (Month, Day, Year) 22. CITY, TOWN, OR LOCATION OF MARRIAGE

November 3 2008 Orlando Florida

23a. SIGNATURE OF PERSON PERFORMING CEREMONY (Last, First, Middle Initial) 23b. ADDRESS (Of person performing ceremony)

Rev. Bob Wilson 12536

24. NAME AND TITLE OF PERSON PERFORMING CEREMONY 24. SIGNATURE OF WITNESS TO CEREMONY (Last, First, Middle Initial)

Rev. Bob Wilson James H. Wilson

25. SIGNATURE OF WITNESS TO CEREMONY (Last, First, Middle Initial)

M. Wilson

SEAL

DEATH CERTIFICATION

STATE FILE NUMBER : 139-19-024675

DECEDENT'S NAME: *HUBERT LEON CLODFELTER*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: MAY 13, 1934

TYPE OF PLACE OF DEATH: OTHER (SPECIFY)

NAME AND ADDRESS OF PLACE OF DEATH: 10108 KINGS HIGHWAY, MYRTLE BEACH, SC 29577

PLACE OF DISPOSITION: HORRY COUNTY CORONER'S OFFICE

DISPOSITION LOCATION: CONWAY, SOUTH CAROLINA

METHOD OF DISPOSITION: HOLDING

DECEDENT'S RESIDENCE: 4490 COLUMBINE COURT, MURRELLS INLET, GEORGETOWN COUNTY, SC, 29576

PLACE OF BIRTH: NORTH CAROLINA

SURVIVING SPOUSE'S NAME: IRENE CLODFELTER

FATHER'S NAME: EARLIE CLODFELTER

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: CARRIE GREEN

INFORMANT'S NAME: KAREN CHAPPELL

MAILING ADDRESS: 4527 CLARKSDALE COURT, ORLANDO, FL, 32812

FUNERAL HOME: HORRY COUNTY CORONER, 2560 N MAIN ST #3, CONWAY, SC, 29526

FUNERAL DIRECTOR: ROBERT L. EDGE JR.

EMBALMER'S NAME: NA

ACTUAL OR PRESUMED DATE OF DEATH: JUNE, 2019

ACTUAL OR PRESUMED TIME OF DEATH: NOT LISTED

CAUSE OF DEATH - PART I:

GUNSHOT WOUND TO HEAD

SEX: MALE

SOCIAL SECURITY NUMBER: 224-34-0512

AGE: 84 YEARS

COUNTY OF DEATH: HORRY

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY MEMBER

LICENSE NUMBER: NA

LICENSE NUMBER: NA

MANNER OF DEATH: HOMICIDE

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES AUTOPSY PERFORMED? YES AUTOPSY AVAILABLE? YES

DATE OF INJURY: Est DEC 26, 2016 to MAR 14, 2019 TIME OF INJURY: NOT LISTED INJURY AT WORK? NO

PLACE OF INJURY: UNKNOWN

LOCATION OF INJURY: UNKNOWN UNKNOWN, MYRTLE BEACH, HORRY COUNTY, SC, 29575

HOW THE INJURY OCCURRED?

SHOT BY SOMEONE

CERTIFIER NAME AND TITLE: DEPUTY CORONER PATTY H. BELLAMY LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: 2560 N MAIN ST #3, CONWAY, SC, 29526

DATE FILED: JULY 02, 2019

DATE OF ISSUANCE: JULY 08, 2019

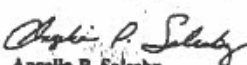
SPECIAL INSTRUCTIONS:

NA

SC07643684

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.


 David E. Wilson, Jr.
 Acting Director


 Angela P. Saleeby
 Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 04/09/2018



STATE OF SOUTH CAROLINA

COUNTY OF: GEORGETOWN

IN THE MATTER OF:

Hubert Leon Clodfelter

Decedent Alleged Incapacitated Individual



KAREN LEIGH CHAPPELL AND LYNDIA FAYE
CLINGER

Petitioner(s),

vs.

IRENE K. CLODFELTER,

Respondent(s).*

IN THE PROBATE COURT
CASE NUMBER 2019-ES-22-00397

SUMMONS

*For Guardianship/Conservatorship matters, you must include the alleged incapacitated individual as a Respondent.

TO THE RESPONDENT(S) LISTED ABOVE:

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):

Please Type or Print.

Davis Inabnit, Jr.

Law Office of Davis Inabnit, Jr., LLC

(Name of Petitioner/Attorney for Petitioner)

1004 Buck St.

(Street Address or Mailing Address)

Conway, SC 29526

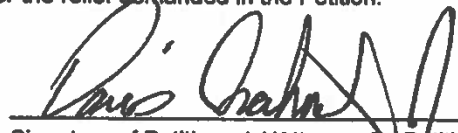
(City, State, and Zip Code)

PROBATE COURT

2021 SEP 10 PM 12:41

GEORGETOWN SC

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.



Signature of Petitioner(s)/Attorney for Petitioner(s)

Date: September 8, 2021

SCCA 401PC (01/2019)

RECORD ON APPEAL 069

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell, Lynda Faye Clinger)
)
 Petitioner)
 vs.)
)
 Irene K. Clodfelter,)
)
 Respondents.)

IN THE PROBATE COURT
 CASE NUMBER: 2019-ES-22-00397

PETITION
("Executor de son Tort")
(Accounting, Breach of Contract)
(and Unjust Enrichment)

The Petitioners Karen Leigh Chappell and Lynda Faye Clinger, complaining of Respondent would respectfully show unto this Honorable Court as follows:

1. The Petitioners are the duly appointed co-personal representatives of the Estate of Hubert Leon Clodfelter, who was their father.
2. Prior to the appointment of the Petitioners as co-personal representatives of their father's estate, the Respondent, Irene K. Clodfelter was initially appointed as personal representative of the decedent's estate.
3. During the course of her appointment litigation ensued which ultimately resulted in the termination of Respondent's appointment as personal representative, and barring Respondent's claims for an elective share or any other claims against the Decedent's estate.
4. Both during the course of litigation and subsequent to the termination of Respondent's appointment as Personal Representative, the Petitioners have made numerous request of the Respondent to identify, produce and/or disclose the whereabouts of personal property believed to be owned by the Decedent at the time he was murdered.

5. The items of personal property which the Petitioners have specifically requested and which are listed on Exhibit "A" are upon information and belief, believed to be in the possession of the Respondent.

6. Upon information and belief there is additional items and personal property of the Decedent that are not specifically listed on Exhibit "A" which are in the Respondent's possession which have neither been disclosed or accounted for by the Respondent.

7. The Petitioners prior to the filing of this petition have requested the disclosure and delivery of the Decedent's personal property from the Respondent, but to date the Respondent has failed to produce or disclose the whereabouts of the items shown on Exhibit "A" or any other items of personal property from the Respondent.

For a First Cause of Action
(Accounting)

8. Each and every allegation contained in the paragraphs above are incorporated herein when not inconsistent herewith.

9. That upon information and belief, the Respondent Irene K. Clodfelter has received funds, income, personal property and other assets that were the sole property of the decedent and decedent's estate.

10. That the Petitioners are entitled to accounting of all funds, income, personal property and other assets received or which are in the possession of the Respondent and for payment and return of the same to the decedent's estate to be disbursed pursuant to decedent's Will, dated October 1, 2014.

11. That the Petitioner asserts that in addition to an accounting and return of the Decedent's property, that they are entitled to the recovery of cost and attorney's fees for the prosecution of this action.

For a Second Cause of Action
(S.C. Code § 62-3-619 “Executor de son Tort”)

12. Each and every allegation contained in the paragraphs above are incorporated herein when not inconsistent herewith.

13. The Petitioners assert that the Respondent has received funds, income, personal property and other assets belonging to the decedent and decedent's estate.

14. That upon information and belief, the Respondent received and is concealing and/or has converted such property under the guise of her prior appointment as personal representative, by means of fraud, and/or without paying valuable consideration therefore.

15. That upon information and belief, the Respondent's actions and conduct are in violation of S.C. Code § 62-3-619 and Respondent should be charged as an Executor de son Tort; therefore, entitling the Petitioners to an order requiring the Respondent to account for said property and to assess damages including but not limited to attorney's fees and cost as may be determined by the court against the Respondent.

For a Third Cause of Action
(Breach of Contract)

16. Each and every allegation contained in the paragraphs above are incorporated herein when not inconsistent herewith.

17. Upon information and belief, the Respondent assertion of defenses and counterclaims for affirmative relief in the prior litigation and her refusal to cooperate, account for and produce the decedent's personal property to Petitioner constitute a material breach to the prenuptial agreement.

18. That pursuant to paragraph 17 of said prenuptial agreement, the breaching party to said agreement shall be responsible for payment of all costs and expenses including reasonable attorney's fees incurred by the nonbreaching party.

19. That Petitioners would assert that Respondent actions in the prior litigation as well as her actions complained of hereinabove are barred by said prenuptial agreement and Respondent assertion of claims against Petitioners and the decedent's estate are a material breach of said agreement.

20. That as a result of Respondent breach of said agreement, the Petitioners have have incurred actual and consequential damage as a result of having to proceed formally and/or defend against Respondent prior claims and having to prosecute the foregoing action.

21. Based upon the foregoing, Petitioners assert that they are entitled to a judgment to be entered against the Respondent for actual and consequential damage, punitive damages, for recovery of all costs and attorney's fees in pursuit of the present action and in defense of Respondent's previous claims and defenses, and for such other and further relief as this court shall deem just and proper.

For a Fourth Causes of Action

(Unjust Enrichment)

22. Each and every allegation contained in the paragraphs above are incorporated herein when not inconsistent herewith.

23. That upon information and belief, the Respondent has converted assets of the decedent and decedent's estate to her benefit.

24. That upon information and belief, Respondent has realized a benefit and has either converted or may still maintain possession of such property and assets of the decedent and/or decedent's estate.

25. That the Respondent has unduly cost the Petitioners and the Decedent's Estate funds for the prosecution of this action to the Respondent's benefit and to the detriment of the Petitioners and the Decedent's Estate.

26. That upon information and belief, the Respondent has never made payment for such assets or property of the decedent and/or decedent's estate.

27. It is unjust for the Respondent to retain the benefits and property received, concealed and/or has converted without paying for the value thereof.

28. The Respondents assert that they are entitled to judgment against the Respondent for the return of items in the Respondent's possession, and for actual and consequential damages; as well as punitive damages as determined by the court. Further, the Answering Respondents are entitled to prejudgment and post judgment interest, all costs of this action including reasonable attorney's fee for the Petitioners attorney, and for such other and further relief which is just and proper.

WHEREFORE, having set forth Petitioners claims and causes of action against the Respondent, the Petitioners would pray for, for the relief requested in their Petition, for judgment to be rendered against the Respondent in such sum as shall be determined by this Court, and for such other further relief as this court may deem just and proper.

LAW OFFICE OF DAVIS INABNIT, JR., LLC



Davis Inabnit, Jr. (SC Bar #:73700)

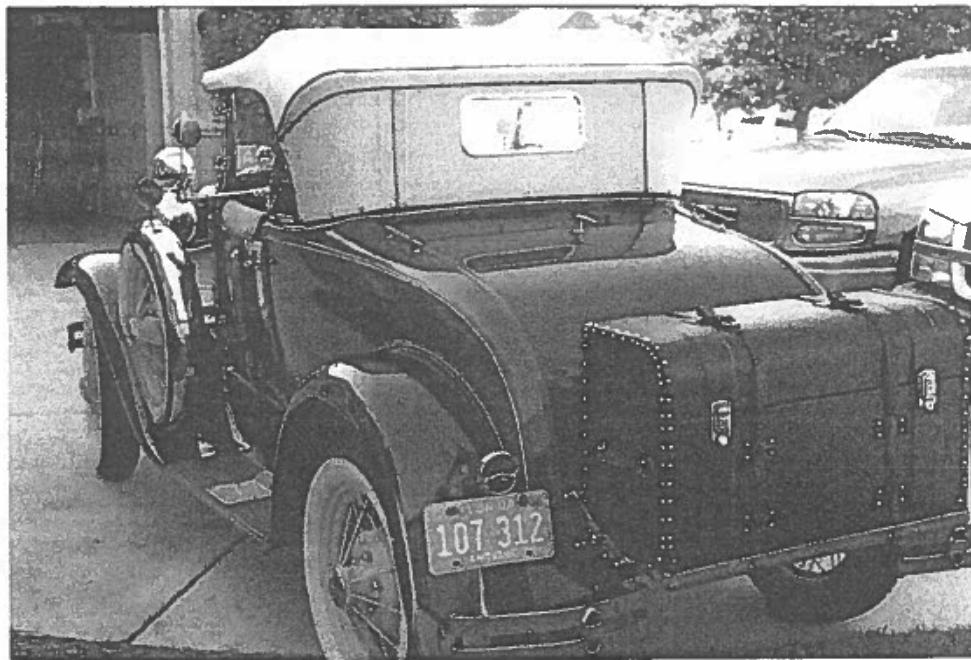
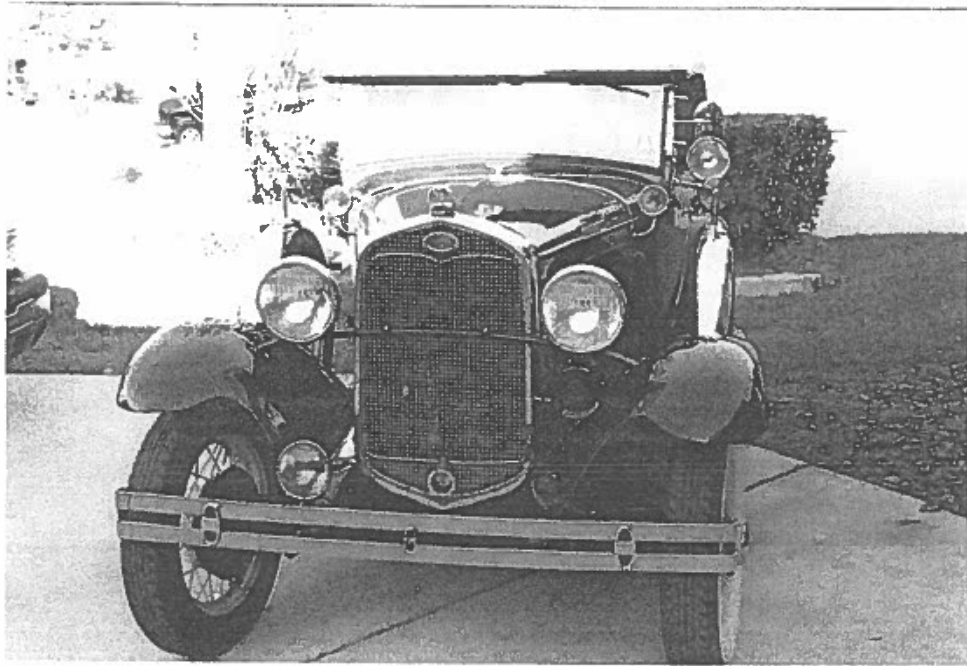
1004 Buck Street
Conway, S.C. 29526
843-248-2089
843-248-9653 fax

davis@inabnitlaw.com

ATTORNEY FOR PETITIONERS

September 8, 2021
Conway, South Carolina

EXHIBIT "A"



A03709

STATE OF FLORIDA

LIEN SATISFACTION

IDENTIFICATION NUMBER A4102622	YR 1931	MAKE FORD	MODEL	BODY 2D	WT-L-BHP 2300	VESSEL REGIS. NO.	TITLE NUMBER 48829760
-----------------------------------	------------	--------------	-------	------------	------------------	-------------------	--------------------------

REGISTERED OWNER

HUBERT LEON CLODFELTER
3612 CRESCENT PARK BLVD
ORLANDO FL 32812

DATE OF ISSUE

11/08/2005

LIEN RELEASE

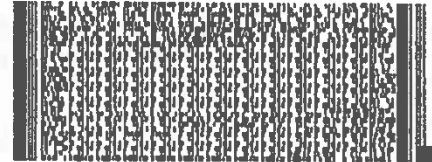
INTEREST IN THE ABOVE DESCRIBED VEHICLE IS
HEREBY RELEASED

BY _____

MAIL TO:

HUBERT LEON CLODFELTER
3612 CRESCENT PARK BLVD
ORLANDO FL 32812-3825

TITLE DATE



CERTIFICATE OF TITLE

SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER SECTION 319.23/328.03, FLORIDA STATUTES, TITLE TO THE MOTOR VEHICLE OR VESSEL DESCRIBED BELOW IS VESTED IN THE OWNER(S) NAMED HEREIN, THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE OR VESSEL.

IDENTIFICATION NUMBER A4102622	YR 1931	MAKE FORD	MODEL	BODY 2D	WT-L-BHP 2300	VESSEL REGIS. NO.	TITLE NUMBER 48829760
PREV STATE FL	COLOR BLU	PRIMARY BRAND	SECONDARY BRAND	NO OF BRANDS	USE PVT	PREV ISSUE DATE 07/11/1994	DATE OF ISSUE 11/08/2005
ODOMETER STATUS OR VESSEL MANUFACTURER OR OH USE 13372 MILES 11/08/2005 NOT ACTUAL				HULL MATERIAL	PROP		

REGISTERED OWNER
HUBERT LEON CLODFELTER
3612 CRESCENT PARK BLVD
ORLANDO FL 32812

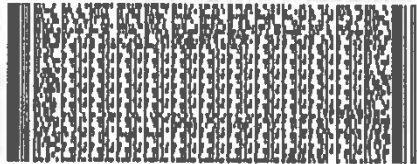
LIEN RELEASE
INTEREST IN THE ABOVE DESCRIBED VEHICLE IS
HEREBY RELEASED

BY _____

TITLE DATE

1ST LIENHOLDER

NONE



DIVISION OF MOTOR VEHICLES TALLAHASSEE FLORIDA

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES

Carl A. Ford
CARL A. FORD
DIRECTOR

Control Number 75005328

Fred O. Dickinson, III
FRED O. DICKINSON, III
EXECUTIVE DIRECTOR

TRANSFER OF TITLE BY SELLER (This section must be completed at the time of sale.)
Federal and state law require that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

This title is warranted and certified to be free from any liens except as noted on the face of this certificate and the motor vehicle or vessel described is hereby transferred to:
Purchaser: _____ Address: _____

I/We state that this 5 or 6 digit odometer now reads (no tenths) Selling Price \$ _____ Date Sold: _____

miles, date read _____ and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one of the odometer statement blocks is checked.
CAUTION DO NOT CHECK 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.
DO NOT CHECK 2. I hereby certify that the odometer reading is not the actual mileage.
WARNING - ODOMETER DISCREPANCY.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE.

Signature of Purchaser: _____ Printed Name of Purchaser: _____
Signature of Co-Purchaser: _____ Printed Name of Co-Purchaser: _____
Signature of Seller: _____ Printed Name of Seller: _____
Signature of Co-Seller: _____ Printed Name of Co-Seller: _____

(When Applicable) Selling Dealer's License Number: _____ Tax No. _____ Tax Collected \$ _____

Auction Name _____ License Number _____

STATE OF FLORIDA

DEPARTMENT OF MOTOR VEHICLES

GC-2

S.C. GOLF CART PERMIT REGISTRATION

Audit No. 01029

Office and Specialist Code WILLIAMS_CYNTHIA

Date of Issue 02/19/2009

I certify that this golf cart is owned by:

Name 0 CLODFELTER, HUBERT L

INSURANCE CERTIFICATION

I hereby declare the vehicle to be an insured motor vehicle in accordance with the S.C. Automobile Reparation Reform Act and S.C. Motor Vehicle Financial Responsibility Act under the penalty set forth in 58-11-760 and will maintain security thereon during the registration period.

I hereby certify that my address as shown on this application is my true legal residence.

Street 10108 KINGS RD LOT #675

City MYRTLE BEACH State SC

Zip Code 29572

OPERATING RESTRICTIONS:

- * To be operated daylight hours only
- * Must have a valid driver's license
- * Must be driven on a secondary highway or street within (2) miles of residence or place of business
- * Must be operated by owner, his agent or employees
- * Person selling this golf cart must immediately notify the Department of Motor vehicles in writing, giving the name and address of the new owner, with the date of sale
- * This registration must be carried when golf cart is operated.

Name of Insurance Co. - not agency
FOREMOST INSURANCE COMPANY
Policy Number

Hubert L Clodfelter
 Owner's Signature _____ Date _____
 Driver's License Verified CL
 Specialist's Initials

APPLICANT



GALLERY OF ORIENTAL RUGS

Imperial Trading Co. 1507 S. College Road Wilmington, NC. 28403
Tel: 910-392-2605 Fax: 910-392-7878 Toll Free: 800-999-2605

Date: 03/20/95 Invoice: 2547

MR. LEE CLODFELTER
104 MARINGALE LANE
WILMINGTON, NC 28409

Rug/Trans NO	Description	Cost
6533	MAIN HABIBIAN /SILK & WOOL 4.8X6.6	1600.00
6534	MAIN HABIBIAN 7.2X10.3 SILK WOOL	3237.00
*	KERMAN KONNER 2.6X12 RED	900.00
**	KERMAN 6X6 RED.AYYEH	1150.00
***	KERMAN 3X5 RED.	480.00
****	KERMAN 5X7 AT. COL. RED	1150.00
*****	PADDING, 210 SQ.F.	315.00
*****	APDDING 6SERVICE OF 6 RUGS	668.00
		0.00

Total Taxable Sale: 9900.00
 Total Non Taxable Sale: 0.00
 Sales Tax: 570.00
 Total Invoices: 10070.00

PAID
FN

***** THANK YOU *****

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) IN THE PROBATE COURT
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
HUBERT LEON CLODFELTER (Decedent)

PROBATE COURT
2021OCT29PM1:58
GEORGETOWN SC

Karen Leigh Chappell and Lynda)
Faye Clinger,)

Petitioners,)

v.)

Irene K. Clodfelter,)

Respondent.)
_____)

**ANSWER AND AFFIRMATIVE
DEFENSES**

Respondent Irene K. Clodfelter ("Petitioner"), answering the allegations set forth in the Petition, would allege and show as follows:

FIRST DEFENSE

1. Each and every allegation in the Petition not expressly admitted, modified, or qualified herein is denied.
2. The allegations contained in Paragraphs 1, 2 and 3 of the Petition are, upon information and belief, admitted.
3. The allegations contained in Paragraph 4 of the Petition is denied.
4. As to the allegations contained in Paragraph 5 of the Petition, some of the items on the list are in the possession of Respondent and they have been given, or offered to be given, to Petitioners. Many of the items on the list, however, are not in possession of the Respondent so she denies the same.
5. The allegations contained in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Petition are denied.

6. Respondent denies all the remaining allegations, including all "Wherefore" clauses, including all subparts thereto, and demand strict proof thereof.

SECOND DEFENSE

7. The claims asserted against Respondent are barred in whole or in part by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

THIRD DEFENSE

8. Petitioners are barred from recovery against Respondent based upon their own actions and their own conduct or misconduct.

FOURTH DEFENSE

9. Petitioners' claims against Respondent are barred by the doctrine of res judicata and/or law of the case and/or claim preclusion and/or issue preclusion and/or estoppel in that these exact claims and issues have already been decided and determined, or could have been, in the trial or proceeding which has already occurred in this action.

FIFTH DEFENSE

10. Each and every cause of action set forth in the Petition is barred, in whole or in part, due to the failure of the Petitioners to timely and completely exhaust their administrative remedies, statutory remedies, and/or contractual remedies prior to commencing this action.

SIXTH DEFENSE

11. Each and every claim for equitable relief is barred insofar as the Petitioner maintains adequate remedies at law.

SEVENTH DEFENSE

12. The claims asserted against Respondent are barred, in whole or in part, for failure to assert them as compulsory counterclaims to the Petition filed by Respondent.

EIGHTH DEFENSE

13. The claims asserted against Respondent are barred, in whole or in part, for failure to mitigate damages.

NINTH DEFENSE

14. The claims asserted against Respondent are barred in whole or in part by the applicable statutes of limitation.

TENTH DEFENSE

15. Respondent asserts the doctrine of mistake as a complete and affirmative defense.

ELEVENTH DEFENSE

16. Respondent asserts the doctrines of waiver, estoppel, and laches as complete and affirmative defenses.

TWELFTH DEFENSE

17. Respondent asserts that any recovery is barred in whole or in part as a result of the doctrine of unjust enrichment.

THIRTEENTH DEFENSE

18. Petitioners' causes of action are duplicative and are, therefore, barred to the extent Petitioner seeks recovery for the same damages for duplicative claims.

FOURTEENTH DEFENSE

19. Respondent asserts that any recovery is barred in whole or in part as a result of the doctrine of election of remedies because the Petitioner seeks inconsistent remedies that would result in double recovery.

FIFTEENTH DEFENSE

20. Respondent asserts that Petitioners have tortiously caused damage to her and asserts that any damages recoverable by the Petitioners, if any, should be set off by the damages sustained by Respondent.

SIXTEENTH DEFENSE

21. Any injuries or damages sustained by Petitioners, all of which are denied, were caused by their own conduct and are barred in whole or in part against Respondent, were consented to and/or initiated by Petitioners, and/or were waived either expressly or impliedly by Petitioners' actions.

SEVENTEENTH DEFENSE

22. Petitioner's claims are barred by the doctrine of accord and satisfaction.

EIGHTEENTH DEFENSE

23. Respondent invokes the defense of condonation.

NINETEENTH DEFENSE

24. Respondent invokes the defense of payment.

TWENTIETH DEFENSE

25. Respondent invokes the defense of *plene administravit*.

TWENTY-FIRST DEFENSE

26. Respondent invokes the defenses of recrimination, release, res judicata and statute of frauds.

TWENTY-SECOND DEFENSE

27. Petitioners' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, § 1, and by the Due Process Clause of the South Carolina Constitution because the law of this State governing punitive damages provides inadequate procedural protections against arbitrary or erroneous awards of such damages. The United States Supreme Court has declared that a State may constitutionally award punitive damages only if the law that State provides significant and effective procedural protections to the other party, which the law of this State does not.

TWENTY-THIRD DEFENSE

28. Petitioners' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, § 1, and by the Due Process Clause of the South Carolina Constitution because Respondent lacked adequate notice either of the type of conduct that could warrant an award of punitive damages under the law of this State, or of the amount of such damages that could be awarded. The lack of fair notice bars any award of punitive damages.

TWENTY-FOURTH DEFENSE

29. Petitioners' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, § 1, and by the Due Process Clause of the South Carolina Constitution because due process requires that any award of punitive damages bear a close relationship to appropriate civil fines or penalties established by

the legislature, or by administrative agencies under authority delegated by the legislature. The law of this State, however, fails to incorporate this due process requirement, and therefore, no award of punitive damages may constitutionally be made under the law of this State.

TWENTY-FIFTH DEFENSE

30. Petitioners' claim for punitive damages is barred by the Commerce Clause of the U.S. Constitution, art. I, § 8, cl. 3 because the transactions alleged in the Complaint took place in interstate commerce, and the imposition of punitive damages on Respondent for transactions in interstate commerce unduly burdens that commerce.

TWENTY-SIXTH DEFENSE

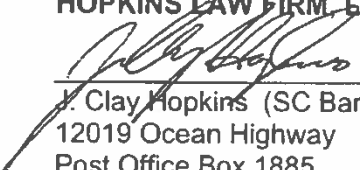
31. Petitioners are not entitled to punitive/liquidated damages as Respondent did not act or fail to act in a manner sufficient to give rise to punitive/liquidated damages liability.

TWENTY-SEVENTH DEFENSE

32. Respondent reserves the right to assert further affirmative defenses as they become evident through discovery investigation.

WHEREFORE, Respondent prays that her Answer be deemed good and sufficient and all claims by Petitioners against Respondent be dismissed, with prejudice, and such other and further relief, legal and equitable, including attorney's fees and costs, be awarded Respondent.

HOPKINS LAW FIRM, LLC



J. Clay Hopkins (SC Bar # 102053)

12019 Ocean Highway
Post Office Box 1885
Pawleys Island, South Carolina 29585
(843) 314-4202 – Telephone
(843) 314-9365 – Facsimile
clay@hopkinsfirm.com

Attorneys for Respondent Irene K. Clodfelter

Pawleys Island, South Carolina
October 29, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) IN THE PROBATE COURT
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
HUBERT LEON CLODFELTER (Decedent)

Karen Leigh Chappell and Lynda)
Faye Clinger,)

Petitioners,)

v.)

Irene K. Clodfelter,)

Respondent.)
_____)

CERTIFICATE OF SERVICE

PROBATE COURT
2021OCT29PM1:58
GEORGETOWN SC

I, Kathy Roberts, an employee of Hopkins Law Firm, LLC, do hereby certify that on October 29, 2021, the foregoing Respondent's **Answer and Affirmative Defenses** was served on counsel for the Petitioners via electronic and U.S. Mail, postage prepaid, addressed as follows:

E.B. Davis Inabnit, Jr.
Law Office of Davis Inabnit, Jr. LLC
1004 Buck Street
Conway, SC 29526
davis@inabnitlaw.com


Kathy Roberts

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	CASE NUMBER: 2019-ES-22-00397
COUNTY OF GEORGETOWN)	
)	
IN THE MATTER OF:)	
HUBERT LEON CLODFELTER)	
(Decedent))	
)	
Karen Leigh Chappell and Lynda)	
Faye Clinger)	
)	
)	REPLY TO DEFENDANT'S MOTION
Petitioners)	TO ALTER OR AMEND JUDGMENT
vs.)	AND FOR A NEW TRIAL
)	
Irene K. Clodfelter,)	
)	
)	
<u>Respondent.</u>)	

The Respondent Irene K. Clodfelter has filed a Motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure with regards to an Order that was signed on July 20, 2022 by the Honorable Leigh Powers Boan, Probate Judge for Georgetown County, South Carolina. acting as Special Referee. As basis for her Motion, the Respondent alleges that there was no evidentiary support for the Court's award of damages from the Defendant for breach of her fiduciary duties to the Estate of Hubert Leon Clodfelter.

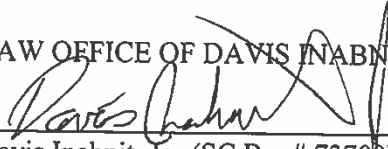
Petitioners would assert that Respondent's contention that there is no evidentiary support in the record is without merit. Based upon the exhibits entered into evidence, testimony of the Petitioners, Doug Smith, as well as the Respondent, the Court properly found that the Respondent had a fiduciary duty to the estate. "If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty..." *S.C. Code* § 62-3-712. The Court correctly determined that sufficient evidence was presented for some, but not all of the items for which an accounting was sought. "A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting." *Brown v. Allstate Ins. Co.*, 542 S.E.2d 723, 344 S.C. 21 (S.C. 2001). The court was presented with evidence of the existence and values of the items for which damages were awarded to the Petitioners.

As an example of this, relative to the golf cart, the Respondent testified and agreed that it was placed in her possession in the storage unit **after** she was appointed personal representative of the Decedent's estate. Further, testimony was presented by Doug Smith as well as the Petitioners that the Ford Model A was stored in the Decedent and Respondent's garage for which they were the only people who had access to the same.

While the Respondent would seek to replace her perspective as to the weight and credibility of the testimony and evidence, make her own findings of fact and conclusions of law; however, these are squarely within the purview of the trial judge as the fact finder. As stated hereinabove and in the Court's July 20, 2022 Order, factual findings were made based on exhibits and witness testimony, both of which constitute evidence in this case. It is the trial judge's job as the fact finder to review said evidence and to make findings of fact and conclusions of law, as was done in the case at bar. While the Respondent requests the Court to second guess its previous findings and conclusion, evidentiary support exists for the Court's ruling.

Based upon the above arguments, the Petitioners pray that the Respondent's Motion to Reconsider, Alter, and/or Amend, be denied.

LAW OFFICE OF DAVIS INABNIT, JR., LLC


Davis Inabnit, Jr. (SC Bar #:73700)

1004 Buck Street

Conway, S.C. 29526

843-248-2089

843-248-9653 fax

davis@inabnitlaw.com

ATTORNEY FOR PETITIONERS

August 22, 2022
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell, Lynda Faye Clinger)
)
 PETITIONER,)
)
 vs.)
)
 Irene K. Clodfelter,)
)
 RESPONDENT.)
 _____)

IN THE PROBATE COURT
 CASE NUMBER: 2019-ES-22-00397

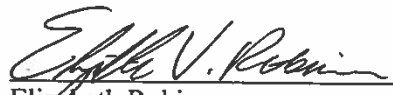
Certificate of Mailing

I, the undersigned, an employee of Law Office of Davis Inabnit, Jr., LLC, do hereby certify that I have served the foregoing, **Reply to Respondent’s Motion to Reconsider, Alter and/or Amend** by personally depositing same at by UPS, postage prepaid, addressed to the attorney indicated below:

Georgetown Probate Court
 Attn. Judge Leigh Powers Boan
 401 Cleland Street
 Georgetown, SC 29442

Hopkins Law Firm, LLC
 Attn: J. Clay Hopkins
 PO Box 1885
 Pawleys Island, SC 29585
Attorney for Respondent

August 22, 2022


 Elizabeth Robinson

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell and Lynda)
 Faye Clinger)
)
 Petitioners)
 vs.)
)
 Irene K. Clodfelter,)
)
 Respondent.)

IN THE PROBATE COURT
 CASE NUMBER: 2019-ES-22-00397

REPLY TO DEFENDANT’S MOTION
 TO ALTER OR AMEND JUDGMENT
 AND FOR A NEW TRIAL

The Respondent Irene K. Clodfelter has filed a Motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure with regards to an Order that was signed June 20, 2023 by the Honorable Leigh Powers Boan, Probate Judge for Georgetown County, South Carolina. The Order (the “Order”) was issued upon the Court’s issuance of a Summons to Show Cause for Contempt for her willful failure to comply with a prior order of this Court. In the Order, the Court found Respondent in Contempt of Court and sentencing her to six (6) months of incarceration (or, in the alternative, purging the Contempt by paying the sum previously ordered to be paid by Respondent within 30 days.

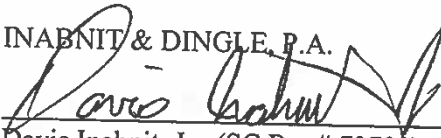
Petitioners would agree with Respondent in that “the power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). However the Petitioners would assert that Respondent’s contention that there is no evidentiary support or testimony for the Court to find that Respondent willfully disobeyed this Court’s prior order is without merit. At the hearing before the Court, the Respondent testified that she was aware of the Court’s order; however, she did not think she had to comply with the order of this Court. Furthermore, as the Order explicitly provides, the basis for finding that Respondent willfully disobeyed the Court’s order and her ability to pay the sum due.

The Respondent motion for reconsideration also attempts to make the argument that res judicata in some way should bar the Court from enforcement of its prior order. However, the Petitioners would assert that the Respondent is the party that appears to be trying to relitigate matters that were decided with finality by re-litigating prior un-appealed rulings and orders of the Court.

As stated hereinabove and in the Court's June 20, 2023 Order, factual findings were made based evidence of record in this case, prior orders of this court, and the Respondent's own testimony, all of which constitute and provide clear and convincing evidence for this Court's finding the Respondent in contempt. It is the trial judge's job as the fact finder to review said evidence and to make findings of fact and conclusions of law, as was done in the case at bar. While the Respondent requests the Court to second guess its previous findings and conclusion, clear and convincing evidentiary support exists for the Court's ruling.

Based upon the above arguments, the Petitioners pray that the Respondent's Motion to Reconsider, Alter, and/or Amend, be denied.

INABNIT & DINGLE, P.A.


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843-248-9653 fax

davis@inabnitlaw.com

ATTORNEY FOR PETITIONERS

August 30, 2023
Conway, South Carolina

TRANSCRIPTION OF AUDIO SOURCE RE:

Hearing: April 18, 2023 -

Summons to Show Cause (Damages Not Paid)

Case: Hubert Leon Clodfelter

Case No, 2019-ES-22-000397

Petitioner: Karen Lee Chappell and

Linda Faye Clinger

Attorney: E. Davis Inabnit, Jr.

Respondent: Irene Clodfelter

Attorney: Clay Hopkins

1 The Court: We're on the record.
2 Today is April 18th, 2023. It is 12:07. We are
3 here in the matter of Herbert Leon Clodfelter.
4 This is case number 2019-ES-22, Matter 397. We
5 are here with regards to a summons to show cause
6 that was issued to Irene Clodfelter on -- it was
7 dated March 2nd of 2023. I have an affidavit of
8 service indicating it was served on her on April
9 7th. This is 11 days past that day.

10 I also have an order of transport
11 that was issued on the same day. My
12 understanding is that that transport order was
13 also served and it was also given to the
14 appropriate channels for Ms. Clodfelter to be
15 transported, but there was a mistake in that
16 transport on behalf of the department of
17 corrections and she was not transported. So the
18 hearing was initially to start at 10:00, but we
19 have now moved this hearing to a virtual
20 hearing.

21 I have present on the virtual
22 screen, Ms. Clodfelter, who is at the
23 correctional institute. I have present in the
24 conference room of the probate court, Davison
25 Inabinet, who is here representing the

1 petitioners, Karen Lee Chappelle and Linda Faye
2 Clink--- Linda Faye Clinger, who is also present
3 in the court's conference room. I have present
4 in the court's conference room, my staff,
5 Ms. Susan Stewart, who is the court coordinator.
6 And I also have the estate clerk of court
7 present with me and that's Ms. Patricia McCray.
8 We have one additional party who is present in
9 the courtroom. And Mr. Inabinet I'll allow you
10 to introduce that individual.

11 Mr. Inabinet: And that -- and I
12 always forget the last name of which one?

13 Unknown Speaker: Clodfelter.

14 Mr. Inabinet: Clodfelter.

15 Ms. Clodfelter: Hannah Clodfelter.

16 Mr. Inabinet: Hannah Clodfelter,
17 yes. That is my clients Karen Chappelle and
18 Linda Clinger's mother.

19 The Court: All right.
20 Ms. Clodfelter, do -- were you able to hear
21 Mr. Inabinet?

22 Mr. Inabinet: No.

23 The Court: No.

24 Mr. Inabinet: My mic is off. I'm
25 sorry.

1 The Court: Okay.

2 Mr. Inabinet: I can speak up. In
3 the courtroom is Hannah Clodfelter, who is the
4 hear -- the petitioner's mother.

5 Unknown Speaker: Can you hear him
6 now?

7 The Court: Okay, one second.
8 You're not able to hear him that way? All
9 right. Let me mute my mic and then you can
10 speak up. Okay.

11 Mr. Inabinet: Yes, Your Honor. The
12 other person that is here today is Hannah
13 Clodfelter, who is the petitioner's mother.

14 The Court: Ms. Clodfelter, were you
15 able to -- Ms. Clodfelter, were you able to hear
16 that?

17 Ms. Clodfelter: No, ma'am.

18 The Court: All right. Is -- let's
19 see. Is it Tiffany that I may have present or
20 Ms. Burns?

21 Ms. Burns: Yes, ma'am.

22 The Court: Is there a way if I do a
23 call in phone number and then that way we can
24 use the audio via telephone instead of the
25 computers and then that -- that way I'm thinking

1 it may be, if you've got a phone that could be
2 placed on a speaker.

3 Ms. Burns: Yes, ma'am.

4 The Court: Okay. All right. Let
5 me just get the new number and call in. All
6 right.

7 (Off-the-record discussion.)

8 The Court: Mr. Inabinet, would you
9 then please introduce the additional individual
10 that's present?

11 Mr. Inabinet: Yes, Your Honor. It
12 is Hannah Clodfelter, who is the petitioner's
13 mother.

14 The Court: Okay. All right.
15 Ms. Clodfelter, I would note that I did not have
16 any counsel that appeared on your behalf at
17 10:00 or at any time since. Do you have any
18 attorney that is supposed to appear on your
19 behalf today?

20 Ms. Clodfelter: Yes I do, but I
21 understood that it -- it had been changed or
22 rescheduled.

23 The Court: And how do you
24 understand that? Who told you that?

25 Ms. Clodfelter: Well, I haven't --

1 I haven't been able to speak to my attorney
2 since I've been here.

3 The Court: Okay.

4 Ms. Clodfelter: So through my
5 daughter, she had notified him.

6 The Court: All right. And has he
7 -- is he -- because he's -- has he said that he
8 was going to represent you in this matter?

9 Ms. Clodfelter: Yes.

10 The Court: And who is that?

11 Ms. Clodfelter: Clay Hopkins.

12 The Court: All right. Can we get
13 Mr. Hopkins on the phone and see if -- what his
14 intentions are? And -- and Ms. Clodfelter, I
15 have a record showing that you were served with
16 the summons to show cause as well as the order
17 of transport on April the 7th of 2023.

18 Ms. Clodfelter: No, I've got
19 nothing on -- about a transport.

20 The Court: Okay. But you did
21 receive those summons to show cause?

22 Ms. Clodfelter: Yes. I -- I -- I
23 received the summons saying there was that --
24 there was a hearing, yes. I left the message at
25 my attorney's office, but I haven't spoke with

1 him.

2 The Court: Okay.

3 Ms. Clodfelter: Because I can't get
4 a call through here.

5 The Court: We're reaching out to
6 his office now. I know that he represented you
7 in the prior matter, but I just -- I don't have
8 anything saying that he's here on behalf of you
9 for the summons to show cause. My
10 understanding -- Mr. Inabinet, Mr. Hopkins was
11 also provided with this information?

12 Mr. Inabinet: Yes, Your Honor. On
13 March 7th, I got a copy of the letter where at
14 least -- where I sent it to him, which was when
15 I sent the order of transport to him as well as
16 to the department of corrections and a copy back
17 to your office, Your Honor.

18 The Court: Okay.

19 Mr. Inabinet: When we sent it off.

20 The Court: All right. Thank you.
21 I'm going to hand that back to you.

22 Mr. Inabinet: All right.

23 The Court: You've got the
24 recording?

25 Unknown Speaker: Yes, it's going.

1 Judge, it's sending me straight to the voice
2 mail.

3 The Court: Okay. Let me see if I
4 can.

5 Unknown Speaker: Thank you.

6 The Court: Susan, we'll be
7 adjourned just for a moment.

8 (off the record.)

9 The Court: All right. We started
10 this process -- initially it was supposed to
11 start at 10:00. There were transport errors on
12 the behalf of South Carolina Department of
13 Corrections. We've worked those out to be able
14 to conduct the hearing remotely. And upon
15 starting the hearing, Ms. Clodfelter indicated
16 that she did in fact have counsel. So we
17 reached out to that counsel. There was
18 confusion as to the date for the hearing. We do
19 notice that they -- that the proper time and
20 date was served by petitioner's counsel,
21 Mr. Inabinet. Counsel for Ms. Clodfelter has
22 now appeared virtually. It is 1:00.

23 In an effort to give him a few
24 moments to speak with his client alone, the
25 Court is going to set up a virtual breakout

1 room. Mr. Hopkins, so that I can give some
2 guidance to those that have been waiting for a
3 while, how long do you anticipate needing to
4 talk with -- with your client and is there
5 anything I need to take up before you do that?
6 And give me -- oh, he can't hear me at all. I'm
7 so sorry. Mr. Hopkins, you can't hear me.
8 Would you dial our conference number. It's
9 (843) 545-3062. Is our line still open?

10 Unknown Speaker: Uh-huh.

11 The Court: Okay. Mr. Hopkins?

12 Mr. Hopkins: Ma'am?

13 The Court: I'm sorry. I just
14 realized I was going on the record and you
15 couldn't even hear me. I was just surmising
16 that the hearing was initially to start at
17 10:00. We found out that the department of
18 corrections -- although Ms. Clodfelter was on
19 the transport list properly for today, that they
20 made a mistake and she was not transported. We
21 were able to secure a video conferencing of the
22 hearing. And upon her appearing at the hearing,
23 she indicated that she was supposed to have
24 counsel. I didn't notify you before because I
25 wasn't sure if you were representing her on the

1 summons to show cause, so then we stopped to
2 reach out. And that's when the understanding --
3 that's when it was -- the Court was informed
4 that you had it on the wrong date on your
5 calendar, but that you would be able to appear
6 virtually.

7 Prior to, I want to give you an
8 opportunity to speak with Ms. Clodfelter in a
9 private breakout session. Prior to doing that,
10 is there anything I need to take up?

11 Mr. Hopkins: Yes, ma'am. Your
12 Honor, there's a couple of issues that I
13 think -- I really think probably prevent the
14 Court going forward today on anyway. The first
15 issue is that I -- although, I mean, I'm aware
16 obviously the Court's order and the contents of
17 the order there -- there right now is judgment
18 against Ms. Clodfelter. So in terms of a
19 petition or rule to show cause in the
20 supplemental proceedings, you know, the -- first
21 the -- Mr. Clodfelter's daughters would have to
22 get the judgment.

23 As for this Court, the judgment
24 transferred to the Clerk of Court for Georgetown
25 County. And then they would have to, you know,

1 obviously try and execute that judgment. They
2 -- I mean, I think the State is lacking
3 jurisdictionally because it doesn't even
4 acknowledge that there's been an ex--- execution
5 made or that, you know, (@13:26 inaudible). So
6 for those reasons, Your Honor, really I'm --
7 although, I mean, obviously I understand there's
8 a court order and there's, you know, a
9 requirement for that order. There's just not a
10 judgment, so in terms of the -- the relief that
11 they are seeking, I think it -- jurisdictionally
12 is an issue right now.

13 The Court: All right. Mr.
14 Inabinet?

15 Mr. Inabinet: Your Honor, when I
16 initially contacted the Court, I requested to
17 see -- I didn't know whether -- it is my
18 understanding at this point in time -- I even
19 sent in the case. I did not know whether or not
20 you prefer to go ahead and convert this to a
21 civil judgment or to issue some type of rule to
22 show cause or in this case a summons due to the
23 violation of the court order by Ms. Clodfelter.

24 So I'll leave that to your
25 discretion of as to whether that is appropriate

1 because you did have a order that provided what
2 -- if you want to call it, the relief for what
3 the repercussions were from both the initial
4 hearing as well as on the motion for
5 reconsideration. Your Honor, which I think
6 that's in your purview to be able to enforce an
7 order that you entered.

8 The Court: All right. And
9 Mr. Hopkins our -- our phone made a funny noise.
10 I just want to make sure I've still got you on
11 the line where you can hear.

12 Mr. Hopkins: Yes, ma'am.

13 The Court: And the reason that we
14 did the open line is so that it's clear, is
15 there was some difficulty because I've got
16 Mr. Inabinet with his clients in the court's
17 probate conference room here -- or hearing room.
18 And we were having a hard time with feedback
19 with Ms. Clodfelter being remote. So we opened
20 a conference line to do the audio.

21 I had before me initially a rule or
22 a summons to show cause and it requested or
23 referred to statutes that were outside of the
24 probate jurisdiction. And I -- I revised it
25 because I cannot -- I wasn't going to issue a

1 summons to show cause on the issues on -- of
2 supplemental hearings because that's not within
3 my jurisdiction. That would be something that
4 would be more suitable in the circuit court
5 jurisdiction or a defer -- a referral to the
6 master in equity, to the extent that there was a
7 non-compliance with the court order because the
8 filings did say to some extent some
9 non-compliance with the court order. I am in a
10 position to exercise jurisdiction over any of
11 that non-compliance. So I guess what I'm asking
12 of you Mr. Hopkins and you Mr. Inabinet, is the
13 issue solely the collection of the judgment that
14 is being sought here?

15 Mr. Inabinet: Yeah.

16 The Court: I'll -- I'll go to
17 Mr. Hopkins first.

18 Mr. Hopkins: That's -- that's my
19 understanding, Judge. It's simply a matter
20 about payment as Mr. Inabinet and I think the
21 Court is aware, my client is incarcerated right
22 now. Not sure that -- well, I mean, regardless
23 of what she may testify to at during, she -- in
24 terms of whether or not now or -- the ultimately
25 what the Court's decision could be regarding

1 her.

2 Your Honor, ultimately, I mean,
3 the -- the most significant punishment would be
4 contempt of court, of which she is already in
5 prison. So I really I'm not what -- you know,
6 the aim is today. She hasn't paid it. She
7 doesn't have the ability to pay it. And so, I
8 mean, if we need to have a hearing just to kind
9 of put something on the record, I understand
10 that. But again I -- I really am not sure what
11 they seek to accomplish today.

12 The Court: All right. Mr.
13 Inabinet?

14 Mr. Inabinet: Your Honor, at the
15 time you issued the original order back in July,
16 at that point in time, then a motion for
17 reconsideration was heard. And held and
18 Ms. Clodfelter was not incarcerated at that
19 point in time. Your order plainly stated what
20 the requirements were for her as far as
21 calculations of either -- I mean, you did put a
22 -- I mean, there is a dollar amount for the
23 value of the items that were failed to be
24 accounted for and/or removed. I think Your
25 Honor, has the ability to enforce your order to

1 that extent. Because at that point in time, it
2 did give a timeframe for her to -- if it
3 would've been fine, I feel sure with my clients
4 as well, if the property would've been returned
5 in lieu of the value given. Therefore neither
6 one has been accomplished. Plus it did provide
7 for attorney's fees as well, Your Honor.

8 And like I said, your order was
9 pretty clear in my personal opinion and provided
10 for what that relief was and the timeframe for
11 it to be complied with. And regardless of
12 whether she later on is now incarcerated. At
13 that point in time, that was not the case. And
14 there's been no appeal to those orders to either
15 on the -- your original order or the order on
16 their motion for consideration. And
17 presumptively, from what she testified to at the
18 trial, there is the ability for her to comply
19 with that order. It should have been without
20 the necessity of having to file an additional
21 suit for that point in time.

22 The Court: All right. And so let
23 me make sure if I under--- if the Court does
24 take this testimony and determines based on the
25 present circumstances, she's not able to comply

1 with the order in terms of repayment, at that
2 point where would that leave this court's
3 jurisdiction?

4 Mr. Inabinet: I think at that
5 point, Your Honor, if the Court decided that she
6 -- that there's not ability to pay, then I think
7 it does at that point convert to a civil
8 judgment, but...

9 The Court: Okay. All right. So in
10 light of that, I do think that a -- a hearing to
11 make the -- I mean, I -- I -- the order does say
12 that she's to pay it back. The Court does have
13 jurisdiction to order somebody with the ability
14 to pay to -- to put it back in. Mr. Hopkins is
15 correct that the Court's contempt powers would
16 be applicable, but in this situation, they --
17 they're somewhat limited in the sense that she's
18 already incarcerated.

19 If -- if that -- in that case, then
20 I guess we can go forward with a hearing as to
21 ability to comply, whether or not this is
22 something that is going to be contempt or
23 something that is -- ends up resulting in a -- a
24 matter that may need to be addressed in another
25 court.

1 Mr. Hopkins: I mean, if -- I guess
2 it's -- if we could -- of course, (@20:51
3 inaudible) ultimately (@20:53 inaudible).

4 The Court: You -- you're breaking
5 up a little bit, Mr. Hopkins.

6 Mr. Hopkins: Sorry. I -- I guess
7 if -- I mean, from what I hear, if in terms of
8 the release or the out--- outcomes of the
9 hearing today, I mean, if they're simply looking
10 to convert your order of judgment, I -- I think
11 into that.

12 The Court: Mr. Inabinet, I don't
13 know that that changes your position on wanting
14 to --

15 Mr. Inabinet: No --

16 The Court: -- question --

17 Mr. Inabinet -- Your Honor. I -- I
18 think she had the ability, at least at the time
19 of the hearing when your order was entered, to
20 comply. I think that should be entitled to
21 deference to comply with what the court's order
22 was.

23 The Court: All right. So
24 Mr. Hopkins, I think Mr. Inabinet wants to --
25 and his clients wish to have their day in court

1 to determine her ability to comply with the
2 order as of present. So do you want to go into
3 a breakout room and have conversation with your
4 client before we proceed with taking any
5 testimony on the summons to show cause?

6 Mr. Hopkins: Yes, ma'am. Can I
7 have 10 minutes?

8 The Court: You said 10 minutes?

9 Mr. Hopkins: Yes, ma'am.

10 The Court: Sure. I am going to
11 create that room. Let's see. All right. And
12 you'll be allowed to return at any point in that
13 breakout session, so it won't automatically
14 terminate on you.

15 Mr. Hopkins: Okay. Thank you,
16 ma'am.

17 The Court: And I think you should
18 see ability to join and then we're going close
19 the phone line temporarily once you're all in.

20 Mr. Hopkins: I just --

21 The Court: All right. Don't start
22 talking yet. Are you in the -- are you in the
23 room, Mr. Hopkins?

24 Mr. Hopkins: I'm in the room. Yes,
25 ma'am.

1 The Court: All right. And
2 Ms. Clodfelter, are you in the room?

3 Ms. Clodfelter: Yes, I am.

4 The Court: Okay. You -- you guys
5 can go back to using your audio on your
6 computers and I'm going to close the phone line.
7 When you do come back on, I will see it and then
8 I'll open the phone line back up again. Does
9 that make sense?

10 Mr. Hopkins: Okay.

11 The Court: Yes?

12 Mr. Hopkins: Yes -- yes, ma'am.

13 The Court: Okay. If you have any
14 problems, send me a chat.

15 Unknown Speaker: Okay.

16 The Court: All right.

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Certificate of Reporter

State of South Carolina
County of Florence

I, Mark W. Hagood, do hereby certify that the pages constituting the foregoing transcript is a transcription of an audio provided, and that the transcription is accurate to the best of my ability. I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence,
South Carolina, this the 28TH day of November,
2023.

Mark W. Hagood, RPR

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
HUBERT LEON CLODFELTER (Decedent)

Karen Leigh Chappell and Lynda)
Faye Clinger,)

Petitioners,)

v.)

Irene K. Clodfelter,)

Respondent.)
_____)

**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, AND/OR
AMEND**

PROBATE COURT

2022AUG14PM3:56

GEORGETOWN SC

**TO: E.B. DAVIS INABNIT, JR., ESQUIRE, ATTORNEY FOR PETITIONERS ABOVE
NAMED:**

Pursuant to Rule 59(e), SCRCP, Respondent files this motion requesting the Court reconsider, alter, or amend its July 20, 2022 ruling, granting Petitioners damages from Respondent for alleged breaches of fiduciary duties to the Estate of Hubert Leon Clodfelter (hereinafter "Decedent"). As set out more fully below, reconsideration of that ruling is warranted.

LEGAL STANDARD

"A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A party may file such a motion "when [he or she] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780. "A party *must* file such a motion when an issue or argument has

been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis in original).

ARGUMENT

I. RECONSIDERATION IS WARRANTED BECAUSE THE RECORD IS WITHOUT EVIDENTIARY SUPPORT.

To establish a claim for breach of fiduciary duty, petitioners must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of respondent. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012). The existence of a fiduciary duty is a question of law for the court. See *Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (citing *Clearwater Trust v. Bunting*, 367 S.C. 340, 346, 626 S.E.2d 334, 337 (2006)). Pursuant to the probate code, a personal representative owes a fiduciary duty to all beneficiaries of the estate. S.C. Code Ann. § 62–3–703(a) (2009) (stating “[a] personal representative is a fiduciary” and must “use the authority conferred upon him ... for the best interests of successors to the estate”); see also *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 555, 673 S.E.2d 836, 840 (Ct. App. 2009) (“A personal representative is a fiduciary under this state’s probate code.”); *Witherspoon v. Stogner*, 182 S.C. 413, 415, 189 S.E. 758, 759 (1937) (“That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental.”).

Subsection 62–3–703(a) states a personal representative has the “duty to settle and distribute the estate ... as expeditiously and efficiently as is consistent with the best interests of the estate” and the “successors to the estate.” If the personal representative improperly exercises his power in connection with the estate, he is “liable to interested

persons for damage or loss resulting from breach of his fiduciary duty.” S.C. Code Ann. § 62–3–712 (2009).

On April 16, 2021, the Court issued an Order (the “2021 Order”) that, among other things, removed Respondent as Personal Representative of Decedent’s estate – a role she held since July 22, 2019. Respondent does not dispute that from the time of her appointment until the time of her removal she had a fiduciary duty to the Estate. At the hearing in this case, there simply was no evidence introduced that established when the golf cart, the Model A Ford, and the oriental rugs were last in either Respondent’s or the Estate’s possession.

Thus, there is simply no way the Court – acting as factfinder – could determine the exact time and date these items may have been disposed of or when Respondent may have allowed someone to take possession of these assets at the expense of Decedent’s Estate. For that reason, the Court’s decision that these alleged breaches occurred when Respondent owed a fiduciary duty to the Estate is purely speculative. In fact, there is no way to determine if the alleged breaches occurred when Respondent was Personal Representative or when she was under some other order of the Court because not even Petitioners speculated about that fact, and the Court, in its Order, did not state when these items were likely disposed of or misappropriated by Respondent, which is an existential element in establishing Petitioners’ claims.

To make its finding, the Court is required to have *some* evidence that Respondent disposed of, or allowed some other person to take possession of, these assets after Decedent’s death and when she owed a duty to the Estate to account for and protect these assets. However, there was no evidence in the record supporting these findings

except for Petitioners' speculation. In fact, based on the evidence in the record, it is wholly possible that Respondent did dispose of or misappropriate these items but before Decedent passed away.

In fact, one (1) of the assets – the Model A Ford – is still titled in Decedent's name. The Court states that Decedent and Respondent "lived in a gated community where moving a nonoperational, antique vehicle would likely not go unnoticed." (Order, 8, ¶2). Then why were Petitioners unable to call any witness that saw the vehicle at Decedent's home after June of 2016? It seems very likely that they would be able to find someone who saw the vehicle for over three (3) years since the Court's determination is that Respondent disposed of the vehicle after Decedent's death in 2019.

In essence, the Court's findings required it to take Petitioners' testimony, which was purely speculative and could not even establish dates of decedent's possession, and plug in the missing evidentiary support only by dismissing Respondent's testimony as wholly incredible. While the Court, and any factfinder, is permitted to dismiss Respondent's testimony or find it incredible (or Petitioner's), it is notable that the Court goes to great lengths to describe Respondent's testimony as incredible, but then relies on it so heavily to make its findings regarding what she may have done with the golf cart.¹

Unfortunately, and more concerning though, the Court's ruling not only depends on: (1) dismissing Respondent's testimony in its entirety when it benefits Petitioners; but also (2) assuming facts wholly missing from the Record. It is possible that Respondent

¹ Additionally, the Court refers to Respondent's "actions surrounding the death of her husband," (Order, 9) but makes no reference to Respondent's recent acquittal for accessory after the fact to murder (2019A2610201535), the fact that Respondent has never been charged with decedent's murder, or that Respondent has never been charged in any crime related to these assets whatsoever.

could not be telling the truth or could be misleading the Court and that Decedent disposed of the property or transferred them to someone else prior to his death. The only evidence in the Record supporting the Court's conclusion are statements from Petitioners and one (1) witness that they all saw these items three (3) years before Decedent's death. There was no evidence – testimonial or otherwise – that Decedent possessed these items from that date forward, and from the lack of evidence in the record, it is wholly possible that Decedent did dispose of those items or transfer them to someone else prior to his death. Any conclusion otherwise does not depend on the evidence in the record, but speculation. Thus, the Court's decision is without evidentiary support and should be reversed because there was simply no evidence presented by Petitioners that the Court could make those determinations. See *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005) (stating the trial court's findings in a breach of fiduciary duty action will be upheld unless they are "without evidentiary support").

Furthermore, Petitioners failed to meet their burden as to proximate cause, and the record is without evidentiary support to justify the Court's decision. To establish Respondent proximately caused damages to the Estate with her breaches, the Court was required to determine not only that these assets were in the Estate's possession at the time of decedent's death, but also that Respondent has disposed of them or allowed someone to take possession of these assets at the expense of Decedent's estate. Respondent has already articulated why those decisions required the Court to speculate, but both determinations required the Court to make a finding without any evidentiary support.

First, as to the golf cart, Petitioners testified they had no evidence whatsoever that Respondent sold it or disposed of it. (Tr. P. 29, ¶¶12-18). Furthermore, as personal representatives themselves, they have been aware since their appointment of the likely location and place of the golf cart and have made no efforts whatsoever to account for it and verify that it is indeed the same golf cart. Petitioners could not even testify to the date or time when the golf cart went missing.

There was no evidence introduced that established when the golf cart, the Model A Ford, and the oriental rugs were last in either Respondent's or the Estate's possession. Petitioners were unable to provide any evidence about when the Model A Ford went missing, as well. In fact, the only evidence presented to the Court was that the Model A Ford was last seen when the decedent was still alive in June of 2016 – three (3) years before decedent's death. (Order, 8; Tr. 44, ¶¶ 8-12). As to the oriental rugs, likewise, there was no evidence provided to the Court regarding the last time the estate owned them except that the rugs were last seen when the decedent was still living. (Tr. 19, ¶¶17-19).

In fact, the Court seems to acknowledge this missing evidentiary support by simply stating that it found Petitioners more credible than Respondent. (See Order, 4). While it is certainly appropriate for the Court to make credibility determinations, the Record is totally void of any evidence that Decedent passed away with the Model A Ford and oriental rugs still in his possession, and the conclusion that Respondent "likely [] did something with this vehicle or allowed someone to take possession of this vehicle at the expense of Decedent's Estate[]" is purely speculative and the Record is without any evidentiary support to reach that conclusion. (Order, 9). Thus, the Court's decision should be reversed. See *Jordan*, 362 S.C. at 205, 608 S.E.2d at 131 (2005).

Finally, as to damages, the only evidence the Court could look to for its finding regarding the Estate's damages came through Petitioner's testimony, which was wholly speculative and improper as lay testimony. See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *Watson v. Ford Motor Co.*, 389 S.C. 434, 445-46, 699 S.E.2d 169, 175 (2010) (citing Rules 602 and 701, SCRE) ("[A] lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.").

Generally, the measure of damages in a tort case is "the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004); see also *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) ("The goal [of compensatory damages] is to restore the injured party [404 S.C. 593]... to the same position he or she was in before the wrongful injury occurred."); *Haselden v. Davis*, 353 S.C. 481, 486, 579 S.E.2d 293, 296 (2003) (Burnett, J., dissenting) (explaining the "central tenet of compensatory damages" is "to make an injured person whole by placing him in the position enjoyed prior to the injury").

Thus, the correct measure of damages in this case would be the amount that would compensate the beneficiaries for the loss proximately caused by Respondent's breaches. See S.C. Code Ann. § 62-3-712 (2009) (stating damages for a personal representative's

breach of fiduciary duty are calculated pursuant to subsection 62–7–1002(a) of the South Carolina Code (2009), which provides recovery for (1) the amount needed to restore the asset's value to what it would have been but for the breach, or (2) "the profit the [fiduciary] made by reason of the breach," whichever is greater); Restatement (Third) of Trusts § 100 (2012) (stating one of the objectives in awarding damages for breach of fiduciary duty is to make the beneficiaries whole by restoring what they would have had if the breach had not occurred).

Petitioners' evidence and the valuations they provided were purely speculative. Even if they were qualified as expert witnesses, and without expert evidence of the values of the golf cart, the Model A Ford, and the oriental rugs, any finding regarding their value was speculative. See *Winters v. Fiddie*, 394 S.C. 629, 647, 716 S.E.2d 316, 325 (Ct. App. 2011) ("In order for damages to be recoverable, the evidence should be sufficient to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." (citation omitted)); *id.* ("The evidence . . . should be such that a court or jury can reasonably determine an appropriate amount."); *cf. Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 434, 717 S.E.2d 765, 781 (Ct. App. 2011) ("The determination of damages may depend to some extent on the consideration of contingent events if a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss." (emphasis added)).

Neither Petitioner put any evidence into the record regarding the valuation of these items, and the Court had no evidence regarding the valuation of damages except for Petitioners own valuation of the same. There were no experts called, and the only evidence used to support the calculation of damages for the oriental rugs was a March

20, 1995 receipt for their purchase. (Tr. 19, ¶¶15-16). They did not provide an expert to testify about the rugs' appreciation in value. "Expert testimony is not required to prove [an element] if the common knowledge or experience of a layperson is extensive enough." *O'Leary–Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006).

In fact, the Court seemed to give Petitioners the opportunity to correct the lack of evidence regarding damages, (Tr. 46, ¶15 – 47, ¶12). However, although Petitioners testified about a range of values for the Remington statues, the Court ultimately concluded these "values ... [were] not clear to the Court and no other values were given for the other assets." (Order, 10, ¶4). The evidence for the valuation of the Remington statues was the same presented for the other items – Petitioners' testimony and beliefs. Both are insufficient to establish the valuation of estate property, and Respondent is entitled to reversal of the Court's decision since it is void of any evidentiary support.

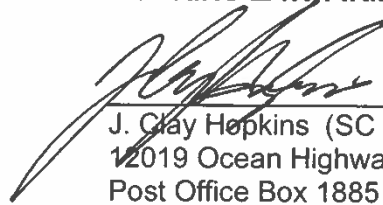
Finally, Respondent believes the Court's decision regarding the awarding of attorney's fees warrants reversal. The record does not support the award of attorney's fees. The only evidence introduced was an affidavit stating that 143.95 hours had been spent on the preparation of the case. The only *Strickland* factor discussed in the Court's ruling was the beneficial results accomplished. (Order, 11) ("The Petitioners were in large measure successful on their 2019 Petitions and in the present Petition. This success was a benefit to the Estate."). However, part of the expenses covered in those fees were for a hearing where Petitioners challenged that Respondent was entitled to ownership of the Murrells Inlet home, which was ultimately awarded to Respondent. Additionally, those fees include fees for other items claimed in the hearing in this matter, and only three (3)

items were determined to be awarded to the Estate as misappropriations. Therefore, the factors cited above could not have been considered by the court because of the lack of evidence. *Strickland v. Strickland*, 376 S.E.2d 268, 297 S.C. 248 (1988).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court reconsider, alter, and amend its July 20, 2022 Order.

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Attorneys for Respondent Irene K. Clodfelter

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August 1, 2022

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
 COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
 HUBERT LEON CLODFELTER (Decedent)

Karen Leigh Chappell and Lynda)
 Faye Clinger,)
)
 Petitioners,)
)
 v.)
)
 Irene K. Clodfelter,)
)
 Respondent.)
 _____)

CERTIFICATE OF SERVICE

PROBATE COURT
 2022AUG1PM3:36
 GEORGETOWN SC

I, Kathy Roberts, an employee of Hopkins Law Firm, LLC, do hereby certify that on August 1, 2022, I served a copy of the foregoing **RESPONDENT'S MOTION TO RECONSIDER, ALTER, AND/OR AMEND** upon counsel for Petitioners, via email and first-class mail, postage prepaid, addressed as follows:

E. B. Davis Inabnit, Jr., Esquire
 Law Office of Davis Inabnit, Jr. LLC
 1004 Buck Street
 Conway, SC 29526
davis@inabnitlaw.com



 Kathy Roberts

Pawleys Island, South Carolina

1 **golf cart from there?**

2 A. No. She was the only one allowed to go in there
3 except for me.

4 **Q. Well, that's -- you are just speculating about that.**
5 **The storage unit -- the storage unit people could go in**
6 **there, correct?**

7 A. Yes.

8 **Q. Okay. But also, I mean you've done some due**
9 **diligence. That golf cart is still titled in your**
10 **father's name, correct?**

11 A. I do not know.

12 **Q. Okay. Well, do you have any evidence that Irene**
13 **sold it or disposed of that golf cart?**

14 A. Only hearsay.

15 **Q. Okay. You have no evidence. You've provided me no**
16 **evidence that she disposed or sold the golf cart, have**
17 **you?**

18 A. That's correct.

19 **Q. In terms of the Model-A Ford, can we also agree that**
20 **you have no evidence that Mrs. Irene disposed of that**

1 that he had purchased years ago. He really was proud
2 of them and there was also a music stand that I forgot
3 to mention they we had wanted and would appreciate
4 getting.

5 **Plaintiff's Exhibit Number Three Identified**

6 **Q. Okay. With regards to the rugs, if I may Your**
7 **Honor. I would like to show you what's been marked as**
8 **Petitioner's Exhibit Number Three and tell me, if you**
9 **can identify what that is?**

10 A. Yes. And in ninety-five (95) when dad bought theses
11 rugs, he thought -- I should have a copy of this. He
12 would give me a lot of things and it just shows that he
13 paid ten thousand (\$10,000.00) dollars for these
14 oriental rugs. Ten thousand and seventy(\$10,070.00)
15 dollars, March 20th of 1995 and they went from house to
16 house.

17 **Q. When is the last time that you saw the rugs?**

18 A. I saw the rugs in the Murrells Inlet house in June
19 of 2016.

20 **Q. Okay. Your Honor, I failed to mention earlier if**

1 **Mr. Inabnit:** Nothing further Your Honor, unless ---

2 **Judge Powers-Boan:** The court has a couple of
3 questions. Sorry. At the time that your father was
4 missing, and you were looking at his properties or did
5 you note or see any of these assets at that time?

6 A. No. Irene didn't let me in the house. We did a
7 well check, but she wouldn't let me in the house.

8 **Judge Powers-Boan:** And when you testified that he
9 was in possession of assets in 2016 and you saw those,
10 that was not the December of 16' when you were in
11 Orlando or was that another time?

12 A. That was in June of 2016, we came to visit.

13 **Judge Powers-Boan:** Were any of the items that you
14 referenced purchased during the marriage or were they
15 items that were purchased prior to the marriage?

16 A. All of them were purchased prior to the marriage,
17 except the golf cart.

18 **Judge Powers-Boan:** And the golf cart, you were
19 aware after the opening of this estate was moved to a
20 storage unit?

1 Q. Is that where that picture is taken?

2 A. Yeah. The storage unit, yes. We have all kinds of
3 pictures of the marital property that we stored for her
4 to pick up.

5 Q. No further questions Your Honor.

6 REDIRECT OF MS. CHAPPELL BY DAVIS INABNIT:

7 Mr. Inabnit: And you referenced Ms. Chappell as far
8 as marital property at the time when ya'll first
9 located and stored the golf cart, were you aware of
10 whether or not or who owned the golf cart?

11 A. No, we were not.

12 Q. Okay. And at that point in time were you aware of a
13 registration existing for the golf cart?

14 A. Not at that time.

15 Judge Powers-Boan: The Court does -- are there any
16 values associated with these assets?

17 A. The Model-A from what I've researched and his was in
18 great condition was \$26,000.00 to about \$32,000.00. The
19 golf cart needed a battery when we put it up there.

20 So, I was told it was worth about five (\$5000.00)

1 thousand, but other -- I haven't really researched.
2 Some of this is sentimental value. Some of the
3 oriental rugs they only go up in value. So, they would
4 probably be well over ten (\$10,000.00) thousand now.
5 The trumpet it's very -- it's hard to say what they
6 would be worth. And the Remington statues I do not
7 know.

8 **Judge Powers-Boan: I didn't hear that last part.**

9 A. I don't not know what the Remington statues would be
10 worth. They can range from five (\$500.00) to six
11 (\$600.00) hundred each. Up to over a thousand
12 (\$1000.00) each.

13 **Judge Powers-Boan: Mr. Hopkins, any further**
14 **questions?**

15 **Mr. Hopkins: No Judge.**

16 **Judge Powers-Boan: Mr. Inabnit?**

17 **Mr. Inabnit: None for this client.**

18 **Judge Powers-Boan: Thank you. You may step-down.**

19 **Mr. Inabnit: And Your Honor, if I may I would like**
20 **to go ahead and call Ms. Irene Clodfelter as a witness.**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 IN THE MATTER OF:)
 HUBERT LEON CLODFELTER)
 (Decedent))
)
 Karen Leigh Chappell and)
 Lynda Faye Clinger,)
)
 Petitioners,)
)
 vs.)
)
 Irene K. Clodfelter,)
)
 Respondent.)
)
 _____)

IN THE PROBATE COURT
 CASE NUMBER: 2019-ES-22-00397

**RULE TO SHOW CAUSE AND
 TEMPORARY RESTRAINING ORDER**

Upon consideration of the annexed verified Petition, it appears that judgment has been entered against the above Respondent and execution issued, and a nulla bona return has been made on the execution.

It further appears that the Petitioner has moved for a supplementary procedure, pursuant to the provisions of §15-39-310, et seq., Code of Laws, South Carolina, 1976, as amended, and it appears that the Petitioner is entitled to this order.

IT IS ORDERED that the Respondent, Irene K. Clodfelter, appear before the Honorable Leigh P. Boan, Probate Judge, Georgetown County, in the Georgetown County Courthouse, Georgetown, South Carolina, on the ____ day of _____, 202__ at a.m./p.m. to answer under oath concerning the below listed assets; to show cause why said property should not be applied towards satisfaction of the Judgment; and to show cause why a receiver for the property should not be appointed, pursuant to provisions of §15-39-430, Code of Laws, South Carolina, 1976, as amended.

IT IS FURTHER ORDERED that the Respondent is hereby restrained and enjoined from

making any transfers or any disposition of property belonging to her which is not exempt from execution pending further order from this Court.

IT IS THEREFORE ORDERED that the Master is to take the testimony of the Respondent and to make his findings of fact and conclusions of law, with authority to dispose of all issues and to enter a final judgment in this case.

IT IS FURTHER ORDERED that Respondent is hereby ordered and directed to bring to the hearing scheduled above, the following records and/or documents:

- a. All records, titles, etc., concerning any and all real estate, automobiles, trucks, trailers and other vehicles owned or being purchased by the Respondent;
- b. All records concerning bank accounts owned by the Respondent, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements of Respondent which have been prepared within the past three (3) years;
- d. Statement of current accounts receivable;
- e. Statement of current accounts payable;
- f. List of current inventory and its approximate market value;
- g. State and Federal Income Tax Returns for the years 2019, 2020 and 2021;
- h. List of any property owned by Respondent which is in the hands of a third party;
- i. Copies of leases of any real or personal property leased by Respondent, including the following information: name and address of landlord, amount of rental payments, and date through which rent is paid;
- j. Transfers by Respondent of any property, owned by Respondent as business assets or personal assets, within the past two (2) years;
- k. Withdrawals, in any form (including compensation, bonuses and loans), which have been made to Respondent within the past two (2) years; and

1. Such other and further records as may disclose the assets and liabilities of the Respondent.

AND IT IS SO ORDERED.

Honorable Leigh P. Boan
Georgetown County Probate Judge

_____, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
IN THE MATTER OF:)
HUBERT LEON CLODFELTER)
(Decedent))
)
Karen Leigh Chappell and)
Lynda Faye Clinger,)
)
Petitioners,)
)
vs.)
)
Irene K. Clodfelter)
)
Respondent.)
_____)

IN THE PROBATE COURT
CASE NUMBER: 2019-ES-22-00397

CERTIFICATE OF MAILING

The undersigned, as an employee of the law firm of the Law Office of Davis Inabnit, Jr., LLC, Attorney for the Petitioners, does hereby certify that a copy of the Petitioners Petition and Proposed Rule to Show Cause and Temporary Restraining Order in the above-referenced action was served upon the following individual(s) on this 30th day of November, 2022 by U.S. Mail, postage prepaid and addressed as follows:

Hopkins Law Firm
Attn: Clay Hopkins, Esq.
12019 Ocean Highway
Post Office Box 1885
Pawleys Island, SC 29585

November 30, 2022



Elizabeth V. Robinson


YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR, AS SPECIFIED BELOW, TO EXPLAIN WHY YOU HAVE NOT PAID THE DAMAGES AS ORDERED BY THIS COURT AND TO SHOW WHY YOU SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT BECAUSE OF YOUR FAILURE TO COMPLY WITH THIS COURT'S ORDER.

DATE: Tuesday February 28, 2023

TIME: 10:00 A.M.

**PLACE: Georgetown County Judicial Center
Courtroom 2C
401 Cleland Street
Georgetown, South Carolina 29440**

EXECUTED THIS 6th DAY OF January, 2023



**Leigh Powers Boan
JUDGE OF PROBATE
GEORGETOWN, SC**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
IN THE MATTER OF:)
HUBERT LEON CLODFELTER)
(Decedent))
Karen Leigh Chappell and)
Lynda Faye Clinger,)
Petitioners,)
vs.)
Irene K. Clodfelter)
Respondent.)

IN THE PROBATE COURT
CASE NUMBER: 2019-ES-22-00397

PETITION PROBATE COURT
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GEORGETOWN SC

THE PETITIONERS above-named, by and through their attorney, Davis Inabnit, Jr., Esq., would respectfully show unto the Court:

1. On or about July 20, 2022, this Court issued an Order awarding to the Petitioners damages against the Respondent in the total amount of Eighty-Two Thousand Two Hundred Eighty-Seven and 56/100 (\$82,287.56) Dollars, inclusive of costs.
2. Thereafter, the Respondent filed a Motion to Reconsider, Alter and/or Amend the Court's July 20, 2022 Order (hereinafter "July 20th Order"). After review and consideration of Respondent's motion for reconsideration, the Court entered a subsequent Order on September 26, 2022 (hereinafter "September 26th Order"), wherein it clarified the award of attorneys fees provided by the July 20th Order.
3. In the September 26th Order, in addition to confirming the July 20th Order, it specifically ordered "Respondent, shall be and is hereby ordered to pay Petitioners' the damages set forth in this Court's Order dated July 20, 2022 within thirty (30) days from the entry of this Order."

COPY

4. Whereas, more than thirty (30) days have elapsed since the entry and service of the September 26th Order, and the Respondent has failed to pay the Petitioners damages as ordered.

5. The Petitioners are informed and believe that the Respondent has property which she unjustly refuses to apply towards the satisfaction of the Petitioners award of damages.

6. The Petitioners are informed and believe that they is entitled to an order directing the Respondent to appear and answer under oath concerning assets which she may be withholding from the satisfaction of the Petitioners award of damages herein; Petitioners are thereafter entitled to the appointment of a receiver to take charge of any assets so discovered for the purpose of applying them to the Petitioners award of damages; and/or in the alternative, the Petitioners are informed and believes that they are entitled to an order directing that any assets, not exempt from execution, be sold and the proceeds applied to the Petitioners award of damages.

7. The Petitioners are informed and believe that they are entitled to an allowance of attorney's fees and costs for these proceedings as well as compensation for any receiver appointed by the Court.

8. The Petitioners are further informed and believe that they are entitled to an order of the Court restraining the Respondent from making any transfers and/or alienation of property, not exempt, pendente lite, and if warranted, permanently, upon any terms and/or conditions set by the Court.

9. The Petitioners are informed and believe that in order for there to be a meaningful examination of the Respondent for the purposes enumerated above, that the Court should issue its orders directing the Respondent to produce and bring with her to the hearing the following records:

- a. All records, titles, etc., concerning any and all real estate, automobiles, trucks, trailers and other vehicles owned or being purchased by the Respondent;

- b. All records concerning bank accounts owned by the Respondent, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements of Respondent which have been prepared within the past three (3) years;
- d. Statement of current accounts receivable;
- e. Statement of current accounts payable;
- f. List of current inventory and its approximate market value;
- g. State and Federal Income Tax Returns for the years 2019, 2020 and 2021;
- h. List of any property owned by Respondent which is in the hands of a third party;
- i. Copies of leases of any real or personal property leased by Respondent, including the following information: name and address of landlord, amount of rental payments, and date through which rent is paid;
- j. Transfers by Respondent of any property, owned by Respondent as business assets or personal assets, within the past two (2) years;
- k. Withdrawals, in any form (including compensation, bonuses and loans), which have been made to Respondent within the past two (2) years; and
- l. Such other and further records as may disclose the assets and liabilities of the Respondent.

WHEREFORE, the Petitioner prays to this Court for the following relief:

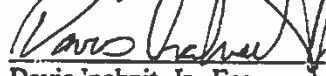
- A. That the Court issue its order and rule to show cause directing the Respondent to:
 1. Appear for the purpose of being examined under oath, concerning the assets and property of the Respondent, before the Probate Court for Georgetown County; and
 2. To bring with her for such examination all records and documents listed in paragraph 9, supra.

- B. That the Court appoint a receiver for the Respondent's assets for the purposes of applying such assets to the satisfaction of the Petitioners award of damages;
- C. That the Court issue its order directing that any assets, not exempt, from execution be sold and the proceeds be applied to the Petitioners award of damages;
- D. That the Court restrain the Respondent from transferring or alienating any property, not exempt, both pendente lite and permanently upon any terms and conditions set by the Court;
- E. That the Court award Petitioner's attorney's fees and the cost and compensation for any received appointed by the Court; and
- F. For such other and further relief as the Court may deem just and proper.

Conway, South Carolina

November 29, 2022

LAW OFFICE OF DAVIS INABNIT, JR., LLC



Davis Inabnit, Jr., Esq.

1004 Buck Street

Conway, S.C. 29526

843-248-2089

843-248-9653 fax

SC Bar No. 73700

davis@inabnitlaw.com

ATTORNEY FOR PETITIONERS

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
HUBERT LEON CLODFELTER (Decedent)

Karen Leigh Chappell and Lynda)
Faye Clinger,)

Petitioners,)

v.)

Irene K. Clodfelter,)

Respondent.)
_____)

**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, AND/OR
AMEND**

**TO: E.B. DAVIS INABNIT, JR., ESQUIRE, ATTORNEY FOR PETITIONERS ABOVE
NAMED:**

Pursuant to Rule 59(e), SCRCP, Respondent files this motion requesting the Court reconsider, alter, or amend its June 20, 2023 Order (the "Order") finding Respondent in Contempt of Court and sentencing her to six (6) months of incarceration (or, in the alternative, purging the Contempt by paying \$82,287.56 Petitioners). As set out more fully below, reconsideration of that ruling is warranted.

LEGAL STANDARD

"A motion under Rule 59(e) long has been viewed as 'motion for reconsideration despite the absence of those words from the rule.'" *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A party may file such a motion "when [he or she] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780. "A party *must* file such a motion when an issue or argument has

PROBATE COURT
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GEORGETOWN SC

been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis in original).

ARGUMENT

I. RECONSIDERATION IS WARRANTED BECAUSE THE FINDING OF CONTEMPT WAS ERRONEOUS.

In a 2021 Order, this Court found that Decedent and Respondent owned a home in Murrells Inlet, which was deeded as joint rights of survivorship. Petitioners previously claimed the Estate was entitled to that marital home, for various reasons. In its 2021 Order, this Court determined that Respondent was entitled to the marital home over Petitioners’ arguments and objections. This is an extremely important point regarding the Court’s finding of Contempt.

As she was entitled to do (as any other property owner would be entitled to do) in November of 2021, Respondent sold that marital home. That 2021 Order also required Respondent to account for Estate assets in her possession. On July 20, 2022, this Court issued an Order granting \$41,000.00 to Petitioners for property they claimed Respondent failed to preserve while she served as Personal Representative of Decedent’s Estate. Additionally, the Court granted Petitioners attorney’s fees and costs, for a total award of \$82,287.56. Respondent subsequently filed a Rule 59(e), SCRPC, motion of that Order, and, on September 26, 2022, the Court issued an Order denying Respondent’s Motion, and ordering her to pay these sums within thirty (30) days of that Order.

Notably, Petitioners never requested a transcript of the Court’s judgment, and never sought to pursue Supplemental Proceedings (as there was no judgment to enforce). Instead, Petitioners filed a Rule to Show Cause seeking to hold Respondent in criminal contempt for failing to pay these sums pursuant to the Court’s September 26,

2022 Order, largely based on the fact that the Court determined that Respondent had the ability to pay Petitioners' attorney's fees **solely** because of the sale of the marital home, which she was solely entitled to as the owner of that home.

For this reason alone, reconsideration is warranted as the Court's Orders – and subsequent criminal contempt finding – are inconsistent. How can it be that Respondent was solely entitled to the marital home, presumably to continue using until her death, but when she sells it, she is now subject to incarceration for not using those funds to satisfy this Court's same Order? It cannot. Respondent was not willfully disobeying the Court's Order because the Court previously said she was entitled to the marital home – and any proceeds from the sale of that home were sole hers, as well.

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). "Civil contempt must be proven by clear and convincing evidence." *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). "Contempt results from the **willful disobedience of a court order** and before a person may be held in contempt, the record must be clear and **specific as to acts or conduct upon which the contempt is based.**" *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). (emphasis added). "A willful act is one which is **'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'**" *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 759-60 (Ct. App.

2007) (quoting *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001)).

As such, the Court's 2021 Order, which Petitioners did not appeal nor sought reconsideration of, is *res judicata*, and it was wholly erroneous for the Court to find Respondent in contempt of Court for essentially failing to turn over property granted to her in a previous Court Order.

When claims arising out of a particular transaction or occurrence are adjudicated, *res judicata* bars the parties to that suit from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit. *Plott v. Justin Ent.*, 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct.App.2007). *Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action involves matters properly included in the first action. *Id.*

[T]he rule precluding relitigation of issues which might have been raised in the prior action applies only where the two actions involve the same cause of action; but all questions which were actually litigated in the prior action and determined by the judgment are conclusive in any subsequent action between the parties, or their privies, regardless of whether the subsequent action involves the same or a different cause of action.

Lowe v. Clayton, 264 S.C. 75, 82, 212 S.E.2d 582, 585-86 (1975).

Whether *res judicata* precludes a claim because the first and subsequent suits involve the same cause of action is not merely a matter of aligning identical causes of action or theories of liability; rather, the subject matter of the two suits must be the same. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999). "The test utilized by this court for comparing two causes of action is to determine whether the primary right and duty and the delict or wrong are the same in both actions." *Plum*

Creek Dev. Co. v. City of Conway, 328 S.C. 347, 350, 491 S.E.2d 692, 694 (Ct. App. 1997), *aff'd as modified*, 334 S.C. 30, 512 S.E.2d 106 (1999); *see also Nunnery v. Brantley Constr. Co., Inc.*, 289 S.C. 205, 210, 345 S.E.2d 740, 743 (Ct. App. 1986).

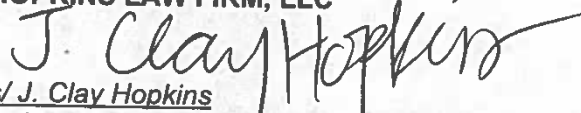
South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: 1) when there is identity of the subject matter in both cases; 2) where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; 3) when there is the same evidence in both cases; and recently 4) when the claims arise out of the same transaction or occurrence. 334 S.C. at 35 n. 3, 512 S.E.2d at 109 n. 3 (citing James F. Flanagan, South Carolina Civil Procedure 649-650 (2d ed.1996)).

Any reasonable analysis of South Carolina precedent provides the Court's finding of contempt clearly precluded by *res judicata*. The parties are the same. The subject matter is the same. And Petitioners' claims are the same. In 2021, this Court awarded Respondent the marital home. However, in 2022, the Court determined Respondent was responsible for various damages to Decedent's Estate. Regardless of whether that decision in and of itself was supported by the facts or law, the Court, nor Petitioners, can then try to justify clearly bringing in the marital home in subsequent litigation to its desired solution. Had Respondent not sold the property prior to the Court's July 2022 Order or its September 2022 Order, it would be inconceivable that this Court could somehow force Respondent to sell her home – that it previously gave her – to satisfy Petitioners' alleged damages. In fact, that is exactly what Respondent's counsel argued it could not do at the hearing on this matter. Petitioners have attempted to bypass the proper avenue for collection of their "judgment" and sought to enforce a subsequent order by bypassing

South Carolina's statutory scheme for executing a judgment. In doing so, Petitioners, and this Court, have accomplished a less-than-subtle end around to getting the marital home back to Petitioners. Unfortunately, though, the Court's 2021 Order providing the marital home to Respondent was also final. Petitioners had their opportunity to appeal, or to file a Rule 59(e), SCRPC, motion. They did not. Furthermore, there was no caveat to the Court's Order providing that its Order may be undone or "overturned" should Petitioners succeed in their future claims against Respondent.

Outside of the proceeds from the sale of the marital home, Respondent had no money to obey the Court's Order. Since the Court's determination that Respondent should have used the proceeds of property that it awarded her – and for which it would have had no power to compel her to dispose of absent her voluntary sale – was clearly erroneous, the Court's Order fails to articulate acts or conduct upon which contempt is based by clear and convincing evidence, and Respondent clearly did not have bad purpose either to disobey or disregard the law since the property the Court used to justify its decision it had previously given her. Incredibly, there is simply no dispute that, but for the sale of the property the Court previously granted her, Respondent would have not been in contempt. Again, neither this Court nor Petitioners had the ability – in this venue – to force Respondent to sell that home. So, had she not, there would be no contempt finding. That alone shows the Court's decision was erroneous. For these reasons, reconsideration is warranted.

HOPKINS LAW FIRM, LLC



s/ J. Clay Hopkins

J. Clay Hopkins (SC Bar # 102053)

12019 Ocean Highway

Post Office Box 1885

Pawleys Island, South Carolina 29585

(843) 314-4202 – Telephone

(843) 314-9365 – Facsimile

clay@hopkinsfirm.com

Attorneys for Respondent Irene K. Clodfelter

Pawleys Island, South Carolina

July 3, 2023

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-ES-22-00397

IN THE MATTER OF:
HUBERT LEON CLODFELTER (Decedent)

Karen Leigh Chappell and Lynda)
Faye Clinger,)
Petitioners,)

CERTIFICATE OF SERVICE

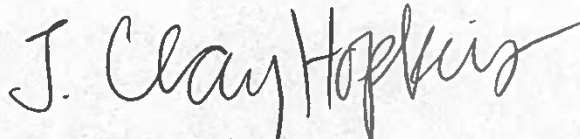
v.)

Irene K. Clodfelter,)
Respondent.)

I, Joseph Clay Hopkins, an employee of Hopkins Law Firm, LLC, do hereby certify that on July 3, 2023, I served a copy of the foregoing **RESPONDENT'S MOTION TO RECONSIDER, ALTER, AND/OR AMEND** upon counsel for Petitioners, via email though his AIS email as follows:

E. B. Davis Inabnit, Jr., Esquire
Law Office of Davis Inabnit, Jr. LLC
1004 Buck Street
Conway, SC 29526
davis@inabnitlaw.com

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2023 JUL 6 AM 8:41
GEORGETOWN SC



s/ J. Clay Hopkins
J. Clay Hopkins

Pawleys Island, South Carolina

RECEIVED

Mar 13 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY PROBATE COURT
Case Number 2019-ES-22-0397
Appellate Case Number 2024-001808

The Honorable Leigh Powers Boan
Probate Court Judge

IN THE MATTER OF:
HUBERT LEON CLODFELTER, Decedent

Irene K Clodfelter, Respondent,

v.

Karen Leigh Chappell and Lynda Faye Clinger, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(g), SCACR.

J. Clay Hopkins (SC Bar No. 102053)
clay@hopkinsfirm.com
HOPKINS LAW FIRM, L.L.C.
171 Church Street, Suite 160
Charleston, SC 29401
(843) 314-4202 – Telephone
(843) 314-9365 – Facsimile

Attorney for Respondent

March 13, 2025