

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Monroe Allen Jr.

CASE NO.: 2020-CP-02-01093

Plaintiff,

vs

ORDER

Gloria Ligon

RECEIVED

Defendant(s).

Feb 12 2026

SC Court of Appeals

STATEMENT OF FACTS

On June 8, 2020, Monroe Allen, Jr. filed a Summons and Complaint in Aiken County asserting claims against Gloria Ligon, his daughter, related to six parcels located in Aiken County. The properties were conveyed to the Defendant on December 24, 2019. The Plaintiff, who is 79 years of age claims undue influence, fraud, breach of fiduciary and judicial relief pursuant to S.C. Code 62 – 8 – 116, and a claim for punitive damages. The Defendant filed an Answer on August 10, 2020 denying the allegations of the Plaintiff. By Form 4 Order filed February 22, 2023, the matter was referred with consent to the Aiken County Master in Equity.

The first day of the trial was held on October 12, 2023. The Plaintiff, Monroe Allen, Jr. appeared with his attorney Michael P. Horger along with the Defendant, Gloria Ligon, with her attorney, Brad Owensby. The Plaintiff's first witness was the Defendant, Gloria Ligon. The Plaintiff is her father. She was appointed as his attorney-in-fact in 2011. The Durable Power of Attorney was later introduced as Plaintiff's Exhibit 20 recorded in Book 4351, Page 2244 and has a recording date of June 7, 2011. The Defendant was presented with various deeds related to real estate in Aiken County owned by her father. The deeds reflect the following information:

- 1) Plaintiff's Exhibit 1 is a deed recorded in The Volume 2292, Page 320, records of the Aiken County RMC Office, for property located at 255 Union Street, Aiken, South Carolina. The Plaintiff purchased the property for \$5.00 love and affection and the Defendant made no

contributions for the purchase of the property. Plaintiff's Exhibit 2 is an Aiken County tax assessment for \$111,940.00.

2) Plaintiff's Exhibit 3 is a deed recorded in The Volume 4638, Page 595, records of the Aiken County RMC Office, for property located at 322 York St., Aiken, South Carolina (May be 314 York Street). The Plaintiff purchased the property for \$73,800.00 and the Defendant made no contributions for the purchase of the property. Plaintiff's Exhibit 4 is an Aiken County tax assessment for \$75,030.00.

3) Plaintiff's Exhibit 5 is a deed recorded in The Volume 1260, Page 19, records of the Aiken County RMC Office, for property located at 251 Union Street, Aiken, South Carolina. The Plaintiff purchased the property for \$15,000.00 and the Defendant made no contributions for the purchase of the property. Plaintiff's Exhibit 6 is an Aiken County tax assessment for \$107,140.00.

4) Plaintiff's Exhibit 7 is a deed recorded in The Volume 1260, Page 19, records of the Aiken County RMC Office, for property in, Aiken County, South Carolina. The Plaintiff purchased the property for \$15,000.00 and the Defendant made no contributions for the purchase of the property. Plaintiff's Exhibit 8 is an Aiken County tax assessment for \$77,610.00.

5) Plaintiff's Exhibit 9 is a deed recorded in The Volume 2156, Page 230, records of the Aiken County RMC Office, for property located at 178 Gun Range Road, Aiken, South Carolina. The Plaintiff purchased the property for \$ 11,800.00 and the Defendant made no contributions for the purchase of the property. Plaintiff's Exhibit 10 is a County tax assessment for the property. The Plaintiff did not collect rents at this location. His adult child and family live in this location. This property also has a mobile home and that information was introduced with Plaintiff's Exhibit 11, a Certificate of Title. After this property was deeded to the Defendant, she notified the parties of rent being charged and started eviction proceedings.

6) Plaintiff's Exhibit 12 is a deed recorded in The Volume 1963, Page 335, records of the Aiken County RMC Office, for property located at 428 Chesterfield Street, Aiken, South Carolina. The Plaintiff purchased the property for \$7,900.00 and the Defendant made no contributions for the purchase of the property. Plaintiff's Exhibit 13 and 14 is an Aiken County tax assessment for \$66,120.00.

The Defendant testified that from 2015 – 2016 until sometime in 2019, she would collect the rent from the tenants located at the above properties. With the exception of the property located on Gun Range Road, the rent proceeds were paid to the Plaintiff. In regards to the Plaintiff's medical status, the Defendant did take the Plaintiff to some medical appointments. At some point, Mr. Allen fell and suffered a shoulder fracture. He was able to take medications without assistance. The Defendant knew her father had cataract surgery but was not aware of any other problems with his vision. The Plaintiff did complain of blurriness with his vision and wanted to get his eyes checked. He used eyedrops after the cataract surgery.

In 2019, the Defendant worked full-time for the Advocacy Center. Her father asked her to make an appointment in December 2019 with Leon Green, an attorney in Aiken. She remembers her dad having more than one appointment with the attorney during this time. Mr. Green had previously prepared documents for Mr. Allen. These included a Durable Power of Attorney in 2011, a Last Will and Testament in 2017, and the deeds in 2019 where the Defendant was listed as the Grantee. Ms. Ligon never received a bill from the attorney. She did not discuss anything with her father before the meetings with Mr. Green. She testified Mr. Allen, Mr. Green and Ms. Ligon were present at some of the meetings. The Defendant was then presented with a series of deeds listing the Defendant as the Grantee. These include the following:

a) Plaintiff Exhibit 15 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019, in Book 4819, Page 394-397 in the Aiken County RMC Office for property identified as TMS# 120-17-09-015, 428 Chesterfield St., Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer;

b) Plaintiff Exhibit 16 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019 in Book 4819, Page 398 in the Aiken County RMC Office for property identified as TMS# 135-14-02-005, 178 Gun Range Road , Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer;

c) Plaintiff Exhibit 17 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019 in Book 4819, Page 402 – 405 in the Aiken County RMC Office for property identified as, 251 Union Street , Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer;

d) Plaintiff Exhibit 18 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019 in Book 4819, Page 406 in the Aiken County RMC Office for property identified as, TMS# 120-17-11-018, 322 York Street, Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer;

e) Plaintiff Exhibit 19 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019 in Book 4819, Page 410 – 413 in the Aiken County RMC Office for property identified as, 314 York Street, Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer;

f) Plaintiff Exhibit 22 is a quitclaim deed dated December 24, 2019 recorded on December 26, 2019 in Book 4819, Page 414 – 417 in the Aiken County RMC Office for property identified as TMS# 120-18-31-001, 323 Edgefield Avenue, Aiken, SC. The consideration is "\$5.00, love and affection". The Defendant confirms she paid nothing to her father for the transfer.

Monroe Allen testified he has fifth grade education, no GED, and testified he could not read the language on the deed. He was employed doing yard work when he was younger and invested his money in real estate. Plaintiff's exhibits 1, 3, 5, and 7, were reviewed to identify each parcel. The plaintiff paid the following for each lot:

1. \$116,940.00 for the property located at 255 Union St. and 322 Union St. on March 17, 2003;
2. \$73,800.00 for the property located at 322 York St. on March 17, 2003;
3. \$107,140.00 for the property located at 314 York St. on February 15, 1989;
4. \$15,000.00 for the property located at 251 Union St. on July 11, 1991;
5. \$11,800.00 for the property located at 178 Gun Range Rd. There is a mobile home on the property for some of his children who are half siblings to the Defendant. Mr. Allen identified the Certificate of Title for the mobile home;
6. \$7,900.00 for the property located on Chesterfield Street in 2000; (see Exhibit 12)
7. \$66,120.00 for the property located (see Exhibit 13)

The Plaintiff relied on the rental income for his living expenses. He testified he did not want the defendant to receive the real estate when he signed the Durable Power of Attorney, admitted as Plaintiff Exhibit 20 (signed in 2011). He managed his real estate interest and the tenants paid him monthly in cash. He denied the defendant collected rent for him.

The Defendant did take him to Leon Green's office in 2019. During that year he suffered a shoulder injury, eye surgery in September 2019 and he could not drive as a result of the procedure. In November and December 2019, he was still seeing his physician for his vision and taking medication. He was also diagnosed with leukemia during this time. He testified that during the December 2019 appointment with Mr. Green, he asked the attorney what he was signing since he could not read or understand the language in the deed. He did not understand that he was losing his real estate. He never visited Mr. Green's office without his daughter. He believes they made 5 to 6 trips to his office but it is unclear if this number includes the earlier Last Will and Testament and the Power of Attorney being prepared by Mr. Green.

Mr. Allen testified that he intended for his real estate to go to his children who could, "carry his name". He does not remember paying Mr. Green in 2019. He believes the defendant described the real estate owned by Mr. Allen to Mr. Green. He never intended the gift over \$400,000.00 in real estate value to the defendant. The Defendant paid nothing for the transfer of the property.

He believes the Defendant took advantage of him with the power of attorney. He testified he did trust her before she took the real estate and he is requesting the court to return the property to him.

On cross examination, Mr. Allen denied the signature shown on the Power of Attorney, dated in 2011 was his signature. However, he could not deny the complaint in this matter alleges he signed the power of attorney. The Plaintiff testified at trial that he collected the rent, but it was shown that he testified his daughter collected the rent and gave it to him in his deposition. Mr. Allen denied signing a Last Will and Testament in 2017 or at least does not remember signing the document. He did confirm his signature on pages two and three of the documents. He does remember meeting with Mr. Green in 2017.

He remembers visiting Mr. Green's office twice in 2019 but he could not remember any questions or explanations provided by the attorney. He did remember during the second visit in

2019, his daughter had advised him that he would have to walk home from the appointment if he did not sign the papers. The Plaintiff could not provide specific facts on the misrepresentations made by the Defendant. He could only state he did not intend to sign the deeds transferring the real estate to the Defendant. Mr. Allen discussed his medical conditions and felt the medications could affect his judgment in 2019. However, he later testified that he was still on medication at the time of the trial but was aware of what he was doing on the date of the trial. He stated he realized the property had been deeded to his daughter when he noticed the documents have been removed from under his bed.

At the beginning of the second day of the trial on November 16, 2023, the court was advised the Plaintiff's testimony had been completed. Leon Green, an attorney with an office in Aiken, South Carolina was then called as a witness. He testified that Monroe Allen was a client of his in 2019 concerning preparing the deeds and discussed a receipt to Mr. Allen. While Mr. Green had no specific recall of the appointments, he testified his records indicate a conversation on December 23, 2019. He believed that Ms. Ligon was with Mr. Allen but he did not speak with Ms. Ligon. His representation concerned Mr. Allen. He did recall Mr. Allen had health issues and wanted the property out of his name and into his daughter's name. Mr. Green testified the procedure would be to talk with the client before December 23, 2019. Each deed would be reviewed at the appointment on December 23, 2019. The first meeting would've taken place a couple days before the appointment where the deeds were reviewed. He would meet only with Mr. Allen and not the Defendant.

Mr. Green reviewed Exhibit 18 to his deposition, which is a deed recorded in Aiken County in book 4819 at page 405. The document was signed on December 24, 2019. It appears the money was collected on December 23, 2019. Mr. Green cannot say for certain when he met with Mr. Allen. He noted the payment was made on December 23, 2019 and the deeds were signed on December 24, 2019 but he believes there was a meeting before December 23, 2019. He advises all clients they may not get the property back when it is transferred in this type of situation. In regards to the deed signing, two witnesses would be in the meeting while the document was signed. Mr. Green believes Ms. Ligon was at the office but she would not have been present during the signing of the deed. Mr. Green's office received no money from the Defendant. Mr. Green further testified

that Mr. Allen also mentioned some family members he needed to protect the property from, including other children.

Mr. Green was asked if the will he prepared in 2017 also dealt with some of those same issues. The Last Will and Testament, executed that Mr. Green's office, apparently excluded certain children. He testified he did not remember who brought Mr. Allen to the appointments in 2017 and admitted he has known the Defendant for approximately twenty years.

On cross examination, Mr. Green stated he could not recall if the purpose of executing the deeds was to preserve the property for the children or the Defendant. After identifying the original deposition transcript of Mr. Green, Mr. Green testified that his office prepares documents he refers to as "simple wills", not estate planning. He testified his procedure for clients in preparing the deed is to meet with the client before preparing and executing a will or a deed. The client makes the payments after the details are confirmed and then the documents are prepared. He may have a staff member sitting in on the first conference where the details of the transfer are discussed. When the deed is signed, the grantor and grantee are present in the office with witnesses. This would seem to indicate the Defendant would be present when the deeds were executed. Mr. Green confirmed that the 2019 deeds have consideration of five dollars love and affection.

When the Plaintiff completed his case, a motion was made pursuant to *Rule 15 (b)*, SCRCPP, to amend the pleadings to conform to the evidence submitted at trial and an additional cause of action for a constructive trust be granted. The defense objected to the motion being granted and argued prejudice. The court noted the language, "leave shall be freely given when justice so requires and does not prejudice any other party." *Rule 15 (a)*, SCRCPP. The court then placed the language of *Rule 15(b)*, SCRCPP on the record and also cited cases of *Williams v Addison*, 443 SE2d 582 and *Ball v Canadian American Express*, 442 SE2d 620. The court noted portions of the testimony provided by the plaintiff's witnesses and granted the motion to amend the complaint to add the cause of action for a constructive trust, finding the following case language discussing the cause of action, "a constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by one holding legal title. *Lollis v Lollis*, 354 SE 2d 559 (1987). A constructive trust, "results from fraud, bad faith, abusive confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Id.*

The court also recognized the prejudice to the Defendant and therefore continued the case. The Plaintiff was to file an amended summons and complaint within thirty days of November 16, 2023 and the Defendant had thirty days to respond. The amended summons and complaint were filed on January 12, 2024 and an amended answer was filed on August 29, 2024 containing the same responses to the prior answer except for the specific denials of a constructive trust. The next date for testimony was scheduled for September 9, 2024. At the beginning of the third day of testimony, the attorneys advised the court that both sides agreed that no further testimony was required. The court allow the parties until October 9, 2024 to provide any trial briefs. That date was extended by the court.

Conclusion of Law

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

Undue Influence

Plaintiff alleges the Plaintiff and Defendant had a confidential relationship based on the Power of Attorney. The Plaintiff was 75 years old in 2019 and testified about a leukemia diagnosis, problems/procedures with his vision, his medications and a shoulder injury from a fall. The Defendant is the daughter he appointed as his attorney-in-fact and she testified she did collect rent for her father from sometime in 2015 – 2016 through some point in 2019. While the father disagreed with this history, no party has testified the plaintiff did not receive the rent proceeds. The Plaintiff's daughter also testified she would take her father to some medical appointments. The Plaintiff took his medication without assistance from the Defendant. The Power of Attorney was executed in 2011.

In 2019, the Defendant was working full-time. Her father requested she take him to Mr. Green's law office. Those visits were in December 2019 and Mr. Green had previously prepared her father's Power of Attorney in 2011 and his Last Will and Testament in 2017. She denied retaining Mr. Green in any capacity during this time or receiving any bills from his office. She further testified she had no discussion with her father about the nature of the appointment. She

denies any knowledge the deeds were being transferred to her as the grantee at the December 24, 2019 appointments.

Mr. Allen provides a different version of the events in 2019. He remembers asking Mr. Green what he was signing since he could not understand the language in the documents. His daughter took him to the appointments and he believes she took advantage of and through the authority in the Power of Attorney. However, he did not provide any details other than the meetings with Mr. Green.

Mr. Green's memory of the meetings in 2019 is that he would normally meet with the client to discuss the documents the client is requesting at the first appointment. In this case, it would be the Plaintiff's request to have numerous deeds prepared transferring the property to his daughter. Mr. Green was very clear that he would not have had the Defendant present in the room during these discussions. At that point, a second appointment is scheduled and the client is advised of the cost for the preparation of the documents. Mr. Green agrees that the Defendant was not billed for the services requested by her father. He believes the money for the deeds was collected at the December 23, 2019 appointment and the deeds were presented to Mr. Allen on December 24, 2019. Mr. Green did recall Mr. Allen discussing his various health issues and he wanted the real estate out of his name and in the name of his daughter, the Defendant in this matter. He further testified he advises all of his clients in this type of case that they may not get the property back. Mr. Allen also discussed his desire that certain children not receive any ownership interest. All of the deeds appear to be properly executed and were admitted as exhibits without any objection.

Burden of Proof to Set Aside a Deed

"A deed regular and valid on its face raises a presumption of validity." *Grant v. Hudson*, 192 S.C. 394, 7 S.E.2d 2 (1940). "Generally, in order to justify the setting aside of a deed on the ground of undue influence, it must be shown that the grantor was unquestionably susceptible to undue influence as a result of old age, mental weakness, or some other costs, and there must be some clear evidence of opportunity and disposition on the part of the grantee or someone in his behalf to exercise such influence." *Page v Lewis*, 209 S.C. 212, 39 S.E.2d 787 (1946), *Atkinson v Belser*, 273 S.C. 296, 255 S.E.2d 852 (1979).

“Where a grantor fails to establish that fraud or undue influence was exercised to obtain conveyance, mere inadequacy of consideration will not justify the cancellation of a deed.” *Avant v Johnson*, 231 S.C. 119, 97 S.E. 2d 396 (1957), *Atkinson v Belser*, 273 S.C. 296, 255 S.E.2d 852 (1979).

Clear and convincing evidence is that degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less that is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.’ “*Satcher v Satcher*, 351 S.C. 477, 483, 570, S.E.2d 535, 538 (ct.App.2002) (quoting *anonymous v State Bd. Of Med. Exam’rs* 329 S.C. 371, 374 n.2, 496 S.E.2d17, 18 n.2 (1998)).

Undue Influence Case Law

The court also reviewed cases concerning undue influence claims to void wills for the requirements of establishing undue influence claims “Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity.” S.C. Code Ann. 62-3-407. “Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial.” *Russell v WACHOVIA Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003). “In order for the will to be void due to undue influence, [a] contestant must show that undue influence was brought directly to bear upon the testamentary act. “Id. At 219, 578 S.E.2d at 335 (quoting *Mock v Dowling*, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)). A mere showing opportunity or motive does not create an issue of fact regarding undue influence. *In re. Estate of Cumbee*, 333 S.C. 664, 671, 511 S.E.2d 390 (Ct.App.1999). To send the issue of undue influence to the jury, the contestant must show more than general influence- “ there [must be] additional evidence that such influence was actually utilized.” *Howard v Nasser*, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct.App.2005) (quoting *Mock*, 266 S.C. at 277, 222, S.E.2d at 774). “The influence necessary to void a will must amount to force or coercion.” “The evidence must show that the fee will of the testator was taken over by someone acting on testator's behalf.” *Russell*, 353 S.C. at 217, 578 S.E.2d at 333.

In this matter, the plaintiff alleges a fiduciary relationship. "Confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68(2005). To establish a claim for breach of fiduciary duty, the Plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the Plaintiff by defendant, and (3) damages proximately resulting from the wrongful conduct of the Defendant. See generally *Moore v. Moore*, 360 S.C. 241,599 S.E.2d 467 (Ct.App.2004) (discussing the elements comprising a breach of fiduciary duty claim). " An agent acting for a principal pursuant to a power of attorney may not make a substantially gratuitous conveyance of the property of the principal to himself unless the power to do so is expressly granted by the instrument itself." *Fender v Fender*, 285 S. C. 260, 329 S.E.2d 430 (1985), *Loftis v Eck*, 288 S.C. 154, 341 S.E.2d 641 (ct. App. 1986).

Based on testimony, the Plaintiff handled his medical treatment and medications. The Defendant took him to some of his medical appointments but she did not handle his day-to-day affairs, other than collecting rent for a certain period of years. She stopped collecting rent in 2019 based on her testimony. The Plaintiff was inconsistent on this point, and his trial testimony and deposition testimony presented different testimony on certain issues.

As an agent, it would be improper for the Defendant to use the agency relationship through the Power of Attorney to benefit herself. Her responsibility is to exercise good faith actions as opposed to negligent or bad faith conduct. "Therefore, the agent will be held liable to the principal for any losses, including interest, that result from his negligence or bad faith." However, since a fiduciary relationship did exist through the Power of Attorney, there is a presumption of undue influence. "Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell*, 353 S.C. at 217, 578 S.E.2d at 333. "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." *in re Estate of Cumbee*, 333 S.C. at 672, 511 S.E.2d at 394 (quoting *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct.App. 1997)). "The existence of a fiduciary relationship between a testator and

beneficiary raises a presumption of undue influence. If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence.: *Hairston v McMillan*, 387 S.C 439, 692 S.E2d 549 (Ct.App 2010),. The Defendant must then offer rebuttal evidence. In this matter, there is only one independent witness and that is the attorney who handled this matter. His testimony supports the testimony of the Defendant and indicates that no action was being taken pursuant to the Power of Attorney when the Defendant had not scheduled the appointments and did not participate in the appointment where Mr. Allen's wishes were discussed and she was not billed for any services by the office. In contrast, Mr. Green stated Mr. Allen raised the issue of his health and his concerns along with his desire to transfer the property to his daughter. In addition to those matters, he raised the issue of his desire not to have all of his children obtain any ownership interest in the property. This appears to be consistent with the Last Will and Testament he had Mr. Green prepare in 2017. The Plaintiff failed to prove he did not have the capacity to understand his actions and disposal of the real estate was of his own volition. "The influence necessary to void a will must amount to force and coercion." *Wilson v. Dallas*, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." *Russell*, 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." *In re Estate of Cumbee*, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." *Howard*, 364 S.C. at 289, 613 S.E.2d at 69 (quoting *In re Last Will & Testament of Smoak*, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)).

FRAUD

The elements of an action for fraud based on a representation include: (1) a representation; (2) falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Redwend Ltd. Partnership v. Edwards* 354 S.C. 459 581 S.E.2d 496 (ct. app. 2003) *West v Gladney* 341 S.C. 127 533 S.E.2d 334 (ct. app. 2000)

For this claim, the Plaintiff relies on the 2011 Power of Attorney and the deed transfers to the Defendant. The Plaintiff alleges in the complaint that the Plaintiff was told he needed to sign the documents to facilitate the Defendants continued management of the rental properties. Mr. Allen testified he did not want the Defendant to obtain ownership of the properties. He denied the Defendant collected rent for him from the tenants at trial but appears to have offered conflicting testimony in his deposition. Specifically, Mr. Allen had difficulty providing facts on the misrepresentations alleged concerning the Defendant's conduct.

Mr. Green's testimony, discussed above, supports the decision to transfer the property being due to medical problems and Mr. Allen's concern that certain children not have any ownership interest in the property. Mr. Green did not have the Defendant present when Mr. Allen was discussing what his wishes were in regards to the transfer of the property. His testimony does not support any confusion shown by Mr. Allen during these appointments and a separate appointment was scheduled for the execution of the deeds which was accomplished on December 24, 2019.

The Plaintiff failed to establish the false representations made by the Defendant, or that Mr. Allen made his decision in reliance on any such representations.

**Breach of Fiduciary duty and Judicial Relief Pursuant to South Carolina Code of
Laws 62 – 8 – 116**

Plaintiff alleges Defendant breached their fiduciary duty and failed "to act loyally" for Mr. Allen's benefit. It is true the Defendant received these properties, a significant asset of Mr. Allen without paying any value. As a result, Plaintiff alleges he lost his real estate investments and his home. South Carolina Code Ann. 62-8-116 allows a party to petition the court to construe a power of attorney including a review of the agent's conduct, and grant any appropriate relief. The Reporters Comment states, "the primary purpose of this section is to protect vulnerable or incapacitated principles against financial abuse." As discussed above, the Plaintiff alleges a breach of the fiduciary duty which should entitle the Plaintiff to an Order of Judicial Relief. Recognizing this fiduciary relationship, the Plaintiff signed deeds transferring all of his real estate without adequate consideration.

The evidence presented does establish the power of attorney , the transfer of property, and the plaintiff is entitled to the presumptions discussed in the undue influence portion of this order concerning the fiduciary relationship. The Defendant's actions, primarily as shown through testimony of Mr. Green, establish the Defendant did not contact Mr. Green about the deeds and she denied that the Plaintiff had discussed the transfers with her. Based on Mr. Green's testimony, Mr. Allen met with his attorney, without the Defendant, described his real estate, and what he wanted transferred. He was advised of the risks and authorized Mr. Green to draft the documents. Mr. Allen raised some concerns about his health, certain children obtaining the property, and was advised he may not get the property back if he transferred the real estate to his daughter/Defendant. Although Mr. Allen's concerns about protecting his property from creditors may not have been successful based on the lack of consideration, he apparently scheduled the appointment, arranged for his daughter to take him to Mr. Greens office, and discuss the details with his attorney who had prepared other documents for him since 2011.

The Plaintiff failed to show the Defendant breached her duty to the Plaintiff which is an element the Plaintiff must prove to establish a breach of fiduciary duty.

Constructive Trust

"A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title." *Lollis v Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987). It "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Id.* "It is resorted to by equity to vindicate right and justice or frustrate fraud." *Whitmire v. Adams*, 273 S.C. 453, 457, 257 S.E.2d 160, 163 (1979). In addition, the standard of proof is high, in that "to establish a constructive trust, the evidence must be clear, definite, and unequivocal." *Lollis*, 291 S.C. at 530, 354 S.E.2d.

A fiduciary relationship existed between the parties through The Power of Attorney. The equitable issue in this cause of action concerns whether there is an equitable violation of the fiduciary duty which warrants relief in this matter. It is undisputed the Defendant was the agent for the Plaintiff. She received the benefit of ownership of the property with a total tax value of

\$437,840.00 and received this as a gift when she was the attorney-in-fact or agent. The evidence does not establish fraud.

In the Amended Summons and Complaint, the Plaintiff alleges the Plaintiff suffered from medical issues including leukemia, hypertension, diabetes, and other complications. The Plaintiff believes he has rebutted any presumption of a gift by parole evidence, including the testimony of the attorney concerning the transfer of the property to the defendant to protect the property. The Plaintiff alleges this establishes a constructive trust for the benefit of the Plaintiff or the Plaintiff and his six children.

The Plaintiff believes the Defendant should be required to make restitution and reconvey all six properties to the Plaintiff, or in the alternative, for the beneficiaries of the constructive trust to include Monroe Allen, Jr., and his children, Gloria Jean Ligon, Sabrina Page, Mekesha Trey Allen, Monroe Allen, III, Jasmine Breland and Condy McKenzie.

The Defendant submitted a posttrial memorandum and relied on the testimony of the attorney handling the real estate transactions. The Plaintiff came to Mr. Green's office on more than one occasion, the attorney testified Mr. Allen was the client, the Defendant was not present when Mr. Allen and Mr. Green discuss the process and why the Plaintiff wanted to transfer the property to the Defendant. Mr. Green's testimony did not identify any issue with the Plaintiff's competence or mental acuity. Mr. Green also testified Mr. Allen discussed his health problems and his wish that some children not get an ownership interest in the property. In regards to the Power of Attorney, the defendant asserts the authority given by the document was not used in the conveyance. Therefore, the Defendant did not exercise any rights in a fiduciary capacity.

An action to declare a constructive trust is in equity, and a reviewing court may find facts in accordance with its own view of the evidence. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). "A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title." *Id.* at 529, 354 S.E.2d at 560. It "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Id.* "It is resorted to by equity to vindicate right and justice or frustrate fraud." *Whitmire v. Adams*, 273 S.C. 453, 457, 257 S.E.2d 160, 163 (1979). In addition, the standard of proof is high, in that "to establish a constructive trust, the evidence must be clear, definite, and unequivocal." *Lollis*, 291 S.C. at 530.

A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. A constructive trust arises whenever a party has obtained money which does not equitably belong to him or has been acquired through a breach of trust or the violation of a fiduciary duty. *SSI Medical Services, Inc. v. Cox*, supra.

The court agrees with the Plaintiff that the Defendant retaining title to all six properties while paying no portion of the purchase price or making any payment for the transfer of the property is inequitable to the Plaintiff. However, the case law for a constructive trust goes further than a finding of an inequitable result. The constructive trust must result from “fraud, bad faith, abusive confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). In this matter, the Plaintiff has failed to establish fraud, as discussed above, concerning the required elements to be established. The evidence does not support any representations made by the Defendant who did not participate in the discussions with Mr. Allen and his attorney concerning his desire to transfer the properties. The abuse of a confidential relationship is recognized by our Supreme Court as the basis of the imposition of a constructive trust by a court of equity. *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559, 561 (1987). The Power of Attorney creates a fiduciary or confidential relationship and the Plaintiff is entitled to certain presumptions based on this relationship. The analysis does not in simply by recognizing the Power of Attorney and the relationship between the parties. The case law in South Carolina is clear that the Plaintiff must establish the Defendant breached that duty are confidential relationship which resulted in the damages suffered by the Plaintiff. The specific case law citations are cited above. The court does not find the Defendant breached the fiduciary duties she was responsible for under the Power of Attorney or the confidential relationship. The Defendant did not arrange the office visits with Mr. Green, did not meet with Mr. Green, did not discuss this transaction with Mr. Allen, and did not participate in the reasons Mr. Allen wanted to transfer the property to the Defendant in the attorney/client conferences. While Mr. Allen had significant health issues, the evidence supports the finding that he was responsible for dealing with those medical issues, including his medication and the Defendant did not exercise any rights pursuant to the Power of Attorney as the agent for the Plaintiff.

CONCLUSION

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

1. Concerning the claim of undue influence, the Plaintiff failed to establish that he was susceptible to undue influence as a result of old age, mental weakness, or some other issue. While Mr. Allen has a limited education and may be considered elderly, he certainly understood the process in purchasing real estate and managing the real estate with tenants and collecting rent. The Defendant did collect rents for a number of years but those funds were transferred to the Plaintiff. The undue influence claim was not established considering the evidence must be shown by unmistakable and convincing evidence.

2. In order to establish fraud, Plaintiff must establish the nine elements required in South Carolina to support this claim. While he is entitled to certain presumptions through the fiduciary relationship created by the Power of Attorney, he failed to establish facts to support any false representations made by the Defendant. As discussed above, the contact with his attorney was initiated by the Plaintiff and that conclusion is supported by the testimony of Mr. Green.

3. Concerning the cause of action for breach of fiduciary duty and judicial relief pursuant to South Carolina Code of Laws, 62 – 8 – 116, the Plaintiff failed to show the Defendant breached her duty to the Plaintiff which is a required element to establish a breach of fiduciary duty.

4. As to the Plaintiff's claim of a constructive trust, The Power of Attorney creates a fiduciary or confidential relationship and the Plaintiff is entitled to certain presumptions based on this relationship. The analysis does not end simply by recognizing the Power of Attorney and the relationship between the parties. The case law in South Carolina is clear that the Plaintiff must establish the Defendant breached that duty or the confidential relationship which resulted in the damages suffered by the Plaintiff. The specific case law citations are cited above. The court does not find the Defendant breached the fiduciary duties she was responsible for under the Power of Attorney or the confidential relationship. The Defendant did not arrange the office visits with Mr. Green, did not meet with Mr. Green, did not discuss this transaction with Mr. Allen, and did not

participate in the reasons Mr. Allen wanted to transfer the property to the Defendant in the attorney/client conferences. While Mr. Allen had significant health issues, the evidence supports the finding that he was responsible for dealing with those medical issues, including his medication and the Defendant did not exercise any rights pursuant to the Power of Attorney as the agent for the Plaintiff.

The court would also note this Order was delayed due to issues with locating the trial exhibits. After several telephone conferences with the attorneys and contacting the respective court reporters, the parties have attempted to re-create the list of exhibits. This was simplified since the deeds, which were the majority of the exhibits, were available in the public records.

Aiken County Master in Equity/M. Anderson Griffith



Aiken Common Pleas

Case Caption: Monroe Allen Jr VS Gloria Ligon

Case Number: 2020CP0201093

Type: Master/Order/Other

AND IT IS SO ORDERED

s/M Anderson Griffith-3076