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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Thomas J. Rode, Circuit Judge

Appellate Case No. 2026-001070
Court of Common Pleas Case No. 2024-CP-10-04752
Probate Court Case No. 2022-ES-10-00235

IN RE: ESTATE OF JAMES L. STROBEL, Deceased,

DANIEL LLOYD STROBEL; JAMES ANDREW STROBEL; JOHN ANTHONY STROBEL;
and PETER NICHOLAS STROBEL,

Respondents,

v.

PAULA M. STROBEL, as Personal Representative of the Estate of James L. Strobel
and individually; DOROTHY ELIZABETH STROBEL BELL, as an interested person;
and ZOIE P. OGLETREE, as an interested person,

Defendants,

of whom PAULA M. STROBEL, as Personal Representative of the Estate of James
L. Strobel and individually; and DOROTHY ELIZABETH STROBEL BELL, as an
interested person, are the

Appellants.

RESPONDENTS' MOTION TO DISMISS APPEAL

Respondents Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel ("Respondents") hereby move the Court for an order dismissing this appeal on the grounds that the circuit court's interlocutory orders which are the subject of the appeal are not directly or immediately appealable. Further, Appellant Dorothy Elizabeth Strobel Bell ("Appellant Bell") lacks standing to appeal the orders in question given that they make no rulings as to her rights. In support of the motion, Respondents show as follows:

BACKGROUND

This case involves the Estate of James L. Strobel (“Decedent”), who died on January 3, 2022. Respondents are his four sons. Their mother is Defendant Zoie P. Ogletree (“Defendant Ogletree”). Decedent is Appellant Bell’s father. Appellant Bell’s mother is Appellant Paula M. Strobel (“Appellant Strobel”). Appellant Strobel serves as the personal representative for Decedent’s estate.

The present action originated in the probate court on December 6, 2022. Appellants have since done everything within their power to delay the completion of this case. On August 16, 2024, over Respondents’ objections, Appellant Bell belatedly removed the case to the circuit court even though she is merely an interested person and no claims have been asserted against her.¹ Appellant Bell did not make an appearance in the case until over thirteen months after she was served with the initial Petition. Her mother’s legal counsel serve as her legal counsel.

Respondents’ Petition filed in the probate court initially named as parties Appellant Strobel (individually and as personal representative of the estate) and Appellant Bell. The Petition does not demand a jury trial. It also does not seek any affirmative relief against Appellant Bell. Paragraph 13 states: “[Bell] is named as a party to this action solely because, upon information and belief, she is a potential heir and an interested person with respect to Decedent’s estate, and her interest may be adversely affected by this Action.”

¹ Appellant Bell filed the motion to remove the case to the Circuit Court because Appellant Strobel’s time for removal had already lapsed under S.C. CODE ANN. § 62-1-302(d). The probate court’s scheduling order dated September 6, 2023, which set a discovery cut-off and other deadlines had already ended and the case was subject to trial on or after June 6, 2024. Removal of the case to the circuit court prevented the trial from occurring in the probate court. Respondents have objected to Appellants’ dilatory tactics. See “Exhibit M” and “Exhibit N” attached.

In their Petition, Respondents seek to enforce the provisions of a written separation agreement dated March 4, 1977, that Decedent executed with their mother, Defendant Ogletree. This separation agreement was filed with the Dorchester County Family Court on April 18, 1977. The terms of the separation agreement require Decedent to make an irrevocable will leaving the greater of \$25,000 or 50% of his estate to Respondents in equal shares. The inventory filed by Appellant Strobel values Decedent's estate at \$4,489,000.00.

Decedent's Last Will & Testament dated March 24, 2003 (Will"), which Appellant Strobel filed for probate on February 8, 2022, does not devise or leave any portion of Decedent's estate to his four sons (Respondents) or to his daughter (Appellant Bell). Instead, the Will would leave Decedent's entire estate to Appellant Strobel and would altogether disinherit Decedent's children. Appellant Bell receives nothing under the terms of the separation agreement or the Will. Respondents were unaware of the separation agreement until July of 2022. Although Appellant Strobel admits she knew of the separation agreement by no later than January of 2022, the Petition avers that she intentionally withheld the separation agreement from Respondents and she failed to apprise the probate court or Respondents of its provisions when she filed for probate on February 8, 2022, including the requirement that Decedent make an irrevocable will for the Respondents' benefit.

The initial Petition asserts claims for (1) declaratory judgment; (2) breach of contract/breach of covenant of good faith & fair dealing—specific performance; (3) breach of contract/breach of covenant of good faith & fair dealing—actual damages; (4) breach of fiduciary duty; (5) unjust enrichment/constructive or resulting trust; and (6) attorneys' fees pursuant to S.C. CODE ANN. § 62-1-111.

On February 3, 2023, Appellant Strobel filed her Answer. It did not make a demand for a jury trial. While Appellant Bell was served with the Petition on January 6, 2023, she did not answer or otherwise respond.

On September 8, 2023, Respondents filed an Amended Petition that again does not demand a jury trial. See “Exhibit A” attached. The Amended Petition adds Defendant Ogletree as an interested person. It also adds a cause of action requesting Appellant Strobel’s removal as personal representative of the estate for cause pursuant to S.C. CODE ANN. § 62-3-611 and it seeks a declaratory judgment that Decedent’s alleged divorce from Defendant Ogletree that was supposedly obtained in the Dominican Republic is invalid under our state’s version of the Uniform Divorce Recognition Act, S.C. CODE ANN. §§ 20-3-210 to -440.² See Powers v. Powers, 273 S.C. 51, 254 S.E.2d 289 (1979). Consequently, Defendant Ogletree was Decedent’s surviving spouse at his death. Decedent’s subsequent marriage to Appellant Strobel on April 29, 1977, is bigamous and void under state law. See S.C. CODE ANN. § 20-1-80; Day v. Day, 216 S.C. 334, 58 S.E.2d 83 (1950).

The Amended Petition alleges claims for (1) declaratory judgment; (2) breach of contract/breach of covenant of good faith & fair dealing—specific performance; (3) breach of contract/breach of covenant of good faith & fair dealing—actual damages; (4) breach of fiduciary duty; (5) unjust enrichment/constructive or resulting Trust; (6) removal of personal representative; and (7) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111. It does not seek any affirmative relief against Appellant Bell or Defendant Ogletree. Paragraph 22 states: “[Ogletree] and [Bell] are named as parties to this action solely because, upon information and

² Appellant Strobel claims that Decedent obtained a divorce from Defendant Ogletree in the Dominican Republic sometime in March 1977. No such divorce decree has been produced. The Dorchester County Family Court has no record of any divorce decree.

belief, they are potential heirs and are interested persons with respect to Decedent's estate, and their interest may be adversely affected by this Action."

On September 21, 2023, Defendant Ogletree was served with the Amended Petition. However, she did not answer or otherwise respond.

On November 17, 2023, Appellant Strobel filed her Answer to the Amended Petition. Her Answer did not demand a jury trial. On December 18, 2023, she then filed her Amended Answer, which adds a counterclaim for unjust enrichment and adds a demand for a jury trial for the first time.

On January 2, 2024, Respondents filed their reply to Appellant Strobel's counterclaim. Paragraph 30 requests that Appellant Strobel's demand for a jury trial be stricken on the basis that she is not entitled to a jury trial and because she waived any right to a jury trial by not timely making a demand for same pursuant to SCRCP 38(b).

On February 28, 2024, through her legal counsel, Appellant Bell appeared in the case for the first time. Her attorneys also represent Appellant Strobel. On April 15, 2024, Appellant Bell filed her Answer to the Amended Petition even though it makes no claim against her. She also alleged counterclaims against Respondents for unjust enrichment, civil conspiracy, and partition and contribution as well as cross-claims against Defendant Ogletree for unjust enrichment and civil conspiracy.

Appellant Bell's Answer did not demand a jury trial. Nevertheless, on April 25, 2024, she filed a motion for removal asking the probate court to grant mandatory removal of the case to the circuit court pursuant to S.C. CODE ANN. § 62-1-302(d) on the basis that "claims have been raised entitling parties to a jury trial" See Motion for Removal filed 4.25.24. Respondents were unsure whether this motion could be treated as a demand for a jury trial. On May 2, 2024,

they filed a motion to strike Appellant Bell's demand for a jury trial (to the extent a demand was made) and they filed a separate motion to strike Appellant Strobel's demand for a jury trial. See "Exhibit B" and "Exhibit C" attached. On May 13, 2024, Respondents also filed a motion to dismiss Appellant Bell's counterclaims. See "Exhibit D" attached.

On May 13, 2024, Appellant Strobel filed a Motion to Amend Answer seeking to add a counterclaim for civil conspiracy. See "Exhibit E" attached. On June 24, 2024, Appellant Strobel then filed a Motion for Jury Trial pursuant to SCRPC 39(b). See "Exhibit F" attached.

On August 16, 2024, over Respondents' objections, the probate court granted Appellant Bell's motion for removal and entered an order removing the case to the circuit court. The probate court did not resolve or decide the parties' pending motions.

On October 15, 2024, following removal of the case, Respondents refiled their pending motions with the circuit court, including their motion to dismiss Appellant Bell's counterclaims, their motion to strike Appellant Bell's demand for a jury trial, and their motion to strike Appellant Strobel's demand for a jury trial.

On July 31, 2025, following a hearing conducted on June 5, 2025, Circuit Judge S. Bryan Doby granted Respondents' motion to dismiss Appellant Bell's counterclaims and held Appellant Bell lacked standing and was not a real party in interest under S.C. R. CIV. PRO. 17(a) to assert the counterclaims alleged in her answer. See "Exhibit G" attached. Judge Doby found that Appellant Bell "is attempting to assert counterclaims on behalf of her mother, Defendant Strobel" and that she "lacks standing to seek recovery on her mother's behalf." Id. p.6. He also granted Respondents' motion to strike Appellant Bell's demand for a jury trial.³ Id.

³ Although Respondents' Motion to Strike Appellant Strobel's demand for a jury trial was also set to be heard by Judge Doby at the June 5, 2025, hearing, he deferred that motion and directed that it be rescheduled for another hearing to be held simultaneously with Appellant Strobel's

p.11-12. On August 25, 2025, Judge Doby denied Appellant Bell's Motion to Alter or Amend his prior order. See "Exhibit I" attached. She did not appeal Judge Doby's orders.

On August 27, 2025, Circuit Judge Thomas J. Rode conducted another hearing involving Appellant Strobel's Motion to Amend Answer (originally filed in the probate court on May 13, 2024, and later refiled in the circuit court on June 23, 2025) and Appellant Strobel's Motion for Jury Trial pursuant to SCRCP 39(b) (originally filed in the probate court on June 24, 2024, and later refiled in the circuit court on June 23, 2025). See "Exhibit J" attached. Despite Judge Doby's prior order requiring that Respondents' Motion to Strike Appellant Strobel's demand for a jury trial be heard at the same time as these motions, the Clerk of Court failed to place Respondents' motion on the roster for August 27, 2025. Consequently, Judge Rode declined to hear or rule upon Respondents' motion at that hearing. Id. p.5 n.1 and p.19 n.4. Respondents' motion has not yet been heard or ruled upon by the circuit court and remains pending.

On November 3, 2025, Judge Rode entered an order denying Appellant Strobel's Motion to Amend Answer and her Motion for Jury Trial pursuant to SCRCP 39(b). Id. Footnotes 1 and 4 of his order explicitly provide that he did not rule upon or dispose of Respondents' Motion to Strike Appellant Strobel's demand for a jury trial under Rule 38(b) because that motion was not scheduled for a hearing before him. Id. p.5 n.1 and p.19 n.4.

On November 13, 2025, Appellant Strobel moved to alter or amend Judge Rode's order. See "Exhibit K" attached. On December 31, 2025, Judge Rode denied the motion. See "Exhibit L" attached. On January 27, 2026, Appellant Strobel and Appellant Bell filed the instant appeal seeking to appeal Judge Rode's order denying Appellant Strobel's Motion to Amend Answer and

Motion to Amend Answer, which she had not yet refiled in the circuit court following removal of the case thus it wasn't on the June 5 roster of motions to be heard. See "Exhibit H" attached.

her Motion for Jury Trial pursuant to SCRCP 39(b) and his later order denying Appellant Strobel's Motion to Alter or Amend.

LAW AND ANALYSIS

1. Appellant Bell Lacks Standing to Appeal Orders Involving Other Parties.

As discussed above, Appellant Bell did not appeal from Judge Doby's orders dismissing her own counterclaims and striking her own demand for a jury trial. See "Exhibit G" & "Exhibit I" attached. Instead, Appellant Bell is now attempting to appeal Judge Rode's orders denying *Appellant Strobel's* Motion to Amend Answer and denying *Appellant Strobel's* Motion for Jury Trial pursuant to SCRCP 39(b). See "Exhibit J" & "Exhibit L" attached. In short, Appellant Bell is trying to appeal from orders denying another party's motions. She lacks standing to appeal those orders and she should be dismissed as an appellant.

South Carolina law holds that only a person aggrieved by a ruling may appeal. See S.C. CODE ANN. § 18-1-30; S.C. APP. C.R. 201(b). "There is no material distinction in general standing principles juxtaposed to the ability of an 'aggrieved party' to appeal pursuant to Rule 201(b) of the South Carolina Appellate Court Rules." Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008). "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citing cases). "The word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." Id.

It thus follows that "[a]party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests." Id.; see, e.g., Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (appellant

lacked standing to assert error in respect to the decision of the lower court, which affected the property rights of his wife); First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (daughter lacked standing to argue on appeal that trial court had erred in requiring her father to repay to a trust the income he had received from the trust after his remarriage); Burns v. Gardner, 328 S.C. 608, 617, 493 S.E.2d 356, 361 (Ct. App. 1997) (clients were not aggrieved by imposition of sanctions against their attorneys; that portion of their appeal relating to the sanctions assessed against their attorney was dismissed); Ballington v. Paxton, 327 S.C. 372, 381–82, 488 S.E.2d 882, 887–88 (Ct. App. 1997) (appellants lacked standing on appeal to raise issues on behalf of their cousins); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct.App.1985) (A party cannot raise on appeal a ruling or issue that does not pertain to the appealing party.).

Rule 17(a) of the South Carolina Rules of Civil Procedure further provides that “[e]very action shall be prosecuted in the name of the real party in interest.” S.C. R. CIV. PRO. 17(a). “A real party in interest is one who ‘has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.’” Townsend v. Townsend, 323 S.C. 309, 309, 474 S.E.2d 424, 427 (1996). Our state supreme court has stated:

The question of who may bring a civil action arises under Rule 17(a) of the South Carolina Rules of Civil Procedure, which provides, “Every action shall be prosecuted in the name of the real party in interest.” As the court of appeals has recognized, *the real party in interest is “the party who, by the substantive law, has the right sought to be enforced.” It is ownership of the right sought to be enforced which qualifies one as a real party in interest.*”

Fisher on behalf of estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 237-38, 811 S.E.2d 739, 740-41 (2018) (citing Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) (emphasis added)).

Appellant Bell lacks standing to argue on appeal that the circuit court supposedly erred by denying Appellant Strobel's motions. Appellant Bell is not the real party in interest as to those issues. Any such rights belong to Appellant Strobel, not to Appellant Bell. Appellant Strobel would be the person with standing to assert she is "aggrieved" by the Court's rulings.

Appellant Bell may argue that she may raise arguments on Appellant Strobel's behalf because she is an "interested" person under the South Carolina Probate Code (SCPC). The SCPC allows a person "interested" in a final order of a probate court to appeal to the circuit court. See S.C. CODE ANN. § 62-1-308(a) ("A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303."). The SCPC defines an "interest person" as follows:

(23) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

Id. § 62-1-201(23). "'Heirs' means those persons ... who are entitled under the statute of intestate succession to the property of a decedent." Id. § 62-1-201(20).

While Appellant Bell is an "interested person" with respect to the probate court's rulings involving her own rights, she is not such a person with respect to the rulings involving Appellant Strobel's rights. Insofar as the probate court's rulings involve Appellant Strobel's right to a jury trial or her right to assert counterclaims against Respondents, Appellant Bell does not have any property right in or claim against Respondents which may be affected by the Court's rulings involving those motions or matters. See Berlinsky v. Berlinsky, No. 2013-GC-10-0150, 2019

WL 7212469, at *6 (S.C. Com. Pl. Dec. 20, 2019) (daughter could not challenge probate court's rulings involving her father's property and assets as an "interested person" under the SCPC).

Because Appellant Bell lacks standing to assert Appellant Strobel's rights, she is not the real party in interest as to those rights, and she is not an interested person with respect to the circuit court's rulings involving Appellant Strobel's rights. Appellant Bell's appeal must be dismissed because she lacks standing and is not the real party in interest.

2. This Court Lacks Jurisdiction Over this Appeal Because the Circuit Court's Orders are Interlocutory and not Immediately Appealable.

The orders appealed from involve the circuit court's denial of Appellant Strobel's Motion to Amend Answer pursuant to SCRCP 15(a) and the denial of her Motion for Jury Trial pursuant to SCRCP 39(b). Neither of these rulings involve a final judgment. The orders involve interlocutory rulings that are not directly or immediately appealable.

Judge Rode's orders denied Appellant Strobel's request to amend her pleading to add a counterclaim for civil conspiracy and denied her request for a jury trial pursuant to Rule 39(b). See "Exhibit J" & "Exhibit L" attached. The orders do not resolve or determine the substantive claims in the case that include, *inter alia*, the validity and enforcement of the separation agreement dated March 4, 1977, whether the Decedent's Will is valid, whether Decedent's alleged Dominican Republic divorce from Defendant Ogletree is void, or whether Appellant Strobel's alleged marriage to Decedent is bigamous and void. All the causes of action in the case remain pending. A final judgment has not been entered. This appeal effectively prevents the parties from moving forward with a trial on the merits of those claims. South Carolina case law is clear that piecemeal appeals such as the present appeal are disfavored, do not promote judicial economy, and are impermissible. Appellants have shown no reason to justify this Court in disregarding or circumventing these decisions.

The right to appeal is a jurisdictional matter. Levi v. N. Anderson Cnty. EMS, 409 S.C. 374, 379-80, 762 S.E.2d 44, 47 (Ct. App. 2014); see also Tatnall v. Gardner, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) (dismissing appeal for lack of subject matter jurisdiction when trial court's order did not fall within requirements of S.C. CODE ANN. § 14-3-330); N. Carolina Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp., 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986) ("The jurisdictional rights of appeal continue to be controlled by § 14-3-330."). "[W]hether a matter is appealable is a jurisdictional matter and may be raised by an appellate court even if not noted by the parties." Levi, 409 S.C. at 379, 762 S.E.2d at 47 (citation omitted).

"An appeal ordinarily may be pursued only after a party has obtained a final judgment." Neeltec Enterprises, Inc. v. Long, 391 S.C. 177, 178, 705 S.E.2d 57, 57 (2011). "Usually, an order that does not finally end a case or prevent a final judgment from which a party could appeal is not immediately appealable." Watson v. Underwood, 407 S.C. 443, 458-59, 756 S.E.2d 155, 163 (Ct. App. 2014). "An order is not immediately appealable when appellants 'have not 'arrived at the end of the road' and [would] be able to appeal the decision after the trial [was] finished.'" Id. (citation omitted).

"Final judgment" refers to the disposition of all the issues in the case. Link v. Sch. Dist. of Pickens County, 302 S.C. 1, n.3, 393 S.E.2d 176, n.3 (1990). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Ex parte Wilson, 367 S.C. 7, 625 S.E.2d 205, 208 (2005). "An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 7, 630 S.E.2d 464, 468 (2006). To be "final," a judgment must result in a binding adjudication of the rights of the parties. Keels v. Powell, 213 S.C. 570,

50 S. E. 2d 704 (1948); Good v. Harford Accident & Indem. Co., 201 S.C. 32, 32, 21 S.E.2d 209, 209 (1942).

The final judgment rule serves the laudatory goal of preventing piecemeal review of matters that are merely steps toward a final judgment. Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 94, 529 S.E.2d 11, 13-14 (2000); Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 533 S.E.2d 331, 331 (2000). This court's admonition in Breland is particularly prescient: "[W]e believe avoiding piecemeal litigation is the best policy to follow. The current case reveals why such appeals are disfavored.... Already the progress of this case has been delayed several years over the issue of venue. Requiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial." Id. at 94, 529 S.E.2d at 13-14. Exceptions to the final judgment rule are recognized cautiously. Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354, 356 (Ct. App. 2004).

"Some exceptions to the final judgment rule are set forth in [S.C. CODE ANN. § 14-3-330], which provides for the appealability of certain interlocutory orders." Tillman v. Tillman, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. CODE ANN. § 14-3-330." Woodard v. Westvaco Corp., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds Sabb v. South Carolina State University, 350 S.C. 416, 567 S.E.2d 231 (2002); see Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005) ("An order generally must fall into one of several categories set forth in [§ 14-3-330] in order to be immediately appealable.").

Appellants presumably rely upon subsections (1) and (2) of § 14-3-330, which provide for appellate jurisdiction for correction of errors of law involving the following matters:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; [and]

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14-3-330(1)-(2). For the reasons explained herein, neither of these subsections applies to the Appellants' appeal.

An order “involving the merits” under § 14-3-330(1) is to be construed in “a more narrow fashion” and requires that the order ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense’” Mid-State Distribs., Inc. v. Century Imps., Inc., 301 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (citing Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). “An order ‘involves the merits,’ as that term is used in Section 14-3-330(1) and is immediately appealable when it *finally determines* some *substantial matter* forming the whole or part of some cause of action or defense.” Ex parte Capital U-Drive-It, 369 S.C. at 7, 630 S.E.2d at 467 (citations & footnote omitted) (emphasis added); see Cooke v. Palmetto Health Alliance, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (same). An order “involving the merits” is one that “finally determine[s] a substantial cause of action or defense.” State v. Isaac, 405 S.C. 177, 183, 747 S.E.2d 677, 679 (2013).

“Orders affecting a substantial right [under § 14-3-330(2)] ‘discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.’” Edwards v. SunCom,

369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (quoting Mid-State Distribs., 301 S.C. at 335 n.4, 426 S.E.2d 780 n.4). “To appeal an order affecting a substantial right, an order must not only involve a right, but it must also ‘prevent[] a judgment from which an appeal might be taken.’” Cobb v. Maccaro, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) (citations omitted); see also Neeltec Enterprises, 397 S.C. at 566, 725 S.E.2d at 928 (“An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a).”).

In Tillman, this court observed that “[o]ur courts have held that orders denying a motion to amend an answer ... denying a motion to file a late answer ... and denying a motion to amend to file a third party complaint are not immediately appealable ..., primarily because they may be appealed after the case has ended and final judgment entered.” 420 S.C. at 249, 801 S.E.2d at 759 (citing Jefferson, Tatnall, and Baldwin Constr. Co. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004)). In Jefferson, the South Carolina Supreme Court held that an order denying a party's motion to file a late answer was not directly appealable under § 14-3-330. 295 S.C. at 317, 368 S.E.2d at 456. The court first held the order was not appealable under § 14-3-330(1) because it did not involve the merits. Id. at 318, 368 S.E.2d at 456. The trial court determined only that the appellants had not shown good cause to be allowed to file a late answer. Id. It did not strike a pleading but refused to allow its filing. The supreme court likewise held the order was not appealable under § 14-3-330(2)(c) since it did not strike the answer but merely refused to allow its filing. Id.

Similarly, in Baldwin Const. Co., our state supreme court cited Jefferson in holding that the trial court's order denying a party's request to be allowed to file an amended answer was not

immediately appealable under § 14-3-330. 357 S.C. at 227, 593 S.E.2d at 146. The court specifically rejected the argument that the order denying a party's motion to amend its pleading affected a substantial right under § 14-3-330(2). In so ruling, the court pointed out that the trial court's order did not strike a pleading but refused to allow its filing. Id. at 230, 593 S.E.2d at 147. The court further noted that "[p]etitioners have not 'arrived at the end of the road' and will be able to appeal the decision after the trial is finished." Id. (citing Mid-State Distributors, Inc.); see also Skydive Myrtle Beach, Inc. v. Horry Cnty., No. 2021-000217, 2024 WL 3291602, at *3 (S.C. Ct. App. July 3, 2024) ("Skydive may appeal the trial court's order denying its motion to amend its complaint at the conclusion of the present action. The order denying Skydive's motion to amend did not determine a substantial matter forming the whole or a part of some cause of action or defense. Nor did the order discontinue an action, prevent an appeal, grant or refuse a new trial, or strike an action or defense as section 14-3-330(2) provides. Accordingly, we dismiss the appeal.").

In Tatnall, this court held that the circuit court's order denying a party's motion to amend her answer to file a third-party complaint was not immediately appealable. 350 S.C. at 138, 564 S.E.2d at 379. The court said that "the trial court's order denying Logan's motion to amend her answer to assert third party claims against Gardner neither determines a substantial matter 'forming the whole or part of some cause of action,' nor prevents 'a judgment from being rendered in the action' from which Logan could then seek review." 350 S.C. at 138-39, 564 S.E.2d at 379 (citations omitted). "At the conclusion of the present action, Logan may either appeal the trial court's order denying her motion to amend or file a separate, first-party suit against Gardner." Id.; see also U.S. Foods, Inc. v. Carlees Rest., LLC, No. 2021-001206, 2023 WL 4930070, at *1 (S.C. Ct. App. Aug. 2, 2023) (dismissing defendant's appeal of trial court's

order failing to allow it to amend its answer even though order was labeled as order striking the defendant's answer).

Our courts have also held that orders denying a motion for jury trial under Rule 39(b) are not immediately appealable. See, e.g., Rowe Furniture Corp. v. Carolina Wholesale Furniture Co., 292 S.C. 575, 576, 357 S.E.2d 725, 725 (Ct. App. 1987); Hannah v. United Refrigeration Servs., Inc., 305 S.C. 394, 394, 409 S.E.2d 360, 361 (1991); see also Satcher v. Satcher, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002) (“A decision denying a jury trial based on Rule 39(b) is discretionary and not immediately appealable.”); Richland Cnty. v. Lowman, 307 S.C. 422, 425 n.4, 415 S.E.2d 433, 435 n.4 (Ct. App. 1992) (noting that a ruling on a motion under Rule 39(b), which is addressed to the discretion of the court is not immediately appealable).

“An order denying a party a jury trial is not immediately appealable *unless it deprives [the party] of a mode of trial to which he is entitled as a matter of right.*” C & S Real Estate Services v. Massengale, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986) (emphasis added). Consequently, because the decision to grant a jury trial under Rule 39(b) is a matter *within the discretion of the circuit court*, a party is not entitled to a jury trial as a matter of right under that rule. Rowe Furniture, 292 S.C. at 576, 357 S.E.2d at 725 (trial court order denying party's motion for jury trial pursuant to Rule 39(b) was not immediately appealable); Hannah, 305 S.C. at 394, 409 S.E.2d at 361 (“A ruling on a Rule 39(b) motion is within the discretion of the judge and is interlocutory and not directly appealable.”).

In this case, Judge Rode's orders do not constitute “an order involving the merits” under § 14-3-330(1) and they do not affect “a substantial right” under § 14-3-330(2). His rulings do not “finally determine” a “substantial matter” forming the whole or part of some cause of action or defense because the court has yet to issue a final judgment resolving any of the parties' causes of

action or defenses in this case. The rulings do not terminate the action as to any of the parties' claims. Instead, Judge Rode issued an interlocutory ruling involving the filing of pleadings and whether a jury trial should be ordered as a matter of discretion pursuant to Rule 39(b). His orders do not strike any pleading but refuse to allow the filing of an amended pleading. His rulings are preliminary rulings before a final judgment is rendered. They are merely one step in the resolution of the parties' claims. Good, 21 S. E. 2d at 212 (“[I]f the question involved will be inherent in the final judgment and can be presented in an appeal from that judgment, it will be treated as an interlocutory order, review of which can only be had upon the general appeal.”); Watson, 407 S.C. at 458-59, 756 S.E.2d at 163 (same).

As noted above, Judge Rode's orders denying Appellant Strobel's request for a jury trial pursuant to Rule 39(b) do not affect a substantial right because she did not have any “right” to a jury trial under that rule. Instead, a motion under Rule 39(b) involves a matter *within the discretion of the circuit court*. The denial of a Rule 39(b) motion does not involve a matter of right. Moreover, nothing prevents Appellant Strobel from appealing the decision once a final judgment is rendered.

Appellant Strobel may attempt to circumvent the holdings in Rowe Furniture and Hannah by claiming that Judge Rode denied her request for a jury trial as a matter of right under SCRCP 38(b). However, such an argument misrepresents the record and distorts Appellant Strobel's motion. Judge Rode's order explicitly states in its opening paragraph on the first page and on page 19 that he denied Appellant Strobel's Motion for Jury Trial pursuant to SCRCP 39(b), which motion was originally filed in the probate court on June 24, 2024, and was later refiled in the circuit court on June 23, 2025. See “Exhibit J” pp.1 & 19. That motion stated in clear terms on the first page that Appellant Strobel “files this Motion for Jury Trial *in accordance with Rule*

39(b).” See “Exhibit F” p.1 (emphasis added). The motion then goes on to state that “[t]o the extent the Court finds that [Appellant Strobel] waived her right to a jury trial and that [Appellant Strobel’s] additional counterclaims do not create new issues of fact, [Appellant Strobel] *files this Motion for Jury Trial in accordance with Rule 39(b).*” Id. pp.1-2 (emphasis added). The motion that Judge Rode denied was made under Rule 39(b). It did not purport to be a motion for a jury trial as a matter of right under Rule 38(b). In summary, the motion that Judge Rode ruled upon and denied merely involved a request for a jury trial under Rule 39(b), not a demand for a jury trial under Rule 38(b). The holdings in Rowe Furniture and Hannah are controlling.

Furthermore, while Respondents filed a separation Motion to Strike Appellant Strobel’s demand for a jury trial under Rule 38(b) on the basis that she waived her right to a jury trial, see “Exhibit B,” Judge Rode’s order explicitly provides that he did not rule upon or dispose of Respondents’ motion because it was not scheduled for a hearing before him. See “Exhibit J” p.5 n.1 & p.19 n.4. Respondents’ motion remains pending in the circuit court and has not yet been decided. Appellant Strobel is attempting to prematurely appeal a ruling on a motion that the circuit court has not yet heard or decided.

CONCLUSION

As stated in Good, “endless delays” need to be avoided and piecemeal appeals will never bring litigants to the “end of the road.” Good, 201 S.C. at 42, 21 S.E. 2d at 213. Appellants’ appeal is yet another example of their delay tactics in this case. For the forgoing reasons, Respondents respectfully request an order of this court dismissing this appeal and remanding the matter to the circuit court for further proceedings.

ROSEN HAGOOD, LLC

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March 30, 2026.

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Reviewed and Approved for Electronic Transmission

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September 8, 2023.

Charleston, South Carolina.

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
9/8/2023 9:52AM

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF CHARLESTON	)	CASE NO. 2022-ES-10-00235
IN RE: ESTATE OF	)	
JAMES L. STROBEL, Deceased,	)	
	)	
DANIEL LLOYD STROBEL;	)	AMENDED PETITION
JAMES ANDREW STROBEL; JOHN	)	
ANTHONY STROBEL; and	)	
PETER NICHOLAS STROBEL,	)	
Petitioners,	)	
	)	
vs.	)	
	)	
PAULA M. STROBEL, as Personal	)	
Representative of the Estate of James L.	)	
Strobel and individually; DOROTHY	)	
ELIZABETH STROBEL BELL, as an	)	
interested person; and ZOIE P.	)	
OGLETREE, as an interested person,	)	
Respondents.	)	
_____	)	

Petitioners Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel respectfully allege and would show unto this Honorable Court as follows:

1. James Lloyd Strobel (hereinafter “Decedent” or “James L.”) died on January 3, 2022 at the age of 81 years old. At the time of Decedent’s death, he was a citizen and resident of the County of Charleston, State of South Carolina, and was domiciled at 419 West Ashley Avenue, Folly Beach, South Carolina 29439. His estate is currently being probated by this Probate Court as Case No. 2022-ES-10-00235.

2. Petitioner Daniel Lloyd Strobel (hereinafter “Danny” or “Petitioner”) is a citizen and resident of Buncombe County, North Carolina, and is the adult son of the Decedent. Danny was born on December 9, 1963.

3. Petitioner James Andrew Strobel (hereinafter “Jamie” or “Petitioner”) is a citizen and resident of Dorchester County, South Carolina, and is the adult son of the Decedent. Jamie was born on December 28, 1965.

4. Petitioner John Anthony Strobel (hereinafter “Tony” or “Petitioner”) is a citizen and resident of Dorchester County, South Carolina and is the adult son of the Decedent. Tony was born on February 10, 1969.

5. Petitioner Peter Nicholas Strobel (hereinafter “Nicky” or “Petitioner”) is a citizen and resident of Dorchester County, South Carolina and is the adult son of the Decedent. Nicky was born on February 10, 1969. Tony and Nicky are twin brothers.

6. Petitioners Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel are collectively referred to herein as “Petitioners.” Petitioners are individuals who claim an interest in the estate of the Decedent by virtue of the allegations herein described.

7. Respondent Zoie P. Ogletree (hereinafter “Zoie” or “Respondent Zoie”) is an adult citizen and resident of Dorchester County, South Carolina.

8. Decedent and Zoie were married on or about June 5, 1960. During Decedent’s marriage to Zoie, they had four sons together, the Petitioners. Zoie is the Petitioners’ mother.

9. Respondent Paula M. Strobel (hereinafter “Paula” or “Respondent Paula”) is an adult citizen and resident of Charleston County, South Carolina.

10. Upon information and belief, at some point prior to March 4, 1977, Decedent began an extramarital affair with Respondent Paula. Decedent and Zoie separated and contemplated divorcing one another and ending their marriage.

11. On or about March 4, 1997, Decedent and Zoie both resided and were domiciled in Dorchester County, South Carolina. While married but in contemplation of or following physical separation, Decedent and Zoie executed and entered a valid and enforceable written Separation Agreement on March 4, 1977 (hereinafter “Separation Agreement”) that was filed in the Office of the Clerk of Court for Dorchester County, South Carolina. A true and correct copy of the Separation Agreement is attached hereto as “**Exhibit A**” and incorporated herein by reference.

12. In the Separation Agreement, which Decedent and Zoie both executed and agreed to while they were domiciled in South Carolina, Decedent agreed to make provisions in his Last Will and Testament for the benefit of Petitioners and thereby contracted to make an irrevocable will in favor of the Petitioners to leave a portion of his estate to Petitioners in equal shares. Specifically, the Fifth Section of the Separation Agreement states as follows:

FIFTH: It is agreed by the parties that the Husband will keep at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of his estate, whichever is greater, of his estate – for the benefit of his four (4) children – of his personalty and realty free of all liens and Husband further agrees to execute an Irrevocable Will to that effect. Said amount of his estate to be equally divided among his children at his death, namely: Daniel Lloyd Strobel, James Andrew Strobel, Peter Nicholas Strobel and John Anthony Strobel, per stirpes.

13. Section Eleven of the Separation Agreement further states as follows:

ELEVENTH: It is agreed by the parties hereto that this Separation Agreement shall be binding upon them individually and upon their Administrators, Executors or Trustees in the event of either party’s demise. It is expressly understood that each party’s estate is subject to the terms of this Separation Agreement.

14. These provisions of the Separation Agreement were intended to directly benefit Petitioners, who were and are the children of Decedent and Zoie.

15. Upon information and belief, within days after executing the Separation Agreement on March 4, 1977, and without Zoie’s knowledge, Decedent then traveled to the Dominican Republic for the sole purpose of obtaining a divorce from Zoie. Zoie did not travel to the

Dominican Republic and was unaware that Decedent had traveled to the Dominican Republic to obtain a divorce. Decedent attempted to bypass South Carolina law without Zoie's knowledge or consent. Decedent attempted, albeit unsuccessfully, to terminate his marriage to Zoie by seeking a divorce in proceedings commenced in the Dominican Republic.

16. At all times after Decedent's departure from South Carolina and until his return from the Dominican Republic, Decedent and Zoie both maintained their place of residence within the State of South Carolina and maintained their domicile in the State of South Carolina.

17. Upon information and belief, Decedent was present in the Dominican Republic for only a few days or weeks for the purpose of commencing divorce proceedings there.

18. Upon information and belief, Decedent and Zoie (a) were domiciled in South Carolina within twelve months prior to the commencement of proceedings for their divorce in the Dominican Republic and Decedent resumed his residence in this state less than eighteen months after his date of departure from this state and/or (b) at all times after Decedent's departure from South Carolina and until his return to this state both Decedent and Zoie maintained a place of residence in this state. Pursuant to S.C. CODE ANN. § 20-3-430 and predecessor enactments of this section, these facts constitute *prima facie* evidence that Decedent and Zoie were both domiciled in South Carolina when the divorce proceedings were commenced in the Dominican Republic.

19. Upon information and belief, although Decedent attempted to obtain a divorce of his marriage to Zoie in proceedings filed in the Dominican Republic on or about March 15, 1977, the attempted divorce was and is invalid and of no force or effect pursuant to S.C. CODE ANN. § 20-3-420 and predecessor enactments of this section. The marriage between Decedent and Zoie was therefore never terminated and remained valid and binding until Decedent's death on January 3, 2022.

20. Following Decedent's attempted, but unsuccessful, divorce from Zoie, Decedent subsequently attempted to marry Paula on or about April 29, 1977, but the marriage was and is bigamous and therefore invalid pursuant to S.C. CODE ANN. § 20-1-80 and predecessor enactments of this section. Decedent and Paula were never validly married and/or such marriage is void as a matter of law.

21. During their relationship, Decedent and Paula had one child, Respondent Dorothy Elizabeth Strobel Bell (hereinafter "Dorothy" or "Respondent Dorothy"). Dorothy is a citizen and resident of Charleston County, South Carolina, and is the adult daughter of the Decedent and Paula.

22. Respondents Zoie and Dorothy are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent's estate, and their interest may be adversely affected by this Action.

23. On or about July 17, 1978, Decedent and Zoie amended the Separation Agreement, a true and correct copy of which amendment is attached hereto as "**Exhibit B**" and incorporated herein by reference. The terms of the Amended Separation Agreement dated July 17, 1978, did not amend, modify, or otherwise alter the Fifth Section of the Separation Agreement above-referenced. The Amended Separation Agreement further states that "[i]n all other respects, the Separation Agreement heretofore entered into by the parties on the 4th day of March, 1977 is confirmed." Therefore, the Fifth Section regarding Decedent's contract to make a will in favor of Petitioners was confirmed and was still in effect and remained so up until the time of Decedent's death.

24. Decedent and Zoie did not thereafter revoke, rescind, modify, or amend the Separation Agreement.

25. Upon information and belief, Zoie has performed all conditions required to be performed by her in accordance with the described Separation Agreement. The Decedent therefore had a duty and obligation to perform his obligations under the Separation Agreement.

26. The Separation Agreement and Decedent's contract to make a will for the benefit of Petitioners is in writing, was signed and agreed to by the Decedent, is supported by mutual, adequate, and valid consideration, and is sufficiently definite to be enforced. The contract to make an irrevocable will in favor of the Petitioners was executed as a result of an agreement between Decedent and Zoie, according to which each made enforceable promises to each other supported by valid consideration.

27. Upon information and belief, on March 24, 2003, while Decedent was still married to Zoie but was residing with Paula, Decedent executed his Last Will and Testament of James L. Strobel dated March 24, 2003 (the "Will"). A true and correct copy of Decedent's Will is attached hereto as "**Exhibit C**" and is incorporated herein by reference.

28. Under the terms and provisions of the Will, Decedent names Paula as the primary beneficiary of his entire estate. The Petitioners and Dorothy are only named as contingent remainder beneficiaries under the Will in the event that Paula predeceases Decedent, which did not in fact occur because Paula survived Decedent.

29. The terms and provisions of Decedent's Will conflict with, breach, and do not comply with Decedent's contractual obligations under the Fifth Section of the Separation Agreement. Specifically, the Will breaches Decedent's obligation to "keep at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of his estate, whichever is greater, of his estate – for the benefit of his four (4) children – of his personalty and realty free of all liens" and his agreement to "execute an Irrevocable Will to that effect." The Will breaches Decedent's

contractual obligation under the Separation Agreement to leave at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of his estate, whichever is greater, to be equally divided among the Petitioners' (his children) at his death, per stirpes.

30. The terms and provisions of the Will are therefore in direct conflict with or contrary to the terms of the above-described Separation Agreement, which constitutes a binding and enforceable contract by Decedent to make an irrevocable will for the benefit of the Petitioners. Petitioners were intended and direct third-party beneficiaries of the Separation Agreement.

31. Because the Decedent's Will is in direct conflict with and breaches Decedent's contractual obligations under the Separation Agreement, pursuant to South Carolina law, the Decedent's Will and all the clauses contained therein are invalid, null, void, and of no force or effect whatsoever. Upon information and belief, Decedent died without leaving behind a valid will disposing of any part of his estate.

32. Decedent died on January 3, 2022. At the time of Decedent's death, Zoie was still married to the Decedent. Zoie is the surviving spouse of the Decedent.

33. Upon information and belief, on or about February 11, 2022, Respondent Paula was appointed by this Probate Court as the Personal Representative for the Estate of James L. Strobel.

34. Upon information and belief, Paula was appointed as Personal Representative based on allegations or statements in her Petition for Informal Appointment asserting that she was named as Personal Representative in Decedent's Will and that she is the wife or surviving spouse of the Decedent. Further upon information and belief, the assertions that Decedent had a valid Will naming Respondent Paula as Personal Representative and that Paula was validly married to the Decedent are false and inaccurate.

35. Paula has been acting and serving as Personal Representative since her appointment on or about February 11, 2022.

36. Upon information and belief, during Decedent's lifetime, Paula was aware of the Separation Agreement and its provisions, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners. Paula was aware of the Separation Agreement for many years prior to Decedent's death.

37. On or about February 8, 2022, Paula, the appointed Personal Representative for the Estate of James L. Strobel, filed an Application for Informal Probate of Will and Appointment in this Court. Despite the Will's invalidity, the Application attaches or encloses Decedent's Last Will and Testament dated March 24, 2003, the terms of which purport to make Paula the sole Devisee of Decedent's entire estate. The Application seeks to have this Will admitted for probate in this Court when the Will is invalid, null, and void as a matter of law.

38. Despite the fact that Paula was aware of the Separation Agreement executed by Decedent and Zoie, the Application for Informal Probate of Will and Appointment that Paula filed in this Court on or about February 8, 2022, fails to mention, acknowledge, or recognize the existence of the Separation Agreement or Decedent's obligations thereunder. The Application further fails to mention, acknowledge, or recognize that Decedent's marriage to Zoie was never validly terminated or ended, that Decedent was married to Zoie at the time of his death, and that Decedent was never validly married to Paula.

39. Upon information and belief, Paula's Application appears to seek a determination or finding that she is the sole Devisee of Decedent's estate pursuant to the terms and provisions of Decedent's Last Will and Testament dated March 24, 2003, which is invalid, null, and void as a matter of law. Petitioners are informed that Paula claims the right to possession of Decedent's

entire real and personal property included in his estate pending administration of the estate and she seeks the eventual distribution of the entirety of Decedent's estate to herself, to the exclusion of the Petitioners and the Decedent's intestate heirs. Upon information and belief, Paula's Application refuses to recognize any beneficial ownership or rights in and to the real or personal property of Decedent in Petitioners.

40. Paula, individually and in her role as Personal Representative, knowingly and intentionally concealed from and failed to disclose to Petitioners the existence of the Separation Agreement and its provisions, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners. Paula further knowingly and intentionally concealed from and failed to disclose to Petitioners the facts that Decedent's marriage to Zoie was never validly terminated or ended, that Decedent was married to Zoie at the time of his death, and that Decedent was never validly married to Paula.

41. Upon information and belief, Paula deliberately took actions to probate, administer, and distribute Decedent's estate while concealing and failing to disclose the Separation Agreement to the Court and to the Petitioners and while ignoring, avoiding, and evading Decedent's obligations under that agreement, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners, and while concealing and failing to disclose to the Court and to the Petitioners the facts that Decedent's marriage to Zoie was never validly terminated or ended, that Decedent was married to Zoie at the time of his death, and that Decedent was never validly married to Paula.

42. On or about June 8, 2022, Paula, as the appointed Personal Representative for the Estate of James L. Strobel, filed an Inventory and Appraisement with this Court. The Inventory discloses that Decedent owned or held "probate" assets at the time of his death valued at

approximately \$4,489,000.00. The Inventory further discloses that Decedent also had other “nonprobate” assets which are not valued on the Inventory, including life insurance policies, banking or checking accounts, retirement account, farm equipment, and personal items.

43. Upon information and belief, on the date of Decedent’s death, Decedent owned and possessed various real property and personal property or interests therein, including but not limited to real estate situated in Dorchester and Charleston Counties, stock or shares in First National Bank Corporation, banking and/or checking accounts, brokerage accounts, retirement accounts, motor vehicles, farm equipment, and personal items.

44. Additionally, upon information and belief, at times subsequent to the Separation Agreement and during his lifetime, the Decedent also apparently deeded or transferred to Paula a one-half or 50% undivided interest in certain real properties that were wholly owned by Decedent, thereby dissipating the assets in his estate that were to be devised or given to the Petitioners according to the terms and provisions of the Separation Agreement and effectively defeating or thwarting Decedent’s obligations under the Separation Agreement. Paula gave no consideration to Decedent in exchange for these deeds or transfers of Decedent’s interests in the real estate to her. Further upon information and belief, these deeds or transfers were in violation of Decedent’s obligations under the Fifth Section of the Separation Agreement.

45. Upon information and belief, at times subsequent to the Separation Agreement and during his lifetime, the Decedent also created or opened bank accounts or joint bank accounts with Paula with the right of survivorship and deposited or transferred his funds or monies into these accounts, which upon his death were to pass to Paula, dissipated the assets in his estate that were to be devised or given to the Petitioners according to the terms and provisions of the Separation Agreement, and effectively defeated or thwarted Decedent’s obligations under the Separation

Agreement. Paula gave no consideration to Decedent in exchange for Decedent making her the beneficiary of the bank accounts upon his death. Further upon information and belief, these joint accounts with right of survivorship were in violation of Decedent's obligations under the Fifth Section of the Separation Agreement.

46. Upon information and belief, at times subsequent to the Separation Agreement and during his lifetime, the Decedent also opened or funded a retirement account and purchased life insurance policies and named Paula as the sole beneficiary of said account or policies upon his death. Decedent used his funds or monies to purchase or fund the retirement account and insurance policies, which upon his death were to pass to Paula, dissipated the assets in his estate that were to be devised or given to the Petitioners according to the terms and provisions of the Separation Agreement, and effectively defeated or thwarted Decedent's obligations under the Separation Agreement. Paula gave no consideration to Decedent in exchange for Decedent making her the beneficiary of the retirement account or life insurance policies. Further upon information and belief, these beneficiary designations were in violation of Decedent's obligations under the Fifth Section of the Separation Agreement.

47. Upon information and belief, Decedent and Paula engaged and participated in these transactions during Decedent's lifetime involving Decedent's real property, personal property, accounts, life insurance policies, banking or checking accounts, retirement account, farm equipment, and assets while being fully aware of Decedent's legal or contractual obligations under the Separation Agreement and with the intent and purpose of evading, avoiding, or circumventing those obligations.

48. The admission of the invalid Will to probate would be a breach of the contractual obligation existing between Decedent and Zoie, as set forth in the Fifth Section of the Separation

Agreement. The invalid Will that Respondent Paula seeks to probate differs significantly from the covenant contained in the Separation Agreement between Decedent and Zoie, in that it would leave Decedent's entire estate to Respondent Paula, would completely cut out or omit Petitioners, and would not leave at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, for the benefit of the Petitioners. The admission of the Will to probate would also be improper because the Will is invalid, null, and void for the reasons set forth herein.

49. Because Decedent's Last Will and Testament dated March 24, 2003, should be held and declared to be a nullity, void, inoperative, illegal, and ineffective, the Decedent's estate is to be administered according to the Separation Agreement and via the intestacy laws as provided in S.C. CODE ANN. § 62-2-101 *et seq.*

50. At the time of Decedent's death, Decedent left behind a surviving spouse (Zoie) and five surviving children or issue (the Petitioners and Dorothy).

51. Because the marriage between Decedent and Paula is bigamous and therefore invalid pursuant to S.C. CODE ANN. § 20-1-80, Paula was never validly married to Decedent and was not his surviving spouse at the time of his death, she is not Decedent's heir, and she is not entitled to any portion of Decedent's estate pursuant to the laws of intestate succession as provided in S.C. CODE ANN. § 62-2-101 *et seq.* nor an elective share as provided in S.C. CODE ANN. § 62-2-201.

52. Pursuant to S.C. CODE ANN. § 62-2-101 *et seq.* of the South Carolina Laws of Intestate Succession, Decedent's sole heirs at law include Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy).

53. As a result of the forgoing, pursuant to terms of the Separation Agreement and then the laws of intestate succession after distribution pursuant to the provisions of the Separation Agreement, (i) the Petitioners are entitled to at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, and (ii) Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy) are entitled to the remainder of Decedent's estate in accordance with the intestacy provisions of S.C. CODE ANN. §§ 62-2-101 *et seq.* with Zoie to receive one-half of the remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive the other one-half of the remainder in equal shares.

54. As a result of the above, Paula should also be removed as the Personal Representative of the estate pursuant to S.C. CODE ANN. § 62-3-203.

55. Any attempt by Decedent or Respondent Paula to transfer the estate or assets of Decedent in a manner contrary to the laws of S.C. CODE ANN. § 62-2-101 *et seq.* and contrary to the Fifth Section of the Separation Agreement would be a breach of contract and would amount to unjust enrichment to Decedent and Respondent Paula.

56. At all times mentioned herein, the acts complained of took place in whole or in part in the State of South Carolina, and this Court has jurisdiction over the Respondents.

57. The Court has jurisdiction over this matter pursuant to S.C. CODE ANN. § 62-1-302, in that this matter involves an estate of a decedent, including the contest of a will, construction of a will, determination of property in which the estate of a decedent has an interest, and determination of heirs and successors of a decedent and the Court has jurisdiction over Respondents pursuant to S.C. CODE ANN. § 62-3-602.

58. Venue is proper in this County of Charleston, State of South Carolina, pursuant to S.C. CODE ANN. § 62-3-201 because the Decedent was domiciled in this county at the time of death.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Pursuant to S.C. Code Ann. §§ 15-53-30 and 15-53-50 and SCRPC 57)

59. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

60. S.C. CODE ANN. § 15-53-30 provides that “[a]ny person interested under a . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

61. S.C. CODE ANN. § 15-53-50 also provides that:

[a]ny person interested as . . . devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the estate of a decedent . . . may have a declaration of rights or legal relations in respect thereto: (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; (2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

62. SCRPC 57 further provides, *inter alia*, that the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate and that the Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

63. The Separation Agreement represents and constitutes mutual promises, contractual intent, an actual meeting of the minds, and a bona fide and arm’s length transaction for value

between Decedent and Zoie. By the terms of the Separation Agreement, there was adequate consideration and mutual covenants and agreements contained therein. Therefore, the covenant requiring Decedent to make an irrevocable will for the benefit of Petitioners was and is a valid and enforceable contract.

64. That even though the covenant to make a will as contained in the Separation Agreement was executed prior to the effective date of S.C. CODE ANN. § 62-2-70, the Separation Agreement nevertheless complies with the Code as it is a writing signed by the Decedent which evidences the contract.

65. Petitioners are direct and intended beneficiaries or third-party beneficiaries to the Separation Agreement between Decedent and Zoie and the covenants and promises contained therein, and their rights have vested by bringing this Petition.

66. Upon information and belief, Decedent died without leaving behind a valid will disposing of any part of his estate.

67. By virtue of the facts alleged herein-above, Petitioners have rights or interests under the above-referenced Separation Agreement that will be affected by a judicial determination or declaration of Decedent's obligations under said contract.

68. That also by virtue of the facts alleged herein-above, Petitioners have rights or interests in Decedent's estate as heirs in law in accordance with the intestacy provisions of S.C. CODE ANN. §§ 62-2-101 *et seq.* that will be affected by a judicial determination or declaration of the marriage between Decedent and Paula.

69. Petitioners bring this action pursuant to S.C. CODE ANN. § 15-53-30 for the purpose of obtaining a declaratory judgment with respect to the Parties' rights and obligations under the above-referenced Separation Agreement, specifically relating to Decedent's obligations under the

Separation Agreement to execute and maintain an irrevocable will leaving at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, for the benefit of the Petitioners.

70. Petitioners also bring this action pursuant to S.C. CODE ANN. § 15-53-50 for the purpose of obtaining a declaratory judgment with respect to a declaration of rights or legal relations in respect to ascertaining a class of devisees, heirs, and next of kin and to determine a question arising in the administration of the estate, specifically relating to (1) the validity of the Will, (2) whether Decedent left a valid will or died intestate, (3) the determination of Decedent's heirs at law, (4) the validity of the divorce between Decedent and Zoie, and (5) the validity of the marriage between Decedent and Paula, which collectively would thus affect Petitioners' rights to intestate succession.

71. Due to the facts, conditions, and circumstances set forth herein-above, an actual and justiciable controversy has arisen and now exists between Petitioners and Respondent Paula regarding (1) Decedent's obligations under the Separation Agreement to execute and maintain an irrevocable will leaving at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, for the benefit of the Petitioners, (2) the validity of the Decedent's Will, (3) whether Decedent left a valid will or died intestate, (4) the determination of Decedent's heirs at law, (5) the legality of the divorce between Decedent and Zoie, and (6) the legality of the marriage between Decedent and Paula that would therefore affect the distribution of Decedent's Estate.

72. Declaratory relief is necessary to adjudicate the rights of the parties.

73. Petitioners have no adequate remedy at law.

74. Petitioners are therefore entitled to a declaratory judgment declaring the covenant requiring Decedent to make a will for the benefit of the Petitioners as contained in the Separation Agreement is therefore valid and enforceable and further declaring that (1) Petitioners are entitled to at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, under the terms of the Separation Agreement; (2) Decedent's Last Will and Testament dated March 24, 2003 should be held and declared to be a nullity, void, inoperative, illegal, and ineffective; (3) the Decedent left no valid will; (4) the divorce of the marriage between Decedent and Zoie in the Dominican Republic was and is invalid and of no force or effect pursuant to S.C. CODE ANN. § 20-3-420 and the marriage between Decedent and Zoie was therefore never terminated and remained valid and binding until Decedent's death on January 3, 2022; (5) the marriage between Decedent and Respondent Paula is bigamous and therefore null, void, inoperative, illegal, and ineffective pursuant to S.C. CODE ANN. § 20-1-80; (6) Decedent's sole heirs at law include Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy); (7) Paula is not the Decedent's surviving spouse and therefore is not entitled to a distribution of the estate via the laws of intestate succession nor an elective share pursuant to S.C. CODE ANN. § 62-2-201; and (8) that Decedent's estate should be distributed pursuant to the terms of the Separation Agreement and the laws of intestate succession after distribution pursuant to the provisions of the Separation Agreement, with (i) at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, passing to the Petitioners pursuant to the terms and provisions of the Separation Agreement and (ii) the remainder of Decedent's estate passing to Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy) in accordance with the intestacy provisions of S.C. CODE ANN. §§ 62-2-101 *et seq.* with Zoie to receive one-half of the

remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive one-half of the remainder in equal shares.

75. The *inter vivos* or lifetime transfers of Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies, and other assets to Respondent Paula not supported by adequate consideration that effectively defeated or thwarted Decedent's obligations under the Separation Agreement should be held and declared to be a nullity, void, inoperative, illegal, and ineffective, with at least Fifty (50%) Per Cent of those assets passing to the Petitioners pursuant to the terms and provisions of the Separation Agreement. Judgment should be entered cancelling the deeds and *inter vivos* transfers made by Decedent in violation of the Separation Agreement.

76. Petitioners further request that the Court order a speedy hearing of this action and advance it on the calendar pursuant to SCRCP 57.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance)

77. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

78. As alleged herein above, there was a valid contract requiring Decedent to make an irrevocable will for the benefit of the Petitioners. Said covenant within the Separation Agreement required Decedent to make an irrevocable will to the effect of keeping at least Twenty-Five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of his estate, whichever is greater, for the benefit of Petitioners to be equally divided among them at his death per stirpes.

79. Petitioners are direct and intended beneficiaries or third-party beneficiaries to the Separation Agreement between Decedent and Zoie and the covenants and promises contained

therein, including specifically the requirement that Decedent make an irrevocable will to the effect of keeping at least Twenty-Five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of his estate, whichever is greater, for the benefit of Petitioners to be equally divided among them at his death per stirpes.

80. Decedent's estate is worth more than Twenty-Five Thousand Dollars (\$25,000.00), therefore Petitioners are entitled to the greater of Fifty Percent (50%) of Decedent's estate. On or about June 8, 2022, Paula, the appointed Personal Representative for the Estate, filed an Inventory and Appraisement disclosing that Decedent owned or held "probate" assets at the time of his death valued at approximately \$4,489,000.00 and also held other "nonprobate" assets which are not valued on the Inventory.

81. The Separation Agreement provides for no contingencies.

82. The Separation Agreement included an implied covenant of good faith and fair dealing which required that Decedent act in all respects in good faith toward the Petitioners.

83. Decedent breached said Separation Agreement, breached the contract to which Petitioners are third-party beneficiaries, and breached the implied covenant of good faith and fair dealing by, *inter cilia*, executing the Last Will and Testament dated March 24, 2003 that does not devise at least Twenty-Five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of Decedent's estate, whichever is greater, to Petitioners in equal shares and failing to draft, execute, and maintain at the time of his death a will according to the terms of the Separation Agreement and instead drafting or executing his Will to the contrary. Additionally, the *inter vivos* or lifetime transfers of Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies, and other assets to Respondent Paula not supported by adequate consideration that effectively defeated or thwarted Decedent's obligations under the Separation Agreement

constituted a breach of the contract to which Petitioners are third-party beneficiaries, and breached the implied covenant of good faith and fair dealing.

84. The Separation Agreement was contractual in nature, each party signing in consideration of other party's signature and the dispositions made in said document. To allow Decedent to change his obligations under the Separation Agreement would in effect breach the contract. Specific performance of that contract should therefore be granted to Petitioners to prevent such breach.

85. As intended beneficiaries of the Separation Agreement signed by the Decedent and Zoie, Decedent's breach of contract caused the Petitioners to be deprived of their legitimate interest in his estate at the time of his death.

86. Damages would not adequately compensate Petitioners for any breach to perform the Contract, in that the property of the Decedent is unique and involves real estate. Therefore, Petitioners lack an adequate remedy at law.

87. The Petitioners are therefore entitled to entry of judgment directing the specific performance of the Contract and that the Personal Representative administer the estate according to the terms of the Contract and to convey Fifty Percent (50%) of the Decedent's real and personal property to Petitioners in equal shares. Additionally, judgment should be entered cancelling the deeds and *inter vivos* transfers made by Decedent in violation of the Separation Agreement.

FOR A THIRD CAUSE OF ACTION
**(Breach of Contract/Breach of Covenant of Good Faith &
Fair Dealing—Actual Damages)**

88. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

89. As alleged herein above, there was a valid contract requiring Decedent to make an irrevocable will for the benefit of the Petitioners.

90. Petitioners are direct and intended beneficiaries or third-party beneficiaries to the Separation Agreement between Decedent and Zoie and the covenants and promises contained therein.

91. The Separation Agreement included an implied covenant of good faith and fair dealing which required that Decedent act in all respects in good faith toward the Petitioners.

92. Decedent breached said Separation Agreement, breached the contract to which Petitioners are third-party beneficiaries, and breached the implied covenant of good faith and fair dealing by, *inter cilia*, executing the Last Will and Testament dated March 24, 2003 that does not devise at least Twenty-Five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of Decedent's estate, whichever is greater, to Petitioners in equal shares and failing to draft, execute, and maintain at the time of his death a will according to the terms of the Separation Agreement and instead drafting or executing his Will to the contrary. Additionally, the *inter vivos* or lifetime transfers of Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies, and other assets to Respondent Paula not supported by adequate consideration that effectively defeated or thwarted Decedent's obligations under the Separation Agreement constituted a breach of the contract to which Petitioners are third-party beneficiaries, and breached the implied covenant of good faith and fair dealing.

93. As intended beneficiaries of the Separation Agreement signed by the Decedent and Zoie, Decedent's breach of contract caused the Petitioners to be deprived of their legitimate interest in his estate at the time of his death.

94. As a direct and proximate result of the breaches of the Separation Agreement and the breaches of the implied covenant of good faith and fair dealing set forth herein, Petitioners have been damaged and have suffered actual, consequential, and special damages, including, but not limited to, loss of inheritance; loss of property, assets, and business opportunities; loss of income, revenue, and/or profits; the loss or delay of the ability to invest, spend, distribute, or use the distributions; the loss of the time value of money; and other amounts due under the contract, prejudgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A), plus such other actual, consequential, special, and incidental damages as the evidence may show, and their costs and expenses incurred in the prosecution of this action.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

95. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

96. Pursuant to S.C. CODE ANN. § 62-3-712, as the Personal Representative for the Estate of James L. Strobel, Respondent Paula is a fiduciary who must observe the standards of care applicable to trustees of an express trust.

97. As Personal Representative, at all relevant times, Respondent Paula was required to act at all times in accordance with the provisions of the South Carolina Trust Code, S.C. CODE ANN. §§ 62-7-801 through 817, including, but not limited to, the duties of loyalty, impartiality, and good faith in the administration of the trust solely in the best interests of all of the beneficiaries.

98. As Personal Representative, at all relevant times, Respondent Paula owed strict fiduciary duties to all beneficiaries of the Estate, including the Petitioners. Respondent Paula was required to act at all times honestly, fairly, and in good faith solely in the best interests of all of the beneficiaries of the Estate, including the Petitioners. Respondent Paula's fiduciary obligation

further requires that she act reasonably for the benefit of the heirs, creditors, and other parties interested in the Decedent's estate.

99. By virtue of the conduct summarized above, Respondent Paula breached and failed to fulfill her fiduciary obligations to the Petitioners, is to administer the Estate fairly and effectively, is not serving solely the best interests of all of the beneficiaries of the Estate, and has violated the duties imposed upon her pursuant to the provisions of S.C. CODE ANN. §§ 62-7-801 through 817. Respondent Paula has pursued, represented, and/or advocated the interests of one beneficiary of the Estate (herself) to the detriment of other beneficiaries of the Estate (Petitioners). Respondent Paula has not administered the Estate solely in the best interests of all of the beneficiaries and has failed to act in an impartial manner. Respondent Paula has pursued her own personal interests over those of the Petitioners. Respondent Paula concealed, withheld, and failed to notify or inform the Court or Petitioners of the Separation Agreement and its provisions, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners.

100. S.C. CODE ANN. § 62-3-712 provides that the personal representative is liable to interested persons for damage or loss resulting from a breach of her fiduciary duty.

101. As a natural, direct, and proximate result of Respondent Paula's breaches of her fiduciary duties summarized above, Petitioners have suffered and will continue to suffer in the future actual, compensatory, consequential, special, and incidental damages, including, but not limited to, loss of inheritance; loss of property, assets, and business opportunities; loss of income, revenue, and/or profits; the loss or delay of the ability to invest, spend, distribute, or use the distributions; the loss of the time value of money; and such other actual, consequential, special,

and incidental damages as the evidence may show, and pre-judgment interest at the rate of 8.75% per annum pursuant to S.C. CODE ANN. § 34-31-20(A).

102. In doing the acts alleged above, Respondent Paula acted willfully, maliciously, recklessly, carelessly, and/or wantonly for the purpose of causing injury to the Petitioners. As a result, the Petitioners are entitled to an award of punitive damages in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment/Constructive or Resulting Trust)

103. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

104. As alleged herein above, there was a valid contract requiring Decedent to make a will for the benefit of the Petitioners. Said covenant within the Separation Agreement required Decedent to make an irrevocable will to the effect of keeping at least Twenty-Five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of his estate, whichever is greater, for the benefit of Petitioners to be equally divided among them at his death per stirpes.

105. By virtue of the facts allege herein, it would be unjust enrichment for Decedent, Respondent Paula, or any subsequently appointed Personal Representative to transfer the estate or assets of Decedent in a manner contrary to the Fifth Section of the Separation Agreement or contrary to the laws of S.C. CODE ANN. § 62-2-101 *et seq.* and/or for Respondent Paula to retain or keep the Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies that were previously transferred to her *inter vivos* by Decedent without adequate consideration in violation of the Separation Agreement. Respondent Paula would be unjustly enriched at the expense of the Petitioners.

106. Respondent Paula should be required to hold all the assets of the estate of James L. Strobel and the Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies that were previously transferred to her *inter vivos* by Decedent without adequate consideration in violation of the Separation Agreement as trustee pursuant to further orders of this court, for the benefit of the beneficiaries of the above-described Separation Agreement.

107. Petitioners are entitled to a judgment of the Court imposing a constructive or resulting trust on the real and personal property of the estate of the Decedent and the Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies that were previously transferred to Respondent Paula *inter vivos* by Decedent without adequate consideration in violation of the Separation Agreement, adjudicating that Petitioners are the beneficiaries of the trust, and determining that Respondent Paula holds the property as trustee for Petitioners' benefit.

FOR A SIXTH CAUSE OF ACTION
(Removal of Personal Representative)

108. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

109. Upon information and belief, Paula was appointed as Personal Representative based on allegations or statements in her Petition for Informal Appointment asserting that she was named as Personal Representative in Decedent's Will and that she is the wife or surviving spouse of the Decedent. However, because the assertions that Decedent had a valid Will naming Respondent Paula as Personal Representative and that Paula was validly married to the Decedent are false and inaccurate for the reasons stated above, Paula is not entitled to appointment as Personal Representative.

110. Petitioners are entitled to removal of Respondent Paula as the Personal Representative of the estate pursuant to S.C. CODE ANN. § 62-3-402, § 62-3-414, and § 62-3-611.

111. Pursuant to S.C. CODE ANN. § 62-3-402, § 62-3-414, and § 62-3-611, Petitioners respectfully request the removal of Respondent Paula as Personal Representative of the Decedent's Estate for cause and/or based on disqualification and for an appropriate, suitable, and qualified individual or entity to be appointed as successor or replacement Personal Representative of the Decedent's Estate.

FOR A SEVENTH CAUSE OF ACTION
(Attorney's Fees and Costs)

112. Petitioners repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

113. Pursuant to S.C. CODE ANN. § 62-1-111, Petitioners request an award of costs and expenses, including reasonable attorney's fees, to be paid by Respondent Paula and/or from the Decedent's estate.

WHEREFORE, having set forth the grounds therefore, Petitioners pray for the following relief and prays that this Court issue an Order:

(a) Declaring, holding, and finding that the covenant requiring Decedent to make a will for the benefit of the Petitioners within the Separation Agreement attached to this Petition is a valid contract which is binding upon the Decedent, the Estate, and all interested parties or persons;

(b) Specifically enforcing the provisions or covenants in the Separation Agreement requiring the Decedent to make a will for the benefit of the Petitioners and ordering Respondent Paula M. Strobel, as Personal Representative of the Estate, or any other subsequent Personal Representative of the estate to carry out and execute said provisions in all respects;

(c) A declaration and judgment of the Court that Decedent's Last Will and Testament dated March 24, 2003 is a nullity, void, inoperative, illegal, and ineffective;

(d) A declaration and judgment of the Court that the divorce between Decedent and Respondent Zoie in the Dominican Republic on or about March 15, 1977, is null, void, inoperative, illegal, and ineffective pursuant to S.C. CODE ANN. § 20-3-420 and the marriage between Decedent and Respondent Zoie was therefore never terminated and remained valid and binding until Decedent's death on January 3, 2022;

(e) A declaration and judgment of the Court that the marriage between Decedent and Respondent Paula M. Strobel on or about April 29, 1977, is bigamous and therefore null, void, inoperative, illegal, and ineffective pursuant to S.C. CODE ANN. § 20-1-80;

(f) A declaration and judgment of the Court that Respondent Paula M. Strobel is not the Decedent's surviving spouse and is therefore not entitled to a distribution of the estate via the laws of intestate succession nor an elective share pursuant to S.C. CODE ANN. § 62-2-201;

(g) A declaration and judgment of the Court declaring that Decedent's estate should be distributed pursuant to the Separation Agreement and then the laws of intestate succession after distribution pursuant to the provisions of the Separation Agreement, with (i) with at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of Decedent's estate, whichever is greater, passing to the Petitioners pursuant to the terms and provisions of the Separation Agreement and (ii) the remainder of Decedent's estate passing to Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy) in accordance with the intestacy provisions of S.C. CODE ANN. §§ 62-2-101 *et seq.* with Respondent Zoie to receive one-half of the remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive one-half of the remainder in equal shares;

(h) A declaration and judgment of the Court that the *inter vivos* or lifetime transfers of Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies, and other assets to Respondent Paula M. Strobel not supported by adequate consideration that effectively defeated or thwarted Decedent's obligations under the Separation Agreement are a nullity, void, inoperative, illegal, and ineffective, with at least Fifty (50%) Per Cent of those assets passing to the Petitioners pursuant to the terms and provisions of the Separation Agreement;

(i) A declaration and judgment of the Court cancelling the deeds and *inter vivos* transfers made by Decedent in violation of the Separation Agreement;

(j) A declaration and judgment of the Court imposing a constructive or resulting trust on the real and personal property of the estate of the Decedent and the Decedent's real estate, bank accounts or joint bank accounts, retirement accounts and life insurance policies that were previously transferred to Respondent Paula *inter vivos* by Decedent without adequate consideration in violation of the Separation Agreement, and declaring that Petitioners are the beneficiaries of the trust, and that Respondent Paula M. Strobel holds the property as trustee for Petitioners' benefit;

(k) A declaration and judgment of the Court that the Decedent left no valid will;

(l) A declaration and judgment of the Court that Decedent's sole heirs at law include Decedent's surviving spouse (Respondent Zoie) and Decedent's surviving children or issue (the Petitioners and Respondent Dorothy);

(m) Requiring Respondent Paula M. Strobel, as Personal Representative of the Estate of James L. Strobel to administer the Estate according to the terms of the Separation Agreement and the laws of intestate succession after distribution pursuant to the provisions of the Separation Agreement and to convey (i) at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%)

Per Cent of Decedent's estate, whichever is greater, to the Petitioners pursuant to the terms and provisions of the Separation Agreement, and (ii) the remainder of Decedent's estate to Decedent's surviving spouse (Zoie) and Decedent's surviving children or issue (the Petitioners and Dorothy) in accordance with the intestacy provisions of S.C. CODE ANN. §§ 62-2-101 *et seq.* with Respondent Zoie to receive one-half of the remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive one-half of the remainder in equal shares, and in the event of the failure of Respondent Paula M. Strobel to do so, entitling Petitioners to an Order by the Court appointing a commissioner, clerk, or other judicial officer to so convey the ownership of the real and personal property of the estate of the Decedent to Petitioners and the Decedent's heirs at law in the manner as set forth herein-above;

(n) That Petitioners are entitled to recover the income from the real or personal property of the estate of the Decedent from the date of the death of the Decedent;

(o) A writ of possession to enable the Petitioners to acquire possession of the real and personal property of the estate of the Decedent;

(p) A declaration and judgment of the Court that it would be in the best interests of the estate to remove Respondent Paula M. Strobel as the Personal Representative of the estate and appointing an appropriate, suitable, and qualified individual or entity to act as the successor or replacement Personal Representative of the estate;

(q) Awarding actual, compensatory, special, consequential, and incidental damages as determined by the trier of fact;

(r) Awarding punitive and exemplary damages as permitted by law;

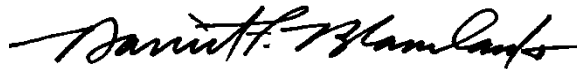
(s) Awarding pre-judgment and post-judgment interest as allowed by law;

(t) Awarding costs and expenses, including reasonable attorneys' fees, to Petitioners to be paid by Respondent Paula M. Strobel and/or from the Decedent's estate;

(u) For a speedy hearing of this action and advance it on the calendar pursuant to SCRCP 57; and

(v) Awarding such other and further legal and equitable relief which the Court deems necessary and proper.

ROSEN HAGOOD, LLC



Reviewed and Approved for Electronic Transmission

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September 8, 2023.

Charleston, South Carolina.

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
9/8/2023 9:52AM

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

JAMES LLOYD STROBEL,)
Husband,)
-and-)
ZOIE P. STROBEL,)
Wife.)

A TRUE COPY
CLERK OF COURT
DORCHESTER COUNTY
DATE: April 18, 1977
Mary F. Carn
CLERK OF COURT

SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT made this 4 day of MARCH, 1977, by and between JAMES LLOYD STROBEL, hereinafter referred to as the Husband, and ZOIE P. STROBEL, hereinafter referred to as the Wife:

WITNESSETH:

WHEREAS, the parties hereto are Husband and Wife, having lawfully married on the 5th day of June, 1960, in Charleston County, South Carolina, and

WHEREAS, there are four (4) children of this marriage, namely, to-wit: Daniel Lloyd Strobel, date of birth: December 9, 1963; James Andrew Strobel, date of birth: December 28, 1965; Peter Nicholas Strobel, date of birth: February 10, 1969; and John Anthony Strobel, date of birth: February 10, 1969; Peter and John are twins, and

WHEREAS, certain irreconcilable differences have arisen between the parties causing their separation, one from the other and making the continuance of the marriage relationship between them impossible, and

WHEREAS, the parties desire to settle all questions as to the status and responsibility of each to the other as to their respective marital obligations in accord with the terms of the Agreement herein,

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, it is hereby mutually agreed as follows:

That the Parties, subject to the terms of this Sep -

CERTIFIED TRUE COPY
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2027 JUN 24 AM 11:28

ration Agreement, and subject to the performance by the Wife of certain obligations imposed in the following paragraphs, releases and discharges the Wife of and from all obligations, duties or services which, as a Wife she may owe him, and from all duties, liabilities or responsibilities of whatsoever nature that she may be under to him by reason of their marriage relationship.

SECOND: That the Wife, subject to the terms of this Separation Agreement, and subject to the performance by the Husband of the obligations as outlined in this Agreement, does hereby release and discharge the Husband of and from all obligations, duties or services which, as a Husband he may owe her, and from all duties, liabilities or responsibilities of whatsoever nature he may owe her by reason of their marriage relationship.

THIRD: That the Husband agrees to:

(a) The husband shall have the exclusive right to sell the house located at Route 3, Ridgeville, South Carolina through July 1, 1977, or in the alternative, must have a valid Contract of Sale. In the event the house is sold, the Wife is to net the sum of Thirty-Eight Thousand, Five Hundred (\$38,500.00) Dollars from the sale. If the Husband has not disposed of the house or obtained a valid Contract of Sale by July 1, 1977, then and in that event he is to deliver to the Wife a Title to Real Estate (Deed), in fee simple, lien and encumbrance free.

(b) Grant unto the Wife quiet possession and use of all furniture, furnishings, household goods, and other personal property, at the residence in Ridgeville, South Carolina; it being expressly understood that when the Wife moves from the said residence, the aforementioned furniture, furnishings and household goods and other personal property shall be for her own use and that the same may be taken with her at her discretion. It is understood that the Husband releases and relinquishes all of his right, title and interest to the aforesaid personal property, but that excepted herefrom are the personal effects of the Husband at the former family residence, namely: his personal tools, furniture, dishes, and

any and all items collected by the Husband while in Military Service. The Husband further agrees to give the Wife a Bill of Sale for the furniture located in the house in Ridgeville.

(c) Give to the Wife the Honda Civic automobile, the title of which will be delivered to the Wife upon the execution of this Agreement.

FOURTH: The parties further agree as follows:

(a) The Wife shall have the custody of the children of the marriage. The Husband shall have visitation with said children every other week from Friday at 6:00 P.M. until Sunday at 6:00 o'clock P.M. and for three (3) weeks each Summer. The Husband shall give the Wife ten (10) days written notice of his desire and intention to have the children for the three (3) weeks each Summer.

(b) The Husband shall pay bi-weekly, on the 5th and 20th of each month, unto the Wife as child support, the sum of Four Hundred (\$400.00) Dollars per month.

(c) The Husband shall pay bi-weekly, on the 5th and 20th of each month, unto the Wife as alimony, the sum of Two Hundred (\$200.00) Dollars per month. The alimony herein set out shall terminate immediately upon the re-marriage of Wife and said payments are to be made to the Wife at her present address: Route 3, Box 175, Ridgeville, South Carolina. If the Wife shall move, she agrees to furnish the Husband her new address.

(d) The Husband and the Wife agree that they will file a joint Income Tax Return for the year 1976, and the Wife will receive One-Third (1/3rd) of the rebate.

(e) The Husband may claim the children of the parties as dependants for Federal and State Income Tax purposes so long as he provides said child support payments.

FIFTH: It is agreed by the parties that the Husband will keep at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of his estate, whichever is greater, of his estate - for the benefit of his four (4) children - of his personalty and realty free of all liens and Husband further agrees to execute an Irrevocable Trust to that effect. Said amount

his estate to be equally divided among his children at his death, namely: Daniel Lloyd Strobel, James Andrew Strobel, Peter Nicholas Strobel and John Anthony Strobel, per stirpes.

SIXTH: The Husband further agrees to keep in force a medical policy covering his children and his Wife. At such time as the parties are divorced, it is agreed that the Wife will be dropped from the insurance with same being retained for the children only.

SEVENTH: The parties herein agree that all real estate, other than that described and located at Route 3, Ridgeville, South Carolina, shall become the sole possession of Husband. Wife agrees to renounce all dower rights in and to said realty.

EIGHTH: It is expressly agreed that the Husband and Wife shall in no way whatsoever, interfere with or molest one another and that they will, in no way, question the social life of the other and each will be free to pursue such a course of conduct as either may desire, and each of them specifically agree that they will not question and each of them will not bring up or testify to any occurrence or any action of the other which takes place after the date of the signing of this instrument. It is expressly agreed that in the event a final Judgment of Divorce is obtained between the parties, this Separation Agreement shall be incorporated in any such final Judgment and that under no circumstances, shall any Order or Decree obtained by either party in any proceeding involving this marriage, be inconsistent with the terms of this Agreement.

NINTH: It is expressly stated by the parties hereto that they have full and complete understanding of the terms of this Separation Agreement, that same has been explained to them and all questions answered pertinent thereto to each party's satisfaction and that each party has the right to seek further advice if they deem such necessary as to its terms and that they freely and voluntarily enter into same.

TENTH: Each of the parties hereto agrees to do any and all acts and other things necessary so as to put this full force and effect to the Separation Agreement.

herein.

ELEVENTH: It is agreed by the parties hereto that this Separation Agreement shall be binding upon them individually and upon their Administrators, Executors or Trustees in the event of either party's demise. It is expressly understood that each party's estate is subject to the terms of this Separation Agreement.

TWELFTH: It is expressly understood that either party can seek strict enforcement of this Separation Agreement through a Court of competent jurisdiction and that the party found to be violating same will be responsible for all attorneys' fees and costs incurred in enforcement thereof.

THIRTEENTH: This Separation Agreement may not be altered or amended orally, but only in writing executed with the same solemnity as this original Agreement or by a Court of competent jurisdiction as allowed by the terms of the Separation Agreement herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

[Signature]

[Signature]
James Lloyd Strobel, Husband

[Signature]
As to execution by Husband

[Signature]

[Signature]
Zoie P. Strobel, Wife

[Signature]
As to execution by Wife

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PROBATE

PERSONALLY appeared before me [Signature] and made oath that 5 he saw the within named JAMES LLOYD STROBEL, sign, seal and as his act and deed, deliver the within Separation Agreement, and that 3 he with [Signature] witnessed the execution thereof.

SWORN to before me this 12

day of June, 1977.

(SEAL)

NOTARY PUBLIC OF SOUTH CAROLINA - MY COMM. EXPIRES:

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

JAMES LLOYD STROBEL,)
Husband,)
-and-)
ZOIE P. STROBEL,)
Wife.)

ADDENDUM TO SEPARATION AGREEMENT

It is further agreed between the parties that a certified copy of the Divorce Decree and Separation Agreement in this matter be filed in the Office of the Clerk of Court for Dorchester County, South Carolina, and the RMC Office for Charleston County, South Carolina.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

Walter R. [Signature]

James Lloyd Strobel
James Lloyd Strobel, Husband

As to Execution by Husband

Walter R. [Signature]

Zoie P. Strobel
Zoie P. Strobel, Wife

As to Execution by Wife

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PERSONALLY appeared before me Walter R. [Signature]
and and made oath that S he saw the within named
JAMES LLOYD STROBEL, sign, seal and as his act and deed, deliver
the within Addendum to Separation Agreement, and that S he with
Walter R. [Signature] witnessed the execution thereof.
SWORN to before me this 4th
day of MARCH, 1977.

(SEAL)
COMMISSIONER OF THE COURT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

PROBATE

PERSONALLY appeared before me

Maria and made oath that S he saw the within named ZOIE P.

STROBEL, sign, seal and as her act and deed, deliver the within

Separation Agreement, and that S he with

James H
Reynolds witnessed the execution thereof.

SWORN to before me this 4th

day of MARCH, 1977.

(SEAL)
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
9/8/2023 9:52AM

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

)

)

)

AMENDMENT TO SEPARATION AGREEMENT

WHEREAS, the parties entered into a Separation Agreement dated 4 day of March, 1977 and which is recorded in the Office of the Clerk of Court for Dorchester County in Deed Book 307, Page 414, and are desirous of amending this Agreement in writing insofar as paragraph Fourth (a) and Fourth (b) are concerned.

NOW THEREFORE, in consideration of the mutual benefits flowing each to the other, the parties hereto agree that paragraph Fourth (a) and Fourth (b) are deleted and the following is inserted in lieu thereof as follows:

FOURTH: (a) The Husband shall have the custody of the children of the marriage. The Wife shall have visitation with said children every other week from Friday at 6:00 P. M., until Sunday at 6:00 o'clock P. M. and for three (3) weeks each Summer. The Wife shall give the Husband ten (10) days written notice of her desire and intention to have the children for the three (3) weeks each Summer.

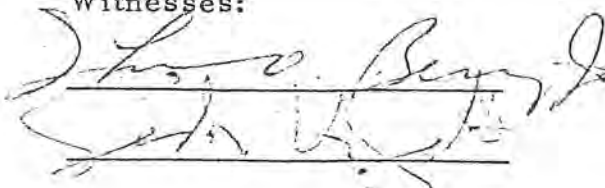
FOURTH: (b) The Husband now having all the children in his custody is releaved of making any child support as provided in paragraph Fourth (b) of the original Agreement.

FOURTH: (c) The parties re-confirm that the husband shall pay bi-weekly , on the 5th and 20th of each month, unto the Wife as alimony, the sum of Two Hundred (\$200.00) Dollars per month. The alimony herein set out shall terminate immediately upon the re-marriage of Wife and said payments are to be made to the Wife at her present address: Route 3, Box 175, Ridgeville, South Carolina. If the Wife shall move, she agrees to furnish the Husband her new address:

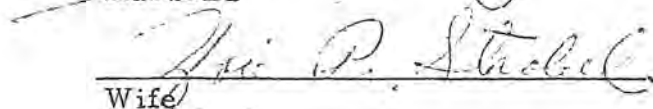
In all other respects, the Separation Agreement heretofore entered into by the parties on the 4 day of March, 1977 is confirmed.

Witness our Hands and Seals this 17 day of July, 1978.

Witnesses:




Husband


Wife

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

PERSONALLY appeared before me Gordon H. Garret and made oath that he saw the within named James Lloyd Strobel and Zoie P. Strobel sign, Amended seal, and as their act and deed, deliver the within Separation Agreement, and that he with Thomas O. Berry, Jr. witnessed the execution thereof.

SWORN to before me this

17 day of July, 1978.

J. H. Berry, Jr.
Notary Public of South Carolina

My commission expires: 10/20/87

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
9/8/2023 9:52AM

EXHIBIT C

**LAST WILL AND TESTAMENT
OF
JAMES L. STROBEL**

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

I, JAMES L. STROBEL, a resident of and domiciled in the State and County aforesaid, knowing the objects of my bounty, do hereby make publish and declare this to be my LAST WILL AND TESTAMENT, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM ONE: I direct that all my just debts, secured and unsecured, be paid as soon as practicable after my death; however, I direct that my personal representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my personal representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM TWO: I direct that all estate, inheritance, succession, death or similar taxes assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my LAST WILL (which term when used herein shall include any codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in my property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

AP
Mr
SLM

ITEM THREE: I make no bequest or devise to my son, JOHN A. STROBEL knowing the objects of my bounty.

ITEM FOUR: I give and bequeath all of my personal and household effects of every kind, including, but not be limited to, furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property to my wife, PAULA M. STROBEL, if she shall survive me. If my said wife shall not survive me, I give and bequeath all of said property to my remaining children DANIEL L. STROBEL, JAMES A. STROBEL, PETER N. STROBEL, and DOROTHY ELIZABETH STROBEL or unto the survivor of them, in equal shares, share and share alike, provided, however, the issue of a deceased child shall take his or her parent's share, per stirpes. If my said children do not agree to the division among themselves, my personal representative shall make such division among them, the decision of my personal representative to be in all respects binding upon my children. I request that my wife, my personal representative, and my issue abide by any memorandum by me directing the disposition of this property or any part thereof. This request is precatory and not mandatory. If any beneficiary hereunder is a minor, my personal representative may distribute his share to him or for his use to any person with whom he is residing or who has the care or control of him without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my personal representative.

ITEM FIVE: I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies, bequests and devises),

wherever situate and whether acquired before or after the execution of this Will absolutely to my wife, PAULA M. STROBEL, if she shall survive me. If my said wife shall not survive me, then I give, devise and bequeath all of said property to my remaining children DANIEL L. STROBEL, JAMES A. STROBEL, PETER N. STROBEL, and DOROTHY ELIZABETH STROBEL or unto the survivor of them, in equal shares, share and share alike, provided, however, the issue of a deceased child shall take his or her parent's share, per stirpes, or in default of such persons to those persons who would be entitled thereto if I had died intestate, unmarried and domiciled in the state of South Carolina.



**ITEM SIX:** I hereby nominate, constitute and appoint as personal representative and trustee of this my Last Will and Testament my wife, PAULA M. STROBEL, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint as substitute or successor personal representative and trustee JEAN M. GROOMS, and direct that she shall serve without bond.

ITEM SEVEN: By way of illustration and not of limitation, and in addition to any inherent, implied or statutory powers granted to personal representatives generally, my personal representative is specifically authorized and empowered to: allot, assign, buy, care for, collect, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate, any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for and in general to exercise all of the powers in the management of similar property owned in his own right, upon such terms and conditions as my personal representative may deem proper or necessary to carry

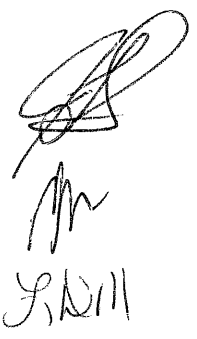
out the purposes of this Will, without being limited in any way by the specific grants of power made, and without the necessity of a Court Order.

ITEM EIGHT: My personal representative shall have absolute discretion, but shall not be required to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election or as to any investment or administrative decision that my personal representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others. In determining the federal estate and income tax liabilities of my estate, my personal representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as federal estate tax deductions or as federal income tax deductions.



ITEM NINE: Whenever my personal representative herein named is directed to distribute any property to a person who has not attained the age of Twenty One (21) years at the date of distribution, my personal representative shall transfer, convey and assign such property to himself as trustee and shall hold the property of such person in trust for such person using so much of the net income and principal of the property as my trustee shall deem necessary to provide for the proper support, medical care and education of such person, taking into consideration to the extent my trustee deems advisable any other income or resources of such person or his or her parents known to my trustee. Such person's property shall be paid over and distributed to such person upon attaining the age Twenty One (21), or if she or he shall sooner die, to his or her estate. Whenever my trustee determines it appropriate to pay any money for the benefit of any person for whom

a trust is created hereunder, then such amounts shall be paid out by my trustee in such of the following ways as my trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the support, medical care, and education of such beneficiary; and (4) by my trustee using such amounts directly for such beneficiary's support, medical care, and education. In holding any property for a person under the provisions of this Item, my trustee shall have all the powers and discretion hereinabove conferred upon himself as personal representative.

Handwritten signature and initials, possibly 'JRM', are written to the left of the text.

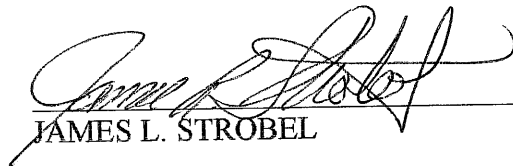
ITEM TEN: Whenever the word "personal representative" and/or the word "trustee", or any modifying or substitutive pronouns therefor are used in this my Will such words and respective pronouns shall be held and taken to include the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the personal representative and trustee named herein, and to any successor or substitute personal representative or trustee acting hereunder, and such successor or substitute personal representative and/or trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my personal representative and/or trustee originally named herein.

ITEM ELEVEN: Whenever the word "children" or "issue", or any modifying or substitutive pronouns therefor are used in this my Will such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine and the feminine and also all children not yet born within the period of gestation at the time of my death.

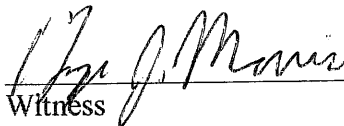
ITEM TWELVE: If any beneficiary and I should die as a result of a common accident or calamity or otherwise under such circumstances as would render it doubtful

whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that said beneficiary predeceased me.

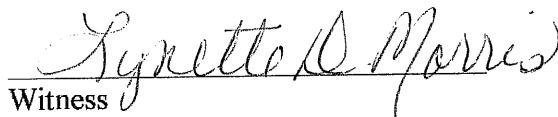
IN WITNESS WHEREOF, I hereunto sign my name to this instrument this 24 day of MARCH, 2003, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

 (SEAL)
JAMES L. STROBEL

 We, George J. Morris and Lynette D. Morris, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his Last Will and Testament and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.


Witness

116 Church St., Ste. One, Chas., SC
Address


Witness

116 Church St., Ste. One, Chas., SC
Address

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

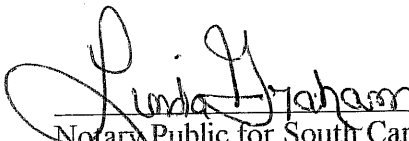
LAST WILL AND TESTAMENT
OF
JAMES L. STROBEL

SUSCRIBED, SWORN TO AND ACKNOWLEDGED before me by,

JAMES L. STROBEL, the Testator, and subscribed and sworn to before me by

George J. Morris and Lynette D. Morris, witnesses,

this 24th day of March, 2003.



Notary Public for South Carolina
My Commission Expires: 8-3-08

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF)
JAMES L. STROBEL, Deceased,)

DANIEL LLOYD STROBEL;)
JAMES ANDREW STROBEL; JOHN)
ANTHONY STROBEL; and)
PETER NICHOLAS STROBEL,)
Petitioners,)

CERTIFICATE OF SERVICE

vs.)

PAULA M. STROBEL, as Personal)
Representative of the Estate of James L.)
Strobel and individually; DOROTHY)
ELIZABETH STROBEL BELL, as an)
interested person; and ZOIE P.)
OGLETREE, as an interested person,)
Respondents.)

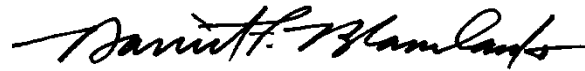
I hereby certify that on the 8th day of September, 2023, a true and correct copy of the Amended Summons and Amended Petition in the above-captioned matter was sent via e-mail and deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

Elizabeth J. Palmer, Esquire
Bijan K. Ghom, Esquire
Saxton & Stump, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
ep@saxtonstump.com
bkg@saxtonstump.com
Attorneys for Paula M. Strobel

Andrew E. Rhea, Esquire
Evans Carter Kunes & Bennett, PA
P.O. Box 369
Charleston, SC 29402
rhea@eckb.com
Attorney for Paula M. Strobel

[SIGNATURE ON FOLLOWING PAGE]

ROSEN HAGOOD, LLC



Reviewed and Approved for Electronic Transmission

Daniel F. Blanchard, III, SC Bar 65342

dblanchard@rosenhagood.com

40 Calhoun Street, Suite 450

Post Office Box 893

Charleston, SC 29402

(843) 577-6726 telephone

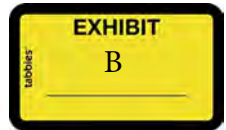
(843) 724-8036 fax

*Attorneys for Daniel Lloyd Strobel, James Andrew
Strobel, John Anthony Strobel, and Peter Nicholas
Strobel*

September 8, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235



IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

2024-CP-10-4752

DANIEL LLOYD STROBEL;
JAMES ANDREW STROBEL; JOHN
ANTHONY STROBEL; and
PETER NICHOLAS STROBEL,
Petitioners,

**MOTION TO STRIKE JURY
TRIAL DEMAND OF RESPONDENT
DOROTHY E.S. BELL**

vs.

PAULA M. STROBEL, as Personal
Representative of the Estate of James L.
Strobel and individually; DOROTHY
ELIZABETH STROBEL BELL, as an
interested person; and ZOIE P.
OGLETREE, as an interested person,
Respondents.

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PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: RESPONDENTS ABOVE-NAMED AND THEIR LEGAL COUNSEL:

PLEASE TAKE NOTICE that, pursuant to S.C. R. CIV. PRO. 38(d), the undersigned attorney for Petitioners Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel (hereinafter "Petitioners") will move before the probate court of Charleston County, Ninth Judicial Circuit, for an Order striking Respondent Dorothy Elizabeth Strobel Bell's (hereinafter "Respondent Bell") demand for a jury trial. This Motion is made on the grounds that Respondent Bell is not entitled to a jury trial on any claims asserted in this action. In support of the motion, Petitioners will show the following:

BACKGROUND

By Summons and Petition filed on December 6, 2022, Petitioners initiated this action against Respondent Paula M. Strobel (hereinafter "Respondent Strobel"), individually and as Personal Representative of the Estate of James L. Strobel, and Respondent Bell. The Petition does

not make a demand for a jury trial. The Petition asserted claims for (1) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30 and S.C. R. Civ. Pro. 57; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; and (6) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

The Petition did not seek any affirmative relief against Respondent Bell. In fact, Paragraph 13 of the Petition expressly stated: “Respondent [Bell] is named as a party to this action solely because, upon information and belief, she is a potential heir and an interested person with respect to Decedent’s estate, and her interest may be adversely affected by this Action.”

Instead, the Petition asserted that the Decedent, James A. Strobel, breached the terms of a written Separation Agreement that he entered on March 4, 1977. The terms of the Separation Agreement required that Decedent make an irrevocable will in favor of the Petitioners to leave a portion of his estate to them in equal shares. Accordingly, the Petition asks that the terms of the Separation Agreement be enforced and that Decedent’s estate be distributed pursuant to those terms. The Petition also asserts that, following Decedent’s death, Respondent Strobel took actions as Personal Representative of Decedent’s estate to probate, administer, and distribute the estate while concealing and failing to disclose the Separation Agreement to the court and to the Petitioners and while ignoring, avoiding, and evading Decedent’s obligations under that agreement, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners. The Petition asserts a claim for monetary damages against Respondent Strobel for breaching her fiduciary duties as Personal Representative.

On February 3, 2023, Respondent Strobel filed and served her Answer to the Petition. The Answer did not make a demand for a jury trial. Respondent Bell was served with the Summons and Petition by process server on January 6, 2023. However, Respondent Bell did not answer or otherwise respond to the Summons and Petition.

On September 8, 2023, Petitioners filed and served their Amended Summons and Amended Petition. The Amended Petition added Respondent Zoie P. Ogletree (hereinafter “Respondent Ogletree”) as an interested person. The Amended Petition does not make a demand for a jury trial. The Amended Petition asserts claims for (1) Declaratory Judgment Pursuant to S.C. CODE ANN. §§ 15-53-30 and 15-53-30 and S.C. R. Civ. Pro. 57; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative Pursuant to S.C. CODE ANN. §§ 62-3-402, 62-3-414, and 62-3-611; and (7) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

The Amended Petition does not seek any affirmative relief against Respondent Bell or Respondent Ogletree. Paragraph 22 of the Amended Petition expressly states: “Respondents [Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.”

On September 21, 2023, Respondent Ogletree accepted service of the Amended Summons and Amended Petition. She did not answer or otherwise respond to the Amended Summons and Amended Petition.

On November 17, 2023, Respondent Strobel filed and served her Answer to the Amended

Petition. The Answer to the Amended Petition did not make a demand for a jury trial. On December 18, 2023, Respondent Strobel filed and served her Amended Answer to the Amended Petition, which added a counterclaim for Unjust Enrichment. The Amended Answer to the Amended Petition also made a demand for a jury trial for the first time. Respondent Strobel made no motion to remove the action to the circuit court.

On February 23, 2024, Respondent Bell accepted service of the Amended Summons and Amended Petition through her attorney. On April 15, 2024, Respondent Bell filed and served her Answer to the Amended Petition even though it asserts no claims against her. In that pleading, Respondent Bell also alleged counterclaims against the Petitioners for Unjust Enrichment, Civil Conspiracy, and Partition and Contribution and cross-claims against Respondent Ogletree for Unjust Enrichment and Civil Conspiracy.¹

¹ Petitioners will be moving to dismiss Respondent Bell's counterclaims on a number of grounds, including that the pleading fails to state a cause of action against the Petitioners as a matter of law. The counterclaims for unjust enrichment and partition and contribution seek to recover for injuries or losses allegedly sustained by Respondent Strobel, not Respondent Bell. Settled law holds a party cannot sue for alleged harm to the rights of another party. Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (appellant lacked standing to assert error in respect to decision which affected the property rights of his wife); First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (daughter lacked standing to assert error in requiring her father to repay to a trust the income he had received from the trust after his remarriage); Burns v. Gardner, 328 S.C. 608, 617, 493 S.E.2d 356, 361 (Ct. App. 1997) (clients were not aggrieved by imposition of sanctions against their attorneys); Ballington v. Paxton, 327 S.C. 372, 381-82, 488 S.E.2d 882, 887-88 (Ct. App. 1997) (appellants lacked standing to raise issues on behalf of their cousins); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct. App. 1985) (party cannot raise issue that does not pertain to the party). The counterclaim for civil conspiracy also fails to allege facts supporting a cause of action against the Petitioners because there is no cause of action under South Carolina law for alleged "civil conspiracy to obtain double inheritance from ostensible bigamous marriage."

LAW AND ANALYSIS

Section 62-1-306(a) of the South Carolina Probate Code (SCPC), which is entitled “Jury trials,” provides:

(a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact *in an action for the recovery of money only or of specific real or personal property*, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.

S.C. CODE ANN. § 62-1-306(a) (emphasis added). This section means a party is entitled to a jury trial in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property unless the right is waived. See Matter of Howard, 315 S.C. 356, 362 n.6, 434 S.E.2d 254, 258 n.6 (1993) (tracing history of § 62-1-306(a)).

As discussed above, the Amended Petition does not seek any affirmative relief against Respondent Bell. Paragraph 22 of the Amended Petition expressly states: “Respondents [Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.” See Amend. Petition ¶22. The Amended Petition does not assert any claim against Respondent Bell for the recovery of money or of specific real or personal property. The Amended Petition does not request that Respondent Bell be required to pay any money or to compensate Petitioners for any damages or injuries.

No claims within § 62-1-306(a) are asserted against Respondent Bell in the Amended Petition. As a result, there are no claims asserted against her entitling her to a jury trial. Cf. Carolina First Bank v. BADD, L.L.C., 414 S.C. 289, 294, 778 S.E.2d 106, 108 (2015), abrogated other grounds by Deutsche Bank Nat’l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck, 440 S.C. 409,

892 S.E.2d 280 (2023) (inclusion of guarantor as party to lender's foreclosure action pursuant to § 29-3-660 only for the purpose of collecting a deficiency should one be adjudged did not entitle guarantor to a jury trial).

Additionally, to the extent Respondent Bell has requested a jury trial involving her counterclaims against the Petitioners and her cross-claims against Respondent Ogletree, state law holds that she has waived her right to a jury trial by asserting such permissive counterclaims and cross-claims in this case. Rule 13(b) of the South Carolina Rules of Civil Procedure provides that a "permissive counterclaim" is "any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." S.C. R. CIV. PRO. 13(b). Conversely, a counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." *Id.* 13(a).²

"Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Bateman v. Rouse, 358 S.C. 667, 673, 596 S.E.2d 386, 389 (Ct. App. 2004) (quoting Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997)). "[A] defendant in an equity action ... has a right to a jury trial on a counterclaim that is legal and compulsory in character." N. Carolina Fed. Sav. & Loan Ass'n v. DAV Corp., 294 S.C. 27, 30, 362 S.E.2d 308, 310 (Ct. App. 1987), aff'd in part, rev'd in part, 298 S.C. 514, 381 S.E.2d 903 (1989).

² In Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck, 440 S.C. 409, 412-13, 892 S.E.2d 280, 281-82 (2023), the South Carolina Supreme Court recently abolished the "logical relationship test" that previously was utilized in determining whether a counterclaim is compulsory or permissive. The Deutsche Bank court held "the question of whether a counterclaim is compulsory is governed by the plain language of Rule 13(a)." *Id.*

“But where a defendant in an action begun in equity asserts a permissive counterclaim that is legal in nature, the defendant is deemed to have waived the right to a jury trial on the issues raised by the counterclaim.” Id.; see also Edwards v. Timmons, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (“A defendant who brings a legal but permissive counterclaim to an action in equity waives his right to a jury trial.”). Additionally, it is well-settled that “cross-claims are permissive.” N. Carolina Fed. Sav. & Loan Ass’n, 298 S.C. at 519, 381 S.E.2d at 906; see Carolina First Bank, 414 S.C. at 292, 778 S.E.2d at 107 (“There is no question these third-party claims are permissive and do not entitle [third-party plaintiff] to a jury trial.”).

Petitioners asserted no claims against Respondent Bell. It necessarily follows that Respondent Bell’s counterclaims and cross-claims cannot arise out of the transaction or occurrence that is the subject matter of the Petitioners’ claims because Petitioners asserted no claims against Respondent Bell. In any event, Respondent Bell’s counterclaims and cross-claims are based on transactions or occurrences that are separate from those forming the basis of Petitioners’ claims. Respondent Bell’s counterclaims and cross-claims do not arise out of the Separation Agreement or Respondent Strobel’s actions in concealing and failing to disclose that agreement to the court and to the Petitioners. Instead, her counterclaims and cross-claims are based on Respondent Strobel’s alleged actions in paying for, maintaining, and improving the real property that is part of Decedent’s estate and on allegations that Petitioners and Respondent Ogletree should be precluded from taking the position that Decedent and Respondent Strobel were never lawfully married because of Petitioners’ and Respondent Ogletree’s alleged actions in “[holding] themselves out as beneficiaries under the will of” Ollie Moore Ogletree, Jr.

Respondent Bell’s counterclaims and cross-claims arise from different transactions and occurrences than Petitioners’ claims. See Carolina First Bank, 414 S.C. at 296, 778 S.E.2d at 109

(holding loan guarantor waived his right to a jury trial by asserting a civil conspiracy counterclaim in lender's foreclosure action because the claim is permissive as it does not arise out of the same transaction or occurrence as the execution of the guaranty agreements). As a result, Respondent Bell's counterclaims and cross-claims are permissive, not mandatory. Respondent Bell waived any right to a jury trial on her counterclaims and cross-claims by asserting them in this action. Accordingly, the court should strike Respondent Bell's demand for a jury trial. See S.C. R. Civ. Pro. 39(a) ("The trial of all issues so demanded shall be by jury, unless ... the court[,] upon motion or its own initiative[,] finds that a right of trial by jury of some or all of those issues does not exist.").

In summary, Respondent Bell is not entitled to a jury trial on any of the Petitioner's claims because those claims do not seek the recovery of money or of specific real or personal property from Respondent Bell. Respondent Bell waived the right to a jury trial by bringing permissive counterclaims and cross-claims. The court should strike Respondent Bell's demand for a jury trial.

This Motion is supported by the pleadings, legal memoranda, documents of record, arguments of counsel, and any other matter presented at any hearing on the Motion.

WHEREFORE, Petitioners move the court for an Order striking the demand for jury trial made by Respondent Dorothy Elizabeth Strobel Bell in her Answer, Counterclaims, and Cross-Claims, and for such other and further relief as this court may deem just and proper.

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May 2, 2024.

Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF)
JAMES L. STROBEL, Deceased,)

DANIEL LLOYD STROBEL;)
JAMES ANDREW STROBEL; JOHN)
ANTHONY STROBEL; and)
PETER NICHOLAS STROBEL,)
Petitioners,)

CERTIFICATE OF SERVICE

vs.)

PAULA M. STROBEL, as Personal)
Representative of the Estate of James L.)
Strobel and individually; DOROTHY)
ELIZABETH STROBEL BELL, as an)
interested person; and ZOIE P.)
OGLETREE, as an interested person,)
Respondents.)

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PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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JULIE J. ARMSTRONG
CLERK OF COURT

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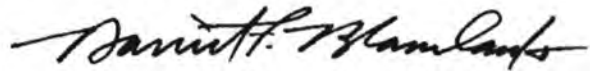
I hereby certify that on the 2nd day of May, 2024, true and correct copies of (a) Petitioners' Motion to Strike Jury Trial Demand of Respondent Paula M. Strobel; (b) Petitioners' Motion to Strike Jury Trial Demand of Respondent Dorothy E.S. Bell; and (c) Petitioners' Response in Opposition to Respondent Dorothy E.S. Bell's Motion for Removal in the above-captioned matter were deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

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May 2, 2024.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235



IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

2624-CP-10-4752

DANIEL LLOYD STROBEL;
JAMES ANDREW STROBEL; JOHN
ANTHONY STROBEL; and
PETER NICHOLAS STROBEL,
Petitioners,

**MOTION TO STRIKE JURY
TRIAL DEMAND OF RESPONDENT
PAULA M. STROBEL**

vs.

PAULA M. STROBEL, as Personal
Representative of the Estate of James L.
Strobel and individually; DOROTHY
ELIZABETH STROBEL BELL, as an
interested person; and ZOIE P.
OGLETREE, as an interested person,
Respondents.

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CLERK OF COURT

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TO: RESPONDENTS ABOVE-NAMED AND THEIR LEGAL COUNSEL:

PLEASE TAKE NOTICE that, pursuant to S.C. R. CIV. PRO. 38(d), the undersigned attorney for Petitioners Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel (hereinafter "Petitioners") will move before the probate court of Charleston County, Ninth Judicial Circuit, for an Order striking Respondent Paula M. Strobel's (hereinafter "Respondent Strobel") demand for a jury trial. This Motion is made on the grounds that Respondent Strobel failed to timely request a jury trial in her pleading and has thus waived the right to a jury trial. In support of the motion, Petitioners will show the following:

BACKGROUND

By Summons and Petition filed on December 6, 2022, Petitioners initiated this action against Respondent Strobel, individually and as Personal Representative of the Estate of James L. Strobel, and Respondent Dorothy Elizabeth Strobel Bell (hereinafter "Respondent Bell"). The

Petition does not make a demand for a jury trial. The Petition asserted claims for (1) Declaratory Judgment Pursuant to S.C. CODE ANN. § 15-53-30 and S.C. R. Civ. Pro. 57; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; and (6) attorneys' fees pursuant to S.C. CODE ANN. § 62-1-111.

The Petition did not seek any affirmative relief against Respondent Bell. In fact, Paragraph 13 of the Petition expressly stated: "Respondent [Bell] is named as a party to this action solely because, upon information and belief, she is a potential heir and an interested person with respect to Decedent's estate, and her interest may be adversely affected by this Action."

Instead, the Petition asserted that the Decedent, James A. Strobel, breached the terms of a written Separation Agreement that he entered on March 4, 1977. The terms of the Separation Agreement required that Decedent make an irrevocable will in favor of the Petitioners to leave a portion of his estate to them in equal shares. Accordingly, the Petition asks that the terms of the Separation Agreement be enforced and that Decedent's estate be distributed pursuant to those terms. The Petition also asserts that, following Decedent's death, Respondent Strobel took actions as Personal Representative of Decedent's estate to probate, administer, and distribute the estate while concealing and failing to disclose the Separation Agreement to the court and to the Petitioners and while ignoring, avoiding, and evading Decedent's obligations under that agreement, including but not limited to the provisions requiring Decedent to make an irrevocable will for the benefit of the Petitioners. The Petition asserts a claim for monetary damages against Respondent Strobel for breaching her fiduciary duties as Personal Representative.

On February 3, 2023, Respondent Strobel filed and served her Answer to the Petition. The Answer did not make a demand for a jury trial. Respondent Bell was served with the Summons and Petition by process server on January 6, 2023. However, Respondent Bell did not answer or otherwise respond to the Summons and Petition.

On September 8, 2023, Petitioners filed and served their Amended Summons and Amended Petition. The Amended Petition added Respondent Zoie P. Ogletree (hereinafter “Respondent Ogletree”) as an interested person. The Amended Petition does not make a demand for a jury trial. The Amended Petition asserts claims for (1) Declaratory Judgment Pursuant to S.C. CODE ANN. §§ 15-53-30 and 15-53-30 and S.C. R. Civ. Pro. 57; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative Pursuant to S.C. CODE ANN. §§ 62-3-402, 62-3-414, and 62-3-611; and (7) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

The Amended Petition does not seek any affirmative relief against Respondent Bell or Respondent Ogletree. Paragraph 22 of the Amended Petition expressly states: “Respondents [Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.”

On September 21, 2023, Respondent Ogletree accepted service of the Amended Summons and Amended Petition. She did not answer or otherwise respond to the Amended Summons and Amended Petition.

On November 17, 2023, Respondent Strobel filed and served her Answer to the Amended

Petition. The Answer to the Amended Petition did not make a demand for a jury trial. On December 18, 2023, Respondent Strobel filed and served her Amended Answer to the Amended Petition, which added a counterclaim for Unjust Enrichment. The Amended Answer to the Amended Petition also made a demand for a jury trial for the first time. Respondent Strobel made no motion to remove the action to the circuit court.

On February 23, 2024, Respondent Bell accepted service of the Amended Summons and Amended Petition through her attorney. On April 15, 2024, Respondent Bell filed and served her Answer to the Amended Petition even though it asserts no claims against her. In that pleading, Respondent Bell also alleged counterclaims against the Petitioners for Unjust Enrichment, Civil Conspiracy, and Partition and Contribution and cross-claims against Respondent Ogletree for Unjust Enrichment and Civil Conspiracy.¹

¹ Petitioners will be moving to dismiss Respondent Bell's counterclaims on a number of grounds, including that the pleading fails to state a cause of action against the Petitioners as a matter of law. The counterclaims for unjust enrichment and partition and contribution seek to recover for injuries or losses allegedly sustained by Respondent Strobel, not Respondent Bell. Settled law holds a party cannot sue for alleged harm to the rights of another party. Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (appellant lacked standing to assert error in respect to decision which affected the property rights of his wife); First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (daughter lacked standing to assert error in requiring her father to repay to a trust the income he had received from the trust after his remarriage); Burns v. Gardner, 328 S.C. 608, 617, 493 S.E.2d 356, 361 (Ct. App. 1997) (clients were not aggrieved by imposition of sanctions against their attorneys); Ballington v. Paxton, 327 S.C. 372, 381-82, 488 S.E.2d 882, 887-88 (Ct. App. 1997) (appellants lacked standing to raise issues on behalf of their cousins); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct. App. 1985) (party cannot raise issue that does not pertain to the party). The counterclaim for civil conspiracy also fails to allege facts supporting a cause of action against the Petitioners because there is no cause of action under South Carolina law for alleged "civil conspiracy to obtain double inheritance from ostensible bigamous marriage."

LAW AND ANALYSIS

Section 62-1-306(a) of the South Carolina Probate Code (SCPC), which is entitled “Jury trials,” provides:

(a) If duly demanded, a party *is entitled to trial by jury* in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, *unless waived as provided in the rules of civil procedure for the courts of this State*. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.

S.C. CODE ANN. § 62-1-306(a) (emphasis added). This section means a party is entitled to a jury trial in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property unless the right is waived. See Matter of Howard, 315 S.C. 356, 362 n.6, 434 S.E.2d 254, 258 n.6 (1993) (tracing history of § 62-1-306(a)).

South Carolina Rule of Civil Procedure 38(b) & (d) specifically deal with a party’s waiver of the right to a jury trial. Those provisions state in pertinent part as follows:

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action *and not later than 10 days after the service of the last pleading directed to such issue*. Such demand may be endorsed upon a pleading of the party. . . .

(d) Waiver. *The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. . . .*

S.C. R. CIV. PRO. 38(b), (d) (emphasis added). The SCPC and the rules of civil procedure make clear that a party’s failure to serve a demand for a jury trial within ten days of the service of the last pleading directed to such issue constitutes a waiver of the right to a trial by jury.

In the present case, Petitioners filed their Amended Petition on September 8, 2023. While Respondent Strobel filed her initial Answer to the Amended Petition on November 17, 2023, her Answer did not make a demand for a jury trial. Her ten days in which to demand a jury trial expired on November 27, 2023. She did not make a demand for a jury trial until December 18, 2023, which

is when she filed and served her Amended Answer to the Amended Petition and raised a Counterclaim for Unjust Enrichment.

The fact that Respondent Strobel filed an Amended Answer and Counterclaims did not revive her right to demand a jury trial. The South Carolina Court of Appeals addressed this exact situation in Zurich Am. Ins. Co. of Illinois v. Palmetto Cont. Servs., Inc., 434 S.C. 104, 862 S.E.2d 714 (Ct. App. 2021) (copy attached). In that case, the court held that “a party’s right to a jury trial is not revived based solely on the fact that the party asserts a counterclaim for the first time in an amended pleading, without also introducing new factual issues that were not previously in dispute.” Id. at 112, 862 S.E.2d at 718. On December 11, 2005, Zurich American Insurance Company (Zurich) sued Palmetto Contract Services (Palmetto) for breach of contract. Palmetto answered on February 16, 2006, denying the allegations in the complaint and raising various affirmative defenses. Neither party demanded a jury trial in its initial pleading.

On July 12, 2016, Palmetto moved to amend its answer to assert additional affirmative defenses and to assert counterclaims for negligent misrepresentation/fraud and breach of contract. After the motion was granted, Palmetto filed its amended answer and counterclaims on September 27, 2017, which included a demand for a jury trial for the first time. Zurich moved to strike the jury trial demand “arguing Palmetto waived its right to a jury trial when it did not demand a jury trial following its initial answer and that the amended answer and counterclaim did not revive the right to a jury trial because it was not based upon new issues of fact.” Zurich, 434 S.C. at 108, 862 S.E.2d at 715. “Zurich contended Palmetto’s allegations were based upon the same issues and facts raised in Zurich’s complaint and Palmetto’s initial answer.” Id.

On appeal from the circuit court’s order striking Palmetto’s request for a jury trial pursuant to Rule 38(d), the court of appeals in Zurich affirmed the circuit judge’s decision that Palmetto’s

amended answer and counterclaim did not create new issues of fact and that Palmetto's demand for a jury trial was untimely because it had not been made within ten days after the service of its initial answer. Id. at 113, 862 S.E.2d at 718 ("Both the breach of contract and negligent misrepresentation counterclaims involve essentially the same facts as previously pled, as does the request for damages."). The court rejected Palmetto's argument that "its right to a jury trial was revived because it asserted affirmative claims against Zurich *for the first time* in its amended answer and counterclaim." Id. at 110, 862 S.E.2d at 717. It held "the act of asserting counterclaims for the first time in an amended pleading does not automatically revive the right to a jury trial." Id. at 113, 862 S.E.2d at 718.

As support for its decision, the Zurich court cited to the prior case of King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (Ct. App. 1987) (copy attached). In King, the plaintiff sued over a note he co-signed as endorser and had to pay for the defendant. Id. at 502, 354 S.E.2d at 402. The defendant answered, asserting fraud and coercion defenses, and counterclaimed for (1) malpractice, (2) fraud and deceit, and (3) breach of trust and fiduciary relationship. Id. The defendant did not make a demand for a jury trial. Id. Thereafter, the defendant amended his answer and added an additional counterclaim for outrage. Id. at 502, 354 S.E.2d at 402-03. The defendant later made another motion to amend his answer and counterclaim to assert an action for unfair trade practices and to transfer the case to the jury calendar. Id. The circuit court denied the motion to transfer but allowed the defendant to amend his answer and counterclaim. Id.

The court of appeals in King affirmed a circuit court's order that allowed the defendant to amend his pleading, but which simultaneously denied the defendant's request for a jury trial on the grounds it was untimely made under Rule 38(b) and thus was waived. The King court followed federal court cases holding that "a litigant's entitlement to a jury trial on the issues presented by

an amended pleading, when no prior demand for a jury trial has been made, turns on whether the amended pleadings create new issues of fact.” Id. at 503, 354 S.E.2d at 403 (Ct. App. 1987) (citing Trixler Brokerage Co. v. Ralston Purina Co., 505 F.2d 1045 (9th Cir. 1974); New Hampshire Fire Ins. Co. v. Perkins, 28 F.R.D. 588 (D.Del.1961); and Williams v. Farmers and Merchants Ins. Co., 457 F.2d 37 (8th Cir. 1972)). Because the defendant’s allegations “in each of his pleadings” were found to “involve essentially the same facts,” the King court held the defendant had waived his right to demand a jury trial when he failed to make such a demand within ten days of his initial answer. Id.²

The same situation is present in this case. Respondent Strobel did not demand a jury trial when she filed her initial Answer to the Amended Petition on November 17, 2023. Respondent Strobel’s deadline to demand a jury trial lapsed on November 27, 2023, pursuant to Rule 38(b). While she later made a demand for a jury trial on December 18, 2023, when she filed her Amended Answer and Counterclaim, her amended pleading involves essentially the same facts and fails to create new issues of fact. For instance, Respondent Strobel’s initial Answer averred that she and the “Decedent, as husband and wife, owned real property, assets, and held joint accounts.” See Answer ¶25. The Amended Answer makes this same allegation and asserts a counterclaim for unjust enrichment because Respondent Strobel asserts she contributed financially to the purchase, maintenance, and improvement of the real property, assets, and joint accounts that she held with

² In Trixler Brokerage, which the Zurich court cited with approval, the Ninth Circuit Court of Appeals held that the presentation of a new theory of recovery in an amended pleading does not constitute the presentation of a new issue on which a jury trial should be granted. Trixler Brokerage Co. v. Ralston Purina Co., 505 F.2d 1045, 1050 (9th Cir. 1974) (“The theory of a case relates to the ultimate basis of liability[] rather than to an issue created by the pleadings.... When read in context, the word issue must have been intended by the Supreme Court to mean nothing other than an issue of fact. Obviously, appellant would not be demanding a jury trial on an issue of law.”). As a result, the fact the amended pleading adds a new legal theory does not revive the time for the party to demand a jury trial.

Decedent as his “spouse and partner ... for several decades,” which she assets are now subject to Petitioners’ claims. See Amended Answer ¶¶25, 84, 87. The facts essentially remain the same; it’s just that Respondent Strobel now asserts a counterclaim based on those facts. The fact Respondent Strobel filed an Amended Answer and Counterclaims did not revive her right to demand a jury trial which had already expired.

Because Respondent Strobel failed to make a timely demand for a jury trial pursuant to S.C. R. CIV. PRO. 38(b), she waived her entitlement to a jury trial as a matter of right. Accordingly, the court should strike her demand for a jury trial.

This Motion is supported by the pleadings, legal memoranda, documents of record, arguments of counsel, and any other matter presented at any hearing on the Motion.

WHEREFORE, Petitioners move the court for an Order striking the demand for jury trial made by Respondent Paula M. Strobel in her Amended Answer and Counterclaims, and for such other and further relief as this court may deem just and proper.

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May 2, 2024.

Charleston, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

DANIEL LLOYD STROBEL;
JAMES ANDREW STROBEL; JOHN
ANTHONY STROBEL; and
PETER NICHOLAS STROBEL,
Petitioners,

vs.

PAULA M. STROBEL, as Personal
Representative of the Estate of James L.
Strobel and individually; DOROTHY
ELIZABETH STROBEL BELL, as an
interested person; and ZOIE P.
OGLETREE, as an interested person,
Respondents.

CERTIFICATE OF SERVICE

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PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
5/2/2024 6:05PM

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

I hereby certify that on the 2nd day of May, 2024, true and correct copies of (a) Petitioners' Motion to Strike Jury Trial Demand of Respondent Paula M. Strobel; (b) Petitioners' Motion to Strike Jury Trial Demand of Respondent Dorothy E.S. Bell; and (c) Petitioners' Response in Opposition to Respondent Dorothy E.S. Bell's Motion for Removal in the above-captioned matter were deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

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May 2, 2024.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235



IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

2024 - CP - 10 - 4752

DANIEL LLOYD STROBEL;
JAMES ANDREW STROBEL; JOHN
ANTHONY STROBEL; and
PETER NICHOLAS STROBEL,
Petitioners,

**MOTION TO DISMISS
COUNTERCLAIMS OF RESPONDENT
DOROTHY E.S. BELL**

vs.

PAULA M. STROBEL, as Personal
Representative of the Estate of James L.
Strobel and individually; DOROTHY
ELIZABETH STROBEL BELL, as an
interested person; and ZOIE P.
OGLETREE, as an interested person,
Respondents.

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
5/13/2024 4:21PM

2024 OCT 15 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: RESPONDENTS ABOVE-NAMED AND THEIR LEGAL COUNSEL:

PLEASE TAKE NOTICE that, pursuant to S.C. R. CIV. PRO. 12(b)(1) and 12(b)(6), the undersigned attorney for Petitioners Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel (hereinafter "Petitioners") will move before the probate court of Charleston County, Ninth Judicial Circuit, for an Order dismissing Respondent Dorothy Elizabeth Strobel Bell's (hereinafter "Respondent Bell") counterclaims for failure to state a cause of action as a matter of law and/or for lack of subject matter jurisdiction. The grounds for this motion are as follows:

1. Respondent Bell's lacks standing or capacity and is not a real party in interest under S.C. R. CIV. PRO. 17(a) to assert the counterclaims for unjust enrichment and partition and contribution as a matter of law. Respondent Bell's counterclaims for unjust enrichment and partition and contribution allege that "*Paula Strobel* was employed for over thirty years and her

income was used to pay for mortgages, bills, improvements, and other maintenance associated with the real property owned by Paula Strobel and Decedent,” “***Paula Strobel*** also provided support to the decedent so that he could spend time improving and maintaining property owned by Paula Strobel and Decedent,” “***Paula M. Strobel*** also paid for, maintained, and improved the real property that Petitioners assert claims to,” and “it would be unfair and inequitable for Petitioners to receive the real property (or the market value thereof) ***without compensating Paula [M. Strobel]*** for the value associated with the same.” See Counterclaim ¶¶ 158-60 (emphasis added). The counterclaims further allege that “Petitioners, the Estate, Zoie Ogletree, or any other interested party ***owe Paula Strobel*** the reasonable value of the benefits conferred in an amount to be determined by the trier of fact.” See Counterclaim ¶ 161 (emphasis added). The counterclaims also aver that “[i]f Petitioners succeed in their claims, they may end up owning property along with Paula Strobel, and if that is the case, the properties should be partitioned ***and Paula Strobel should be awarded compensation*** for the maintenance and improvements made to the properties for her contributions to properties. See Counterclaim ¶ 175 (emphasis added).

These allegations make clear that Respondent Bell is improperly attempting to assert counterclaims on behalf of or which belong to Respondent Paula Strobel. These counterclaims seek to recover for injuries or losses allegedly sustained by Respondent Strobel, not Respondent Bell. Settled law holds a party cannot sue for alleged harm to the rights of another party. Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (appellant lacked standing to assert error in respect to decision which affected the property rights of his wife); First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (daughter lacked standing to assert error in requiring her father to repay to a trust the income he had received from the trust after his remarriage); Burns v. Gardner, 328 S.C. 608, 617, 493 S.E.2d 356, 361 (Ct. App. 1997)

(clients were not aggrieved by imposition of sanctions against their attorneys); Ballington v. Paxton, 327 S.C. 372, 381-82, 488 S.E.2d 882, 887-88 (Ct. App. 1997) (appellants lacked standing to raise issues on behalf of their cousins); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct. App. 1985) (party cannot raise issue that does not pertain to the party).

For the above reasons, Respondent Bell's counterclaims for unjust enrichment and partition and contribution fail to allege facts supporting a cause of action against the Petitioners as a matter of law and should be dismissed.

2. Respondent Bell's counterclaim for civil conspiracy also fails to allege facts supporting a cause of action against the Petitioners as a matter of law because there is no cause of action under South Carolina law for alleged "civil conspiracy to obtain double inheritance from ostensible bigamous marriage." Additionally, Respondent Bell's counterclaim for civil conspiracy fails to allege any facts showing that she supposedly was injured or suffered an injury compensable under the law due to the alleged conspiracy. The facts as alleged in the counterclaim do not state an actionable claim or support a theory of recovery against the Petitioners as a matter of law.

Respondent Bell's civil conspiracy claim alleges that in 2013 the Petitioners conspired with their mother (Respondent Zoie Ogletree) to receive benefits from the Estate of the late Ollie M. Ogletree under the terms of his Will by claiming that Respondent Ogletree was Ollie's wife. See Counterclaim ¶¶ 163-64. The counterclaim also alleges that despite Respondent Ogletree's receipt of benefits from Ollie's estate, Petitioners are now claiming in this action that Decedent James Strobel ("Decedent Strobel") never obtained a valid divorce from Respondent Ogletree in the Dominican Republic in 1977. As a result, Decedent Strobel was still married to Respondent Ogletree at the time of his death on January 3, 2022, and Respondent Strobel's "marriage to the Decedent [Strobel] was invalid because [he] was still legally married to" Respondent Ogletree.

See Counterclaim ¶ 166. Based on these allegations, the counterclaim argues Petitioners and Respondent Ogletree are seeking “to obtain [a] double inheritance from ostensible bigamous marriages” and makes the conclusory assertion that “Respondents Strobel and Bell, directly or indirectly, suffered special damages as set forth herein, including but not limited to the loss of the expected inheritance and gifts from Decedent as desired by Decedent.” See Counterclaim ¶ 171.

Petitioners are not aware of any decision of any court in South Carolina or any court in any other jurisdiction (and Respondent Bell has not cited any) recognizing a civil conspiracy claim based on an alleged “double inheritance.” Even assuming for argument’s sake that such a “double inheritance” could support a civil conspiracy claim, none of the allegations in the counterclaims point to any facts showing that Respondent Bell has been injured by this alleged civil conspiracy. Decedent Strobel’s Last Will & Testament dated March 24, 2003, which Respondent Strobel has offered for probate and is on file with the court, *does not contain any provision leaving any portion of his estate to Respondent Bell*. Rather, under the terms of the Last Will & Testament, Decedent Strobel named Respondent Strobel as the sole beneficiary of his entire estate. Under its terms, Respondent Bell is not a beneficiary of his estate.¹ While Respondent Bell argues in her counterclaim that she suffered “the loss of the expected inheritance and gifts from Decedent [Strobel] as desired by Decedent,” Decedent Strobel’s Last Will & Testament makes clear that he did not desire for Respondent Bell to receive any inheritance from him or any portion of his estate when he died if Respondent Strobel survived him. Under the terms of the will, his estate would go to Respondent Strobel, not to Respondent Bell.

¹ The Petitioners and Respondent Bell are only named as contingent remainder beneficiaries under Decedent Strobel’s Last Will & Testament in the event that Respondent Strobel predeceased him, which did not in fact occur. Respondent Strobel survived Decedent Strobel, thus the will provisions involving contingent beneficiaries are inapplicable.

Conversely, if Petitioners are successful on their claims asserted in their Amended Petition, then Respondent Bell *will* receive a portion of Decedent Strobel's estate. If Petitioners succeed, then Decedent Strobel's Last Will & Testament will be rendered invalid, null, void, and of no force or effect and his entire estate will be distributed pursuant to the terms of the written Separation Agreement that Respondent Ogletree and Decedent Strobel executed on March 4, 1977. Under the Separation Agreement's terms, the Petitioners are entitled to 50% of Decedent Strobel's estate, which leaves the other 50% of his estate to be distributed in accordance with the intestacy laws in S.C. CODE ANN. §§ 62-2-101 *et seq.* Under the laws of intestate succession, Decedent Strobel's surviving spouse (Respondent Ogletree) and Decedent's surviving children or issue (the Petitioners and Respondent Bell) are entitled to that remaining half of his estate with Respondent Ogletree to receive one-half of the remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive the other one-half of the remainder in equal shares.²

Stated succinctly, if Petitioners are successful, Respondent Bell would receive a share (1/5) of one-quarter of Decedent Strobel's overall estate. On the other hand, if Respondent Strobel is successful, Respondent Bell will not receive any portion of Decedent Strobel's estate.

As the above makes clear, Respondent Bell will not be injured by Petitioners' claims in this case. In fact, she will be injured only if Respondent Strobel's petition to probate Decedent Strobel's Last Will & Testament is allowed. Respondent Bell will only receive a portion of

² If Petitioners are successful in enforcing their claims under the Separation Agreement, but the court determines that Decedent Strobel validly divorced Respondent Ogletree and that Respondent Strobel is Decedent Strobel's widow, then Respondent Bell's share of the estate remains exactly the same. In that scenario, pursuant to the intestacy laws, Decedent Strobel's surviving spouse (Respondent Strobel) and Decedent's surviving children or issue (the Petitioners and Respondent Bell) would be entitled to that remaining half of Decedent's estate with Respondent Strobel to receive one-half of the remainder and Decedent's surviving children or issue (the Petitioners and Dorothy) to receive the other one-half of the remainder in equal shares.

Decedent Strobel's estate if Petitioners' claims are successful.³ For the above reasons, the facts as alleged in the counterclaim do not state an actionable claim for civil conspiracy against the Petitioners as a matter of law and should be dismissed.

3. Respondent Bell's counterclaim for civil conspiracy also fails for lack of subject matter jurisdiction. The probate court "is not a constitutional court," but is vested with only such specific and limited subject matter jurisdiction as is granted to it by statute. Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011); see S.C. CODE ANN. § 62-1-302. The probate court has no subject matter jurisdiction over any *in personam* claims that Respondent Bell may wish to assert against Petitioners in their individual capacities. See, e.g., In re Guardianship of Gibbs, 253 S.W.3d 866, 872-73 (Tex. Ct. App. 2008) (dismissing claims of restitution and breach of fiduciary duty brought in probate court by one sibling trust beneficiary against other sibling trust beneficiaries alleging that defendants had wrongfully induced mother to withdraw funds from her trust because of probate court's lack of subject matter jurisdiction over *in personam* claims); Stauffer v. Nicholson, 438 S.W.3d 205, 213 (Tex. Ct. App. 2014) (dismissing plaintiff's *in personam* claims filed against defendant in probate court seeking recovery of damages for plaintiff personally because probate court lacked subject matter jurisdiction over such claims); Roll v. Edwards, 805 N.E.2d 162, 168 (Ohio Ct. App. 2004) (holding that probate court lacks subject matter jurisdiction over *in personam* claim for intentional interference with expectancy of inheritance); In re Morgan, 833 S.W.2d 776 (Ark. 1992) (dismissing counterclaim for negligence stemming from

³ In light of the above, it is perplexing that Respondent Bell is asserting counterclaims in this action which would harm her personal interests rather than advance them. In truth, Respondent Bell is attempting to pursue claims for Respondent Strobel which do nothing for her own interests. To the extent that Respondent Bell is attempting to pursue a counterclaim for civil conspiracy on behalf of Respondent Strobel, then that claim also fails for lack of standing and capacity as explained above. Despite the obvious conflict of interest which exists between Respondent Bell and Respondent Strobel in this case, they nevertheless are represented by the same legal counsel.

injuries sustained in a football game that was filed in probate court action because probate court lacked subject matter jurisdiction over such an *in personam* counterclaim); Eddleman v. Estate of Farmer, 740 S.W.2d 141 (Ark. 1987) (dismissing claim for personal injuries stemming from alleged sexual abuse that was filed in probate court because the probate court did not have subject matter jurisdiction over the action).

The probate court lacks subject matter jurisdiction over any *in personam* claims Respondent Bell may wish to assert against Petitioners. Jurisdiction over such a claim is properly in the circuit court in the first instance, not a lawsuit filed in the probate court. Plaintiff's cause of action for civil conspiracy is not within this court's subject matter jurisdiction as delineated in § 62-1-302. The counterclaim for civil conspiracy should be dismissed for lack of subject matter jurisdiction.

This motion will be supported by the pleadings filed in this action; a memorandum of law to be filed with the Court prior to a hearing on this motion; matters of public record of which the Court may take judicial notice; and arguments of counsel at the hearing.

WHEREFORE, Petitioners hereby move the Court to dismiss Respondent Bell's counterclaims in whole and/or in part in the above matter and for such other and further relief as the Court may deem just and proper.

ROSEN HAGOOD, LLC



Reviewed and Approved for Electronic Transmission

Daniel F. Blanchard, III, SC Bar 65342

dblanchard@rosenhagood.com

40 Calhoun Street, Suite 450

Charleston, SC 29401

(843) 577-6726 telephone

Attorneys for Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel

May 13, 2024.

Charleston, South Carolina.

CERTIFICATE OF SERVICE

I hereby certify that on the 13TH day of May, 2024, a true and correct copy of the Petitioners' Motion to Dismiss Counterclaims of Respondent Dorothy E.S. Bell in the above-captioned matter was deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

Elizabeth J. Palmer, Esquire
Bijan K. Ghom, Esquire
Saxton & Stump, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

Andrew E. Rhea, Esquire
Evans Carter Kunes & Bennett, PA
P.O. Box 369
Charleston, SC 29402

J. Ashley Twombly, Esquire
Thomas Iandoli, Esquire
Twenge + Twombly Law Firm
311 Carteret Street
Beaufort, SC 29902
Attorney for Paula M. Strobel and Dorothy E.S. Bell

FILED
2024 OCT 15 AM 9:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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Attorneys for Daniel Lloyd Strobel, James Andrew Strobel, John Anthony Strobel, and Peter Nicholas Strobel

May 13, 2024.

1

or prejudice, a denial of leave to amend is an abuse of discretion.” Id. (citation omitted); see also Foman v. Davis, 371 U.S. 178, 182 (1962). Prejudice under Rule 15 is generally defined “as lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Id. Discovery is ongoing and the depositions of the petitioners to this action have yet to be taken. Thus, Petitioners have ample notice of the amendments and will not be prejudiced thereby.

WHEREFORE, Respondent respectfully moves this Court for an Order granting Respondent leave to file the Second Amended Answer and Counterclaim and for such other and further relief as this Court may deem just and proper.

Pursuant to Rule 11, SCRPC, counsel for Respondent certifies that they attempted to confer with opposing counsel prior to filing this motion but received no response.

s/Bijan K. Ghom
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Bijan K. Ghom
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ATTORNEYS FOR RESPONDENT
PAULA M. STROBEL

Charleston, South Carolina
May 14, 2024

2024-CP-10-4752

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE PROBATE COURT
) CASE NO: 2022-ES-10-00235
)

IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

)
) DANIEL LLOYD STROBEL;
) JAMES ANDREW STROBEL; JOHN
) ANTHONY STROBEL; and
) PETER NICHOLAS STROBEL
) Petitioners,
)

vs.

)
) EZ FILING
) PROBATE COURT
) CHARLESTON COUNTY, SOUTH CAROLINA
) 2022ES1000235
) 5/14/2024 3:20PM
)

) PAULA M. STROBEL, as Personal Representative
) of the Estate of James L. Strobel and individually;
) and DOROTHY ELIZABETH STROBEL BELL, as
) an interested person,
)

) Respondents.
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the Respondent Paula M. Strobel's Motion to Amend Answer on the following via email on May 14, 2024:

Daniel F. Blanchard, Esquire
Taylor Ambrosius, Esquire
Rosen Hagood, LLC
40 Calhoun St., Suite 450
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dblanchard@rosenhagood.com
tambrosius@rosenhagood.com

ATTORNEYS FOR PETITIONERS

FILED
2025 JUN 23 AM 9:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

By: /s/ Taylor Davis
Paralegal
Saxton & Stump, LLC

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Respondent Strobel files this Motion for Jury Trial in accordance with Rule 39(b). Under Rule 39(b), “[n]otwithstanding the failure of a party to demand a jury trial in an action in which a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.” A party's failure to make a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial. *Hannah v. United Refrigeration Services, Inc.*, 305 S.C. 394, 409 S.E.2d 360 (1991); *Patterson v. McNeill-Patterson & Associates, Inc.*, 312 S.C. 471, 441 S.E.2d 328 (Ct. App. 1994) (granting a demand for jury trial under Rule 39(b) even though the defendant did not request a jury trial until approximately a year after plaintiff filed his amended complaint).

Petitioners have not shown, and cannot show, any prejudice, expense, or delay to oppose Respondents’ demand for jury trial. Moreover, Respondents’ jury trial demands were made in responsive pleadings (albeit amended ones) and very little discovery has been conducted. In any event, “[t]he rules concerning discovery under the South Carolina Rules of Civil Procedure do not differ for jury or non-jury trials.” *Thompson v. Ashpes*, No. 2010-CP-32- 05206, 2012 WL 12127218, at *2 (S.C.Com.Pl. Apr. 26, 2012)

[SIGNATURE ON FOLLOWING PAGE]

to a breach of contract claim where the only remedy is money damages. *See Trotter v. Trotter*, 490 So. 2d 827, 831–32 (Miss. 1986) (“However, a breach of a contract not to revoke a will is just that: a breach of a contract. It is not grounds for contesting the will pertaining to the contract.”) (citing *In Re Estate of Schmalz*, 58 Wis.2d 220, 206 N.W.2d 141 (1973); *In Re Derousseau’s Will*, 175 Wis. 140, 184 N.W. 705, 708 (1921)). Petitioners are seeking money damages as a result of the alleged breach of contract, and therefore, a jury trial as a matter of right is appropriate.

s/Bijan K. Ghom

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Bijan K. Ghom

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ATTORNEYS FOR RESPONDENT

PAULA M. STROBEL

Charleston, South Carolina
June 24, 2024

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN RE: ESTATE OF
JAMES L. STROBEL, Deceased,

DANIEL LLOYD STROBEL;
JAMES ANDREW STROBEL; JOHN
ANTHONY STROBEL; and
PETER NICHOLAS STROBEL
Petitioners,

vs.

PAULA M. STROBEL, as Personal Representative
of the Estate of James L. Strobel and individually;
and DOROTHY ELIZABETH STROBEL BELL, as
an interested person; and ZOIE P. OGLETREE, as
an interested person,

Respondents.

IN THE PROBATE COURT
CASE NO: 2022-ES-10-00235

EZ FILING
PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA
2022ES1000235
6/24/2024 3:14PM

2024-CP-10-4752

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the Respondent Paula M. Strobel's Motion for Jury Trial and Respondents' Motion to Amend Scheduling Order on the following via email and e-filing on June 24, 2024:

Daniel F. Blanchard, Esquire
Taylor Ambrosius, Esquire
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ATTORNEYS FOR PETITIONERS

FILED
2025 JUN 23 AM 9:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

By: /s/ Taylor Davis
Paralegal
Saxton & Stump, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF)
JAMES L. STROBEL, Deceased,)

DANIEL LLOYD STROBEL;)
JAMES ANDREW STROBEL; JOHN)
ANTHONY STROBEL; and)
PETER NICHOLAS STROBEL,)
Plaintiffs,)

**ORDER GRANTING
MOTION TO DISMISS
COUNTERCLAIMS AND
GRANTING MOTION TO STRIKE
JURY TRIAL DEMAND
OF DEFENDANT DOROTHY BELL**

vs.)

PAULA M. STROBEL, as Personal)
Representative of the Estate of James L.)
Strobel and individually; DOROTHY)
ELIZABETH STROBEL BELL, as an)
interested person; and ZOIE P.)
OGLETREE, as an interested person,)
Defendants.)



This matter came before the undersigned on June 5, 2025, for a hearing involving (a) Plaintiffs Daniel L. Strobel, James A. Strobel, John A. Strobel, and Peter N. Strobel’s (hereinafter “Plaintiffs”) Motion to Dismiss the Counterclaims filed by Defendant Dorothy E.S. Bell (hereinafter “Defendant Bell”) and (b) Plaintiffs’ Motion to Strike Defendant Bell’s demand for a jury trial.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiffs; J. Ashley Twombly, Esquire and Thomas Iandoli, Esquire of Twenge + Twombly Law Firm and Bijan K. Ghom, Esquire of Saxton & Stump, LLC, as counsel for Defendant Paula M. Strobel (hereinafter “Defendant Strobel”); Messrs. Twombly and Iandoli as counsel for Defendant Bell; and Dan M. David, Esquire and P. Michael DuPree, Esquire as counsel for Defendant Zoie P. Ogletree (hereinafter “Defendant Ogletree”).

After careful consideration of the motions, pleadings, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Dismiss Counterclaims should be GRANTED and the Motion to Strike Jury Trial Demand should be GRANTED for the reasons stated herein.

BACKGROUND

This case involves the Estate of James L. Strobel, who died on January 3, 2022. This case originated in the Probate Court and was later removed to the Circuit Court. Defendant Strobel is the personal representative for the estate. Plaintiffs are the Decedent's four sons. Their mother is Defendant Ogletree. Defendant Bell is the Decedent's daughter. Her mother is Defendant Strobel.

On December 6, 2022, Plaintiffs filed this action in the Probate Court naming as parties Defendant Strobel, as personal representative of the estate and individually, and Defendant Bell. The original petition did not demand a jury trial. It asserts claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; and (6) attorneys' fees pursuant to S.C. CODE ANN. § 62-1-111.

The original petition asserts that the Decedent breached the provisions of a written separation agreement that he executed with Defendant Ogletree, the terms of which require that he make an irrevocable will in Plaintiffs' favor leaving a portion of his estate—the greater of \$25,000 or 50% of his estate—to them in equal shares. Decedent's Last Will & Testament dated March 24, 2003 (hereinafter "Will"), which Defendant Strobel has offered for probate, does not devise or leave any portion of the Decedent's estate to any of his four sons. Instead, this Will would leave

the Decedent's entire estate to Defendant Strobel and would disinherit the Decedent's sons as well as Defendant Bell.

Plaintiffs' petition requested the court to enforce the separation agreement against the Decedent's estate. It further asserted that, following Decedent's death, Defendant Strobel took actions as personal representative to probate, administer, and distribute the estate while concealing and failing to disclose the separation agreement to the court or to the Plaintiffs and while ignoring and evading the Decedent's obligations under that agreement, including the provisions requiring the Decedent to make an irrevocable will for the Plaintiffs' benefit. The Petition alleges that Defendant Strobel breached her fiduciary duties as personal representative by acting in her own personal interests instead of the best interests of all of those with a beneficial interest in the estate.

Defendant Bell was served with the petition on January 6, 2023, but she did not answer the pleading or make an appearance in the case. On February 3, 2023, Defendant Strobel filed her answer to the petition, which did not demand a jury trial.

On September 8, 2023, Plaintiffs filed their amended petition, which added Defendant Ogletree as a party based on her status as an interested person. The amended petition does not make a demand for a jury trial. It states claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative; and (7) attorneys' fees pursuant to S.C. CODE ANN. § 62-1-111. The amended petition adds a cause of action for Defendant Strobel's removal as personal representative and adds allegations that the Decedent did not validly divorce Defendant Ogletree, thus she was his surviving spouse at his death and the Decedent's purported marriage to Defendant Strobel must be

deemed bigamous and void. The amended petition does not seek affirmative relief against Defendants Bell or Ogletree. Paragraph 22 provides: “[Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.”

On September 21, 2023, Defendant Ogletree accepted service of the amended petition. She did not answer the pleading or make an appearance. On November 17, 2023, Defendant Strobel filed an answer to the amended petition, which did not demand a jury trial. On December 18, 2023, Defendant Strobel filed her amended answer, which added a counterclaim for unjust enrichment and also added a demand for a jury trial for the first time. On January 2, 2024, Plaintiffs filed their reply to Defendant Strobel’s counterclaim. Paragraph 30 of the reply requests that Defendant Strobel’s demand for a jury trial be stricken on the basis that she is not entitled to a jury trial and because she has waived any right to a jury trial.

On February 23, 2024, through her legal counsel, Defendant Bell accepted service of the amended petition. On April 15, 2024, even though Defendant Bell had not previously made an appearance, she then filed an answer to the amended petition. In her answer, Defendant Bell alleges counterclaims against the Plaintiffs for unjust enrichment, civil conspiracy, and partition and contribution and cross-claims against Defendant Ogletree for unjust enrichment and civil conspiracy.

Defendant Bell’s answer did not expressly demand a jury trial. Rather, on April 25, 2024, Defendant Bell filed a motion for removal which asked the Probate Court to grant mandatory removal of the case to the Circuit Court on the basis that “claims have been raised entitling parties to a jury trial” See Motion for Removal filed 4.25.24.

On May 2, 2024, Plaintiffs filed a motion to strike Defendant Bell's demand for a jury trial and filed a separate motion to strike Defendant Strobel's demand for a jury trial. On May 13, 2024, Plaintiffs also filed a motion to dismiss Defendant Bell's counterclaims. On August 16, 2024, while those motions were pending, the Probate Court entered an order removing the case to the Circuit Court. The Probate Court did not resolve or decide Plaintiffs' pending motions, which are now before this Court for a determination.

LAW AND ANALYSIS

1. Motion to Dismiss Defendant Bell's Counterclaims.

The Court finds that Defendant Bell lacks standing or capacity and is not a real party in interest under S.C. R. CIV. PRO. 17(a) to assert the counterclaims alleged in her pleading.

"Standing to sue is a fundamental requirement in instituting any action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Standing is "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." S.C. Pub. Interest Found. v. S.C. Dep't of Transportation, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) (citation omitted). "To have standing, one must have a personal stake in the subject matter of the lawsuit; i.e., one must be the 'real party in interest.'" Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424, 427 (1996) (citation omitted).

Rule 17(a) also states that "[e]very action shall be prosecuted in the name of the real party in interest." S.C. R. CIV. PRO. 17(a). "A real party in interest is one who 'has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.'" Townsend, 323 S.C. at 309, 474 S.E.2d at 427. "[T]he real party in interest is 'the party who, by the substantive law, has the right sought to be enforced.'" and "[i]t is ownership of the right sought to be enforced

which qualifies one as a real party in interest.” Fisher on behalf of estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018) (quoting Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013)).

Defendant Bell’s counterclaims set forth numerous allegations that her mother, Defendant Strobel, took various actions over the years to pay bills for, improve, and maintain the properties that are part of the Decedent’s estate. The counterclaims further allege that Defendant Strobel should be reimbursed or compensated for these expenditures.

These allegations show that Defendant Bell is attempting to assert counterclaims on behalf of her mother, Defendant Strobel. The claims seek recovery for losses allegedly sustained by Defendant Strobel, not Defendant Bell. A party cannot sue for alleged harm to the rights of another party. Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (appellant lacked standing to assert error in respect to decision which affected the property rights of his wife); First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (daughter lacked standing to assert error in requiring her father to repay to a trust the income he had received from the trust after his remarriage); Burns v. Gardner, 328 S.C. 608, 617, 493 S.E.2d 356, 361 (Ct. App. 1997) (clients were not aggrieved by imposition of sanctions against their attorneys); Ballington v. Paxton, 327 S.C. 372, 381-82, 488 S.E.2d 882, 887-88 (Ct. App. 1997) (appellants lacked standing to raise issues on behalf of their cousins); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct. App. 1985) (party cannot raise issue that does not pertain to the party).

Defendant Bell lacks standing to seek recovery on her mother’s behalf. As a result, Defendant Bell’s counterclaims fail to allege facts supporting a cause of action against the Plaintiffs as a matter of law and must be dismissed.¹

¹ At the hearing on June 5, 2025, counsel for Defendants Strobel and Bell argued for the first time

Defendant Bell's Counterclaim for civil conspiracy also fails to allege facts supporting a cause of action against the Plaintiffs as a matter of law. This claim alleges that in 2013 the Plaintiffs allegedly conspired with their mother (Defendant Ogletree) to receive benefits from the Estate of the late Ollie M. Ogletree by claiming that Defendant Ogletree was Ollie's wife. This claim also alleges that despite Defendant Ogletree's receipt of property from Ollie's estate as his surviving spouse, Plaintiffs have now asserted in this action that the Decedent never obtained a valid divorce from Defendant Ogletree and, as a result, the Decedent was still married to her at the time of his death, thus Defendant Strobel's subsequent marriage to the Decedent was bigamous and invalid pursuant to S.C. CODE ANN. § 20-1-80. If Decedent never divorced Defendant Ogletree, she could be entitled to receive a portion of the Decedent's estate in accordance with the intestacy provisions of S.C. Code Ann. §§ 62-2-101 *et seq.* if it is determined that he died without a valid Will.

that the court could allow Defendant Strobel to substitute in place of Defendant Bell under S.C. R. CIV. PRO. 17(a). Notably, neither Defendant Strobel nor Defendant Bell has made a motion for substitution under Rule 17(a). Even if such a motion had been made, Rule 17(a) counsels against the dismissal of an action on the grounds that it is not prosecuted in the name of the real party in interest "*until a reasonable time has been allowed, after objection, for ratification of*" the action by the real party in interest. S.C. R. CIV. PRO. 17(a) (emphasis added). "[T]his language places the burden on the 'plaintiff who is not the real party in interest [to] show ... that he did not have a reasonable time to correct the pleading deficiency.'" BCC Merch. Sols., Inc. v. Jet Pay, LLC, 129 F. Supp. 3d 440, 459 (N.D. Tex. 2015) (citing Wieburg v. GTE Sw., Inc., 71 Fed. Appx. 440, 2003 WL 21417074, at *2 (5th Cir. June 2, 2003)).

In this case, Plaintiffs notified the Defendants of their objection to Defendant Bell's standing in their Motion to Strike Demand for Jury Trial originally filed in the Probate Court on May 2, 2024, and subsequently refiled in the Circuit Court on October 15, 2024. See Motion to Strike p.4 n.1. Although represented by the same legal counsel and despite having more than reasonable time to move for substitution, Defendants Bell and Strobel failed to do so. They waited for over 13 months to raise the prospect of substitution at the June 5 hearing. Under this circumstance, Rule 17(a) permits the dismissal of the action. Fisher on behalf of estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 239, 811 S.E.2d 739, 741 (2018); see Wieburg, 2003 WL 21417074, at *2 (finding "[s]even months is more than reasonable" for plaintiff to have sought leave pursuant to Rule 17(a)); BCC Merch. Sols., 129 F. Supp. 3d at 459-60 (eight months notice is more than reasonable); Carranza v. Madrigal, 354 P.3d 389, 392 (Ariz. 2015) (party did not seek substitution within reasonable time when waited more than a year after objection).

Defendant Bell’s claim argues that Plaintiffs and Defendant Ogletree are seeking “to obtain [a] double inheritance” and states in conclusory fashion that “Strobel and Bell, directly or indirectly, suffered special damages as set forth herein, including but not limited to the loss of the expected inheritance and gifts from Decedent as desired by Decedent.” See Counterclaim ¶ 171.² Of course, a motion to dismiss admits the facts well-pleaded in the complaint but does not admit conclusions of law pleaded therein. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293, 296 (1981); Carolina Winds Owners’ Ass’n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988). “[A]llegations which are conclusory rather than factual should be disregarded.” Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989).

The court is unaware of any law—and Defendant Bell has failed to cite any—where our courts have recognized a cause of action for civil conspiracy to obtain a “double inheritance” or under factual circumstances analogous to this case. Even assuming for argument’s sake that such a “double inheritance” could support a civil conspiracy, this claim fails because Defendant Bell does not allege any facts showing that she was injured due to the alleged conspiracy. While her counterclaim states a conclusion that she suffered “the loss of the expected inheritance and gifts from Decedent as desired by Decedent,” the counterclaim does not allege any facts showing that she is a beneficiary of Decedent’s Will dated March 24, 2003. That Will does not devise any

² Plaintiffs’ counsel provided the Court with the Probate Court’s file for Ollie’s estate. The file shows no distribution of any assets from Ollie’s estate to Defendant Ogletree or the Plaintiffs. The file indicates that Ollie named Defendant Ogletree as the beneficiary of his estate under the terms of his Last Will & Testament. Thus, to the extent Defendant Ogletree could be entitled to receive assets from Ollie’s estate, she would do so by virtue of her status as the devisee named in his Will, not as his surviving spouse. The file belies the linchpin of Defendant Bell’s civil conspiracy claim, which asserts that Defendant Ogletree would improperly receive both Ollie’s and Decedent’s estates as their surviving spouses. When considering a motion to dismiss, the court may consider materials that are public records or are otherwise appropriate for the taking of judicial notice. See S.C. R. EVID. 201(f); Doe v. Bishop of Charleston, 407 S.C. 128, 135 n.2, 754 S.E.2d 494, 498 n.2 (2014). This Court takes judicial notice of the Probate Court’s file involving Ollie’s estate.

portion of Decedent's estate to Defendant Bell. Rather, under its terms, Decedent made Defendant Strobel the *sole* beneficiary of his entire estate. Decedent's Will makes clear that, if Defendant Strobel survived him, he did *not* desire for Defendant Bell to receive any inheritance or gifts from his estate upon his death.³

Likewise, Defendant Bell's counterclaim does not allege that she is a beneficiary of the separation agreement which the Plaintiffs seek to enforce. That agreement was executed several years *before* Defendant Bell was born. Given that Defendant Bell is not a beneficiary of the Decedent's Will or the separation agreement, she could not be damaged by the alleged civil conspiracy because she would not have received any portion of the Decedent's estate even absent the alleged conspiracy. The facts as alleged in the counterclaim do not state an actionable claim against the Plaintiffs as a matter of law.

Finally, Defendant Bell's counterclaim for civil conspiracy also fails for lack of subject matter jurisdiction. As noted above, this case originated in the Probate Court and was later removed to this court pursuant to S.C. CODE ANN. § 62-1-302. This court is only exercising derivative jurisdiction based on the removal of the case from the Probate Court.

The Probate Court "is not a constitutional court," but is vested with only such specific and limited subject matter jurisdiction as is granted to it by statute. Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011); Still v. Vaughn, No. 2018-000500, 2021 WL 5232311, at *2 (S.C. Ct. App. Nov. 10, 2021), reh'g denied (Dec. 16, 2021); see S.C. CODE ANN. § 62-1-302. The Probate Court has no subject matter jurisdiction over any *in personam* claims that Defendant Bell may wish to assert against Plaintiffs in their individual capacities. See In re Guardianship of Gibbs,

³ Plaintiffs and Defendant Bell are only named as contingent remainder beneficiaries under the Decedent's Will should Defendant Strobel predecease him. However, because Defendant Strobel survived the Decedent, the Will's provisions involving contingent beneficiaries are inapplicable.

253 S.W.3d 866, 872-73 (Tex. Ct. App. 2008) (dismissing claims of restitution and breach of fiduciary duty brought in probate court by one sibling trust beneficiary against other sibling trust beneficiaries alleging that defendants had wrongfully induced mother to withdraw funds from her trust because of probate court's lack of subject matter jurisdiction over *in personam* claims); Stauffer v. Nicholson, 438 S.W.3d 205, 213 (Tex. Ct. App. 2014) (dismissing plaintiff's *in personam* claims filed against defendant in probate court seeking recovery of damages for plaintiff personally because probate court lacked subject matter jurisdiction over such claims); Roll v. Edwards, 805 N.E.2d 162, 168 (Ohio Ct. App. 2004) (holding that probate court lacks subject matter jurisdiction over *in personam* claim for intentional interference with expectancy of inheritance); In re Morgan, 833 S.W.2d 776 (Ark. 1992) (dismissing counterclaim for negligence stemming from injuries sustained in a football game that was filed in probate court action because probate court lacked subject matter jurisdiction over such an *in personam* counterclaim); Eddleman v. Estate of Farmer, 740 S.W.2d 141 (Ark. 1987) (dismissing claim for personal injuries stemming from alleged sexual abuse that was filed in probate court because the probate court did not have subject matter jurisdiction over the action).

The Probate Court lacks subject matter jurisdiction over Defendant Bell's *in personam* claims against Plaintiffs. Jurisdiction over such a claim is properly in the Circuit Court in the first instance, not a claim filed in the Probate Court and then removed to the Circuit Court under § 62-1-302. Defendant Bell did not pursue a civil conspiracy claim in the Circuit Court in the first instance. She instead chose to assert her claim as a counterclaim in the Probate Court, which lacks subject matter jurisdiction over the claim. See Still, 2021 WL 5232311 at *3 ("Although a will contest action may be removed to circuit court under certain circumstances, the Probate Code requires that a will contest action be initiated in the probate court.... Therefore, the circuit court

lacked subject matter jurisdiction over the will contest action in the Original Case because it was not initially filed in the probate court.”). Defendant Bell’s counterclaim for civil conspiracy is not within this Court’s subject matter jurisdiction as delineated in § 62-1-302. The civil conspiracy claim must be dismissed.

2. Motion to Strike Defendant Bell’s Demand for Jury Trial.

Section 62-1-306(a) of the South Carolina Probate Code (SCPC), which is entitled “Jury trials,” provides:

(a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.

S.C. CODE ANN. § 62-1-306(a).

Plaintiffs’ amended petition does not seek any recovery from Defendant Bell, much less any claim against her for the recovery of money or of specific real or personal property. It does not request that Defendant Bell be required to pay any money, to convey any property to Plaintiffs, or to compensate Plaintiffs for any injuries. Paragraph 22 of the amended petition states: “[Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.” See Amend. Petition ¶22.

Because the Amended Petition does not allege any claims against Defendant Bell, there are no claims against her that would entitle her to a jury trial. Carolina First Bank v. BADD, L.L.C., 414 S.C. 289, 294, 778 S.E.2d 106, 108 (2015), abrogated other grounds by Deutsche Bank Nat’l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck, 440 S.C. 409, 892 S.E.2d 280 (2023) (inclusion of

guarantor as party to lender's foreclosure action pursuant to § 29-3-660 only for the purpose of collecting a deficiency should one be adjudged did not entitle guarantor to a jury trial). Furthermore, to the extent Defendant Bell has requested a jury trial involving her counterclaims against the Plaintiffs, the court is dismissing those counterclaims for the reasons discussed above. Accordingly, Defendant Bell's request for a jury trial involving her counterclaims is now moot.

In summary, Defendant Bell is not entitled to a jury trial on the Plaintiff's claims because those claims do not seek any recovery from her. Defendant Bell is not entitled to a jury trial on her counterclaims because those claims are being dismissed. Accordingly,

IT IS ORDERED that Plaintiffs' Motion to Strike Demand for Jury Trial of Defendant Dorothy E.S. Bell, which motion was originally filed in the Probate Court on May 2, 2024, and was subsequently refiled in the Circuit Court on October 15, 2024, is hereby GRANTED; and

IT IS ORDERED that Plaintiffs' Motion to Dismiss Counterclaims of Defendant Dorothy E.S. Bell, which motion was originally filed in the Probate Court on May 13, 2024, and was subsequently refiled in the Circuit Court on October 15, 2024, is hereby GRANTED; and

AND IT IS SO ORDERED!

S. Bryan Doby
Presiding Circuit Court Judge
Court of Common Pleas
Ninth Judicial Circuit

This ____ day of _____, 2025.

_____, South Carolina.



Charleston Common Pleas

Case Caption: Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al
Case Number: 2024CP1004752
Type: Order/Other

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF)
JAMES L. STROBEL, Deceased,)



DANIEL LLOYD STROBEL;)
JAMES ANDREW STROBEL; JOHN)
ANTHONY STROBEL; and)
PETER NICHOLAS STROBEL,)
Plaintiffs,)

**ORDER DEFERRING
PLAINTIFFS' MOTION TO STRIKE
JURY TRIAL DEMAND
OF DEFENDANT PAULA M. STROBEL**

vs.)

PAULA M. STROBEL, as Personal)
Representative of the Estate of James L.)
Strobel and individually; DOROTHY)
ELIZABETH STROBEL BELL, as an)
interested person; and ZOIE P.)
OGLETREE, as an interested person,)
Defendants.)

This matter came before the undersigned on June 5, 2025, for a hearing involving Plaintiffs Daniel L. Strobel, James A. Strobel, John A. Strobel, and Peter N. Strobel's (hereinafter "Plaintiffs") Motion to Motion to Strike Defendant Paula M. Strobel's (hereinafter "Defendant Strobel") demand for a jury trial.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiffs; J. Ashley Twombly, Esquire and Thomas Iandoli, Esquire of Twenge + Twombly Law Firm and Bijan K. Ghom, Esquire of Saxton & Stump, LLC, as counsel for Defendant Strobel; Messrs. Twombly and Iandoli as counsel for Defendant Dorothy E.S. Bell (hereinafter "Defendant Bell"); and Dan M. David, Esquire and P. Michael DuPree, Esquire as counsel for Defendant Zoie P. Ogletree (hereinafter "Defendant Ogletree").

After careful consideration of the motions, pleadings, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that Plaintiffs'

Motion to Strike Jury Trial Demand of Paula M. Strobel should be DEFERRED for the reasons stated herein.

This case involves the Estate of James L. Strobel. The case originated in the Probate Court and was later removed to the Circuit Court. Defendant Strobel is the personal representative for the estate. Plaintiffs are the Decedent's four sons. Their mother is Defendant Ogletree. Defendant Bell is the Decedent's daughter. Her mother is Defendant Strobel.

On September 8, 2023, Plaintiffs filed their Amended Petition, which does not make a demand for a jury trial. The Amended Petition avers claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative; and (7) attorneys' fees pursuant to S.C. CODE ANN. § 62-1-111.

On November 17, 2023, Defendant Strobel filed her Answer to the Amended Petition, which did not demand a jury trial. On December 18, 2023, Defendant Strobel filed her Amended Answer to the Amended Petition, which includes a demand for a jury trial for the first time.

On May 2, 2024, Plaintiffs filed a Motion to Strike Defendant Strobel's demand for a jury trial. On May 14, 2024, Defendant Strobel filed a Motion to Amend Answer which requests permission to amend her pleading to assert a counterclaim for civil conspiracy. On August 16, 2024, while those motions were pending, the Probate Court entered an order removing the case to the Circuit Court. The Probate Court did not resolve the pending motions.

On October 15, 2024, after removal of the case, Plaintiffs refiled their Motion to Strike Defendant Strobel's demand for a jury trial with the Circuit Court. However, Defendant Strobel did not refile her separate Motion to Amend Answer. Consequently, when the Clerk of Court

scheduled a hearing for June 5, 2025, the motions roster included Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial, but it did not include Defendant Strobel's Motion to Amend Answer. The undersigned felt it improper to hear Defendant Strobel's Motion to Amend Answer at the June 5 hearing when that motion had not been properly noticed.

The undersigned finds it appropriate for the Court to hear and determine Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial along with or at the same time as Defendant Strobel's Motion to Amend Answer. Accordingly, the Court will defer a ruling on Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial until such time as the Court can notice and conduct a hearing on Defendant Strobel's Motion to Amend Answer. The undersigned expresses no opinion involving whether Defendant Strobel should be granted leave to amend her pleadings, whether she should be granted a jury trial, or whether her request for a jury trial should be denied. The parties' arguments and positions are preserved without prejudice. Accordingly,

IT IS ORDERED that Plaintiffs' Motion to Strike Demand for Jury Trial of Defendant Paula M. Strobel, which motion was originally filed in the Probate Court on May 2, 2024, and was subsequently refiled in the Circuit Court on October 15, 2024, is hereby DEFERRED. Said motion will be scheduled for a hearing to be conducted at the same time as Defendant Strobel's Motion to Amend Answer, which motion was originally filed in the Probate Court on May 13, 2024, and was later refiled in the Circuit Court on June 23, 2025;

AND IT IS SO ORDERED!

S. Bryan Doby
Presiding Circuit Court Judge
Court of Common Pleas
Ninth Judicial Circuit

This ____ day of _____, 2025.

_____, South Carolina.



Charleston Common Pleas

Case Caption: Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al
Case Number: 2024CP1004752
Type: Order/Other

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1004752

Daniel Lloyd Strobel et al
PLAINTIFF(S)

Paula M Strobel et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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



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

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

This matter is before the Court pursuant to Rule 59 (e) SCRPC. The Defendant seeks an Order of this Court amending or altering two orders dated July 31st, 2025: Order Granting Petitioners' Motion to Compel and Order Granting Petitioners' Motion to Dismiss Counterclaims & Strike Jury Trial Demand. Pursuant to Rule 59 (f) SCRPC, this Court determines that the motion to alter or amend may be decided without briefs filed by the parties and without oral argument. Having duly considered the motion to alter or amend of the Defendant, this Court has determined that its original Orders dated July 31st, 2025 are fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Orders are therefore DENIED.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/24/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al
Case Number: 2024CP1004752
Type: Order/Electronic Form 4

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF)
JAMES L. STROBEL, Deceased,)

DANIEL LLOYD STROBEL;)
JAMES ANDREW STROBEL; JOHN)
ANTHONY STROBEL; and)
PETER NICHOLAS STROBEL,)
Plaintiffs,)

**ORDER DENYING
MOTION TO AMEND ANSWER
AND DENYING MOTION TO
FOR JURY TRIAL**

vs.)

PAULA M. STROBEL, as Personal)
Representative of the Estate of James L.)
Strobel and individually; DOROTHY)
ELIZABETH STROBEL BELL, as an)
interested person; and ZOIE P.)
OGLETREE, as an interested person,)
Defendants.)



This matter came before the undersigned on August 27, 2025, for a hearing involving (1) Defendant Paula M. Strobel's (hereinafter "Defendant Strobel") Motion to Amend Answer, which motion was originally filed in the Probate Court on May 13, 2024, and was later refiled in the Circuit Court on June 23, 2025, and (2) Defendant Strobel's Motion for Jury Trial, which motion was originally filed in the Probate Court on June 24, 2024, and was later refiled in the Circuit Court on June 23, 2025.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiffs Daniel L. Strobel, James A. Strobel, John A. Strobel, and Peter N. Strobel's (hereinafter "Plaintiffs"); J. Ashley Twombly, Esquire of Twenge + Twombly Law Firm and Bijan K. Ghom, Esquire of Saxton & Stump, LLC, as counsel for Defendant Strobel; and Mr. Twombly as counsel for Defendant Dorothy E.S. Bell (hereinafter "Defendant Bell").

After careful consideration of the motions, pleadings, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Amend Answer and the Motion for Jury Trial should be DENIED for the reasons stated herein.

BACKGROUND

This case involves the Estate of James L. Strobel, who died on January 3, 2022. The case originated in the Probate Court and was removed to the Circuit Court. Defendant Strobel is the personal representative for the estate. Plaintiffs are the Decedent's four sons. Their mother is Defendant Zoie P. Ogletree (hereinafter "Defendant Ogletree"). Defendant Bell is the Decedent's daughter. Her mother is Defendant Strobel.

On December 6, 2022, Plaintiffs commenced this action by filing their Petition in the Probate Court naming as parties Defendant Strobel (individually and as personal representative of the estate) and Defendant Bell. The Petition does not demand a jury trial. It also does not seek any affirmative relief against Defendant Bell. Paragraph 13 states: "[Defendant Bell] is named as a party to this action solely because, upon information and belief, she is a potential heir and an interested person with respect to Decedent's estate, and her interest may be adversely affected by this Action."

In their Petition, Plaintiffs seek to enforce the provisions of a written separation agreement that Decedent executed with Defendant Ogletree dated March 4, 1977. The Petition contends that the separation agreement required the Decedent to make an irrevocable will leaving a portion of his estate to Plaintiffs in equal shares. Decedent's Last Will & Testament dated March 24, 2003 (hereinafter "Will"), which Defendant Strobel filed for probate after Decedent's death, does not devise or leave any portion of Decedent's estate to his four sons (the Plaintiffs) or his daughter (Defendant Bell). Rather, the Will would leave the Decedent's entire estate to Defendant Strobel.

The Petition asserts claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; and (6) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

On February 3, 2023, Defendant Strobel filed her Answer to the Petition. The Answer did not make a demand for a jury trial. Defendant Bell was served with the Petition on January 6, 2023. However, she did not answer or respond to the Petition.

On September 8, 2023, Plaintiffs filed an Amended Petition, which again does not demand a jury trial. The Amended Petition adds Defendant Ogletree as an interested person, adds a cause of action for Defendant Strobel’s removal as personal representative of the estate, and seeks a declaratory judgment that the Decedent’s divorce from Defendant Ogletree obtained in the Dominican Republic is invalid, thus Defendant Ogletree was the Decedent’s surviving spouse at his death and the Decedent’s marriage to Defendant Strobel is bigamous and void under state law. The Amended Petition does not seek any affirmative relief against Defendants Bell or Ogletree. Paragraph 22 states: “[Defendants Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.”

The Amended Petition raises claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative; and (7) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

On September 21, 2023, Defendant Ogletree was served with the Amended Petition. However, she did not answer or otherwise respond to the Amended Petition.

On November 17, 2023, Defendant Strobel filed her Answer to the Amended Petition. The Answer did not make a demand for a jury trial. On December 18, 2023, Defendant Strobel then filed her Amended Answer to the Amended Petition, which adds a counterclaim for Unjust Enrichment and also adds a demand for a jury trial for the first time.

On January 2, 2024, Plaintiffs filed their reply to Defendant Strobel's counterclaim. Paragraph 30 of the reply requests that Defendant Strobel's demand for a jury trial be stricken on the basis that she is not entitled to a jury trial and because she has waived any right to a jury trial.

On February 23, 2024, through her legal counsel, Defendant Bell accepted service of the Amended Petition and appeared in the case for the first time. Her attorneys also represent Defendant Strobel. On April 15, 2024, Defendant Bell filed her Answer to the Amended Petition even though it makes no claim against her. Her Answer also alleges counterclaims against the Plaintiffs for Unjust Enrichment, Civil Conspiracy, and Partition and Contribution and cross-claims against Defendant Ogletree for Unjust Enrichment and Civil Conspiracy.

Defendant Bell's Answer did not demand a jury trial. Nevertheless, on April 25, 2024, Defendant Bell filed a motion for removal asking the Probate Court to grant mandatory removal of the case to the Circuit Court on the basis that "claims have been raised entitling parties to a jury trial" See Motion for Removal filed 4.25.24. Defendant Bell apparently treated this as a demand for a jury trial.

On May 2, 2024, Plaintiffs filed a motion to strike Defendant Bell's demand for a jury trial and a separate motion to strike Defendant Strobel's demand for a jury trial. On May 13, 2024, Plaintiffs also filed a motion to dismiss Defendant Bell's counterclaims.

On June 24, 2024, Defendant Strobel filed a Motion for Jury Trial. On July 5, 2024, Plaintiffs filed a memorandum in opposition to Defendant Strobel's Motion for Jury Trial.

On August 16, 2024, the Probate Court entered an order removing the case to the Circuit Court. The Probate Court did not resolve or decide the parties' pending motions.

On October 15, 2024, following removal of the case, Plaintiffs refiled their pending motions with the Circuit Court, including their motion to dismiss Defendant Bell's counterclaims, their motion to strike Defendant Bell's demand for a jury trial, and their motion to strike Defendant Strobel's demand for a jury trial.

On July 31, 2025, following a hearing conducted on June 5, 2025, Circuit Judge S. Bryan Doby granted Plaintiff's motion to dismiss Defendant Bell's counterclaims and granted Plaintiffs' motion to strike Defendant Bell's demand for a jury trial.¹ On August 25, 2025, Judge Doby denied Defendant Bell's Motion to Alter or Amend his prior Order.

LAW AND ANALYSIS

1. Motion to Amend Answer.

Defendant Strobel seeks leave to amend her Answer to add a new counterclaim against Plaintiffs for "civil conspiracy." Plaintiffs oppose the motion on the basis, *inter alia*, that

¹ Although Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial was also set for a hearing before Judge Doby on June 5, 2025, he deferred that motion and directed that it be rescheduled for another hearing to be held simultaneously with Defendant Strobel's Motion to Amend Answer, which she had not yet refiled after the case was removed to the Circuit Court.

Despite Judge Doby's Order, Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial was not placed on the August 27, 2025, motions roster along with Defendant Strobel's Motion to Amend Answer and her Motion for Jury Trial, which motions had since been refiled in the Circuit Court. Consequently, even though Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial involves the same issues and arguments as Defendant Strobel's Motion for Jury Trial, which was heard on August 27, the undersigned did not take up Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial at that hearing. Plaintiffs' Motion to Strike will be scheduled for a future hearing date.

Defendant Strobel did not provide a proposed amended pleading with her motion and, even if such a document had been provided, the proposed amendment would be futile.

Defendant Strobel's motion does not attach or provide a proposed amended pleading or set forth any other information regarding the proposed new counterclaim. The motion merely states that Defendant Strobel wants to add a new counterclaim for "civil conspiracy." Nothing other than a label is given. The Court is left to speculate as to the factual basis for the proposed counterclaim. Simply reciting a label is insufficient to state a valid cause of action as a matter of law. A proper pleading "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." McCleary-Evans v. Maryland Dep't of Transp., State Highway Admin., 780 F.3d 582, 585 (4th Cir. 2015).

Courts have denied motions to amend pleadings where a copy of the proposed new pleading was not attached to or filed with the motion to amend. See, e.g., Johnson v. Roach, No. CV 0:18-996-HMH-PJG, 2018 WL 5458692, at *2 (D.S.C. Oct. 29, 2018) (denying motion to amend for failure to attached proposed amendment where it is unclear what claims, if any, plaintiff was seeking to bring). Pet Helpers, Inc. v. Frisco, No. 2022-000775, 2025 WL 1650100, at *1 (S.C. Ct. App. June 11, 2025) ("[W]e hold the circuit court did not abuse its discretion [in denying motions to amend] because Frisco did not provide a proposed amended pleading with either her second or third motions to amend, which would have been necessary to enable the circuit court—and this court—to determine if Pet Helpers would suffer prejudice as a result of the amendment.").

This case was initially filed in the Probate Court on December 6, 2022, and has been pending for almost three years. Defendant Strobel has had more than ample opportunity to obtain discovery, develop the facts, and prepare a pleading that properly states the factual basis for her proposed new counterclaim. She has not given a reason justifying her failure to file a proposed

amended pleading with her motion. This failure compels the denial of her motion.²

Without this document, the Court cannot determine the factual bases upon which the new counterclaim would be asserted, which “severely handicaps [the] court’s ability to determine whether or not the amendment would be proper.” D.R. Horton, Inc. v. Landbank Fund VIII, LLC, No. 4:08-CV-1711-TLW-TER, 2009 WL 10678195, at *1 (D.S.C. Mar. 31, 2009) (denying motion to amend and citing to cases interpreting Rule 15 to require party seeking to amend to attach a copy of the proposed amendments to the motion); Duncan v. Clarke, 2015 WL 2218240, at *2 n.1 (E.D. Va. May 11, 2015) (denying motion for leave to amend where plaintiff “failed to submit his proposed amended complaint with the Rule 15 motion”). The Court denies Defendant Strobel’s motion based on her failure to attach a copy of her proposed new counterclaim to her motion.

Even if Defendant Strobel had provided a proposed amended pleading, the Court still finds that her attempt to raise a counterclaim for civil conspiracy would be futile. Our state law holds that a motion to amend the pleadings should be denied when the proposed amendment would be futile. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017). In Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (2013), the supreme court affirmed the circuit judge’s denial of the plaintiff’s motion to amend its complaint seeking to add new causes of action for civil conspiracy on the basis the amendments would be “futile.” Id. at 632-33, 743 S.E.2d at 813; see also Couram v. Davis, No. 2015-UP-065, 2015 WL 477266, at *1 (S.C. Ct. App. Feb. 4, 2015) (finding circuit court properly denied plaintiff’s motion to amend her

² It is noteworthy that Plaintiffs’ memorandum in opposition to Defendant Strobel’s Motion for Jury Trial, which was filed on July 5, 2024, while the case was in the Probate Court, specifically pointed out that the motion should be denied due to Defendant Strobel’s failure to attach a copy of her proposed amended counterclaim to her motion. Despite this fact, Defendant Strobel did not attach a proposed amended pleading to her motion when she refiled it in the Circuit Court on June 23, 2025, nor did she submit such a document at any prior to the August 27, 2025, hearing.

complaint on the grounds the amendment would be futile).

In the present case, allowing Defendant Strobel to amend her pleading would be futile because this Court does not have subject matter jurisdiction over her proposed claim for civil conspiracy. As discussed above, this case originated in the Probate Court and was later removed to this Court pursuant to S.C. CODE ANN. § 62-1-302. This Court is only exercising derivative jurisdiction based on the removal of the case from the Probate Court.

As Judge Doby previously ruled in this case in his Order filed on July 31, 2025, the Probate Court “is not a constitutional court,” but is vested with only such specific and limited subject matter jurisdiction as is granted to it by statute. See Judge Doby Order filed 7.31.25 p.9; Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011); Still v. Vaughn, No. 2018-000500, 2021 WL 5232311, at *2 (S.C. Ct. App. Nov. 10, 2021), reh'g denied (Dec. 16, 2021); see also S.C. CODE ANN. § 62-1-302. Judge Doby’s Order observed that the Probate Court has no subject matter jurisdiction over *in personam* tort claims that Defendant may wish to assert against Plaintiffs in their individual capacities. See Judge Doby Order filed 7.31.25 p.9; see also In re Guardianship of Gibbs, 253 S.W.3d 866, 872-73 (Tex. Ct. App. 2008) (dismissing claims of restitution and breach of fiduciary duty brought in probate court by one sibling trust beneficiary against other sibling trust beneficiaries alleging that defendants had wrongfully induced mother to withdraw funds from her trust because of probate court’s lack of subject matter jurisdiction over *in personam* claims); Stauffer v. Nicholson, 438 S.W.3d 205, 213 (Tex. Ct. App. 2014) (dismissing plaintiff’s *in personam* claims filed against defendant in probate court seeking recovery of damages for plaintiff personally because probate court lacked subject matter jurisdiction over such claims); Roll v. Edwards, 805 N.E.2d 162, 168 (Ohio Ct. App. 2004) (holding that probate court lacks subject matter jurisdiction over *in personam* claim for intentional interference with expectancy of

inheritance); In re Morgan, 833 S.W.2d 776 (Ark. 1992) (dismissing counterclaim for negligence stemming from injuries sustained in a football game that was filed in probate court action because probate court lacked subject matter jurisdiction over such an *in personam* counterclaim); Eddleman v. Estate of Farmer, 740 S.W.2d 141 (Ark. 1987) (dismissing claim for personal injuries stemming from alleged sexual abuse that was filed in probate court because the probate court did not have subject matter jurisdiction over the action).

As Judge Doby held, the Probate Court lacks subject matter jurisdiction over an *in personam* tort claim against Plaintiffs. Jurisdiction over such a claim properly lies in the Circuit Court *in the first instance*, not a claim filed in the Probate Court and then removed to the Circuit Court under § 62-1-302. See Judge Doby Order filed 7.31.25 p.9; see also Still, 2021 WL 5232311 at *3 (“Although a will contest action may be removed to circuit court under certain circumstances, the Probate Code requires that a will contest action be initiated in the probate court.... Therefore, the circuit court lacked subject matter jurisdiction over the will contest action in the Original Case because it was not initially filed in the probate court.”).

The undersigned concurs with Judge Doby. Defendant Strobel’s counterclaim for civil conspiracy is not within this Court’s subject matter jurisdiction as delineated in § 62-1-302.

Further, although the precise allegations of Defendant Strobel’s proposed counterclaim are unknown given the absence of a proposed amended pleading, her counsel expressed at the hearing that her proposed new claim is based on theories that the Decedent and Defendant Ogletree supposedly conspired with each other in 1977 or acted *in pari delicto* to obtain an illegal divorce from a court in the Dominican Republic. These arguments are not stated in Defendant Strobel’s motion and were raised for the first time at the hearing. Even assuming *arguendo* these arguments were properly raised, Plaintiffs’ counsel pointed out in response that the separation agreement

between Decedent and Defendant Ogletree which they seek to enforce was executed prior to any divorce between Decedent and Defendant Ogletree in the Dominican Republic and the agreement does not provide it is dependent or contingent upon the parties ever obtaining a valid divorce. Plaintiffs assert the separation agreement is valid even if the divorce is illegal or invalid.

Settled law recognizes an important caveat to the general rule that courts will not enforce an illegal contract. In Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975), the court held that despite the rule that the courts will not enforce an illegal transaction, “the principle is recognized that, if there is an independent contract, not forbidden by law, on which the action is brought, the independent contract is enforceable even though it be with respect to the proceeds of an illegal transaction.” Nelson v. Bryant, 265 S.C. 558, 561, 220 S.E.2d 647, 648 (1975); see also Graham v. Graham, 276 S.C. 341, 343, 278 S.E.2d 345, 346 (1981) (holding that subsequent agreement to sell portions of property obtained through an illegal scheme to chill bids at a judicial sale was valid and enforceable contract despite the invalidity of the prior scheme); Cherry v. Thomasson, 276 S.C. 524, 527, 280 S.E.2d 541, 542 (1981) (“Equity will allow a party to recover on an enforceable, legal contract as long as the right to be vindicated arises under that contract and not under an independent illegal agreement.”). In this case, even if the divorce between Decedent and Defendant Ogletree is illegal or void for some reason, the separation agreement is independent and separate from any divorce between them. It is enforceable despite an invalid divorce.

Defendant Strobel’s Motion to Amend Answer is denied because the proposed new counterclaim for civil conspiracy would be futile.

2. Motion for Jury Trial.

Defendant Strobel’s motion requests a jury trial “in accordance with [South Carolina Rule of Civil Procedure] 39(b).” See Def. Strobel’s Motion for Jury Trial p.1. Her motion further states

that she has “demanded a jury trial on all issues so triable as a matter of right pursuant to ... Rule 38.” *Id.* Her motion does not address the provisions of the South Carolina Probate Code (SCPC).

The SCPC applies to Defendant Strobel’s jury demand because this case originated in the Probate Court. SCPC § 62-1-306, which is entitled “Jury trials,” provides as follows:

- (a) If duly demanded, a party *is entitled to trial by jury* in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, *unless waived as provided in the rules of civil procedure for the courts of this State*. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.
- (b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, *in which case the verdict is advisory only*.

S.C. CODE ANN. § 62-1-306(a)-(b) (emphasis added).

The right to a jury trial provided in subsection (a) may be waived as provided in the South Carolina Rules of Civil Procedure. *See Matter of Howard*, 315 S.C. 356, 362 n.6, 434 S.E.2d 254, 258 n.6 (1993) (tracing history of § 62-1-306(a)). Rules 38(b) & (d) specifically deal with a party’s waiver of the right to a jury trial. They state in pertinent part as follows:

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action *and not later than 10 days after the service of the last pleading directed to such issue*. Such demand may be endorsed upon a pleading of the party. . . .

(d) Waiver. *The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. . . .*

S.C. R. CIV. PRO. 38(b), (d) (emphasis added). Taken together, the SCPC and the rules make clear that a party’s failure to serve a demand for a jury trial within ten days of the service of the last pleading directed to such issue constitutes a waiver of the right to a trial by jury.

In the instant case, Defendant Strobel is not entitled to a jury trial as a matter of right under § 62-1-306(a) and Rule 38(b) because she waived this right by not making a timely demand for a

jury trial in her pleadings. Additionally, the Court denies her invitation to exercise its discretion to conduct a jury trial for advisory purposes only under § 62-1-306(b) or Rule 39(b) because there are no special or exceptional circumstances warranting a jury trial in this case.

(a) Jury Trial as a Matter of Right – § 62-1-306(a) and Rule 38(b):

A party's failure to serve a demand for a jury trial within ten days of the service of the last pleading directed to such issue constitutes a waiver of the right to a trial by jury. See S.C. CODE ANN. § 62-1-306(a); S.C. R. CIV. PRO. 38(b), (d). Plaintiffs filed their Amended Petition on September 8, 2023. While Defendant Strobel filed her initial Answer to the Amended Petition on November 17, 2023, she did not make a demand for a jury trial in that pleading. Consequently, her ten days in which to demand a jury trial expired on November 27, 2023. She did not make a demand for a jury trial until December 18, 2023, which is when she filed and served her Amended Answer to the Amended Petition and raised a new Counterclaim for Unjust Enrichment.

The fact that Defendant Strobel filed an Amended Answer and Counterclaim did not revive her right to demand a jury trial. Our Court of Appeals addressed this situation in Zurich Am. Ins. Co. of Illinois v. Palmetto Cont. Servs., Inc., 434 S.C. 104, 862 S.E.2d 714 (Ct. App. 2021). In that case, the court held that “a party's right to a jury trial is not revived based solely on the fact that the party asserts a counterclaim for the first time in an amended pleading, without also introducing new factual issues that were not previously in dispute.” Id. at 112, 862 S.E.2d at 718. On December 11, 2005, Zurich sued Palmetto for breach of contract. Palmetto answered on February 16, 2006, denying the allegations in the complaint and raising various affirmative defenses. Neither party demanded a jury trial in its initial pleading.

On July 12, 2016, Palmetto moved to amend its answer to assert additional affirmative defenses and to assert counterclaims for negligent misrepresentation/fraud and breach of contract.

After the motion was granted, Palmetto filed its amended answer and counterclaims on September 27, 2017, which included a demand for a jury trial for the first time. Zurich moved to strike the jury trial demand “arguing Palmetto waived its right to a jury trial when it did not demand a jury trial following its initial answer and that the amended answer and counterclaim did not revive the right to a jury trial because it was not based upon new issues of fact.” Zurich, 434 S.C. at 108, 862 S.E.2d at 715. “Zurich contended Palmetto’s allegations were based upon the same issues and facts raised in Zurich’s complaint and Palmetto’s initial answer.” Id.

On appeal from the circuit court’s order striking Palmetto’s request for a jury trial pursuant to Rule 38(d), the court of appeals in Zurich affirmed the circuit judge’s decision that Palmetto’s amended answer and counterclaim did not create new issues of fact and that Palmetto’s demand for a jury trial was untimely because it had not been made within ten days after the service of its initial answer. Id. at 113, 862 S.E.2d at 718 (“Both the breach of contract and negligent misrepresentation counterclaims involve essentially the same facts as previously pled, as does the request for damages.”). The court rejected Palmetto’s argument that “its right to a jury trial was revived because it asserted affirmative claims against Zurich *for the first time* in its amended answer and counterclaim.” Id. at 110, 862 S.E.2d at 717. It held “the act of asserting counterclaims for the first time in an amended pleading does not automatically revive the right to a jury trial.” Id. at 113, 862 S.E.2d at 718.

The Zurich opinion cites to the prior case of King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (Ct. App. 1987). In King, the plaintiff sued over a note he co-signed as endorser and had to pay for the defendant. Id. at 502, 354 S.E.2d at 402. The defendant answered, asserting fraud and coercion defenses, and counterclaimed for malpractice, fraud and deceit, and breach of trust and fiduciary relationship. Id. The defendant did not make a demand for a jury trial. Id. Thereafter, the

defendant amended his answer and added an additional counterclaim for outrage. Id. at 502, 354 S.E.2d at 402-03. The defendant later made another motion to amend his answer and counterclaim to assert an action for unfair trade practices and to transfer the case to the jury calendar. Id. The circuit court denied the motion to transfer but allowed the defendant to amend his answer and counterclaim. Id.

The court of appeals in King affirmed the circuit court's order that allowed the defendant to amend his pleading, but which simultaneously denied the defendant's request for a jury trial on the grounds it was untimely made under Rule 38(b) and thus was waived. The court followed federal cases holding that "a litigant's entitlement to a jury trial on the issues presented by an amended pleading, when no prior demand for a jury trial has been made, turns on whether the amended pleadings create new issues of fact." Id. at 503, 354 S.E.2d at 403 (Ct. App. 1987) (citing Trixler Brokerage Co. v. Ralston Purina Co., 505 F.2d 1045 (9th Cir. 1974); New Hampshire Fire Ins. Co. v. Perkins, 28 F.R.D. 588 (D. Del.1961); and Williams v. Farmers and Merchants Ins. Co., 457 F.2d 37 (8th Cir. 1972)). Because the defendant's allegations "in each of his pleadings" were found to "involve essentially the same facts," the King court held the defendant had waived his right to demand a jury trial when he failed to make such a demand within ten days of his initial answer. Id.³

The same situation is present in this case. Defendant Strobel did not demand a jury trial

³ In Trixler Brokerage, which Zurich cited with approval, the Ninth Circuit Court of Appeals held that the presentation of a new theory of recovery in an amended pleading does not constitute the presentation of a new issue on which a jury trial should be granted. Trixler Brokerage, 505 F.2d at 1050 ("The theory of a case relates to the ultimate basis of liability[] rather than to an issue created by the pleadings.... When read in context, the word issue must have been intended by the Supreme Court to mean nothing other than an issue of fact. Obviously, appellant would not be demanding a jury trial on an issue of law."). As a result, the fact the amended pleading adds a new legal theory does not revive the time for the party to demand a jury trial.

when she filed her initial Answer to the Amended Petition on November 17, 2023. Her deadline to demand a jury trial lapsed on November 27, 2023, pursuant to Rule 38(b). While she later demanded a jury trial on December 18, 2023, when she filed her Amended Answer and Counterclaim, her amended pleading involves essentially the same facts and fails to create new issues of fact. The fact that Defendant Strobel filed an Amended Answer and Counterclaim did not revive her right to demand a jury trial which had already expired.

In short, Defendant Strobel failed to make a timely demand for a jury trial pursuant to Rule 38(b) and § 62-1-306(a), and therefore, waived any entitlement to a jury trial as a matter of right.

(b) Jury Trial as a Matter of Discretion – § 62-1-306(b) and Rule 39(b):

Defendant Strobel also asks the Court to exercise “its discretion” to order a jury trial and impanel a jury pursuant to § 62-1-306(b) and Rule 39(b). The Court declines this request. First, the Court finds this case does not involve any special or exceptional circumstances warranting a jury trial. Second, even if the Court were inclined to exercise its discretion to grant a jury trial despite Defendant Strobel’s waiver of this right, the jury’s decision “is advisory only” pursuant to § 62-1-306(b) and Rule 39(c). There is no need for an advisory jury verdict in this case.

The SCPC expressly states that when the right to trial by jury has been waived, “the court in its discretion may call a jury to decide any issue of fact, ***in which case the verdict is advisory only.***” S.C. CODE ANN. § 62-1-306(b) (emphasis added). Rule 39(c) also gives a similar statement. See S.C. R. CIV. PRO. 39(c) (“In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue ***with an advisory jury***”) (emphasis added). Because Defendant Strobel waived any right to a jury trial, this Court could impanel a jury under § 62-1-306(b) or Rule 39(b) only in “an advisory capacity.”

Defendant Strobel’s motion does not elucidate what “issues of fact” she wants a jury to

decide in an advisory capacity. Further, her motion does nothing more than point out that Rule 39(b) grants this court “discretion” to order a jury trial. However, the mere grant of discretion does not justify exercising that discretion in a particular instance. Importantly, while the rule gives the Court discretion to order a jury trial even when a party has waived its right to a jury trial, it was not intended to emasculate the requirement that a party make a timely demand for a jury trial. If a party can obtain a jury trial by showing nothing more than the fact it asked for one under Rule 39(b), then the time limitation imposed in Rule 38(b) (which § 62-1-306(a) effectively incorporates) is rendered meaningless.

In exercising discretion to order a jury trial, our courts have considered the issues involved, prejudice to the movant when their request is denied, the timeliness of the request, the docket, and the reason for movant’s delay. See Satcher v. Satcher, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002) (considering the same and finding no abuse of discretion in trial court’s denial of movant’s request for jury trial after where request was not until after filing his second amended complaint, finding that transferring the case to the jury docket would not result in the “speedy decision on the issues in the case”, and failing to find any prejudice to movant from the denial of a jury trial). Federal courts applying the federal counterpart to Rule 39(b) require the moving party to demonstrate some special or exceptional circumstance that would compel the court to do so. See Gen. Tire & Rubber Co. v. Watkins, 331 F.2d 192, 197 (4th Cir. 1964).

Courts in other jurisdictions have also considered whether the shifting of a trial from a nonjury calendar to a jury calendar will affect the public interest. See Glogau v. Hagan, 107 Cal. App. 2d 313, 318, 237 P.2d 329, 333 (1951); see also Nassif Realty Corp. v. Nat’l Fire Ins. Co. of Hartford, 107 N.H. 267, 220 A.2d 748 (1966) (concluding trial court’s denial of the plaintiff’s

motion for a jury trial was not unreasonable nor an abuse of discretion where congestion, delay, and calendar control present difficult problems for trial courts).

Rule 39(b) was applied by our court of appeals in King. In that case, the trial court had granted the defendant's motion to amend its pleading to assert a new counterclaim against the plaintiff. However, it also denied the defendant's request under Rule 39(b) that the court exercise its discretion and set the counterclaim for a jury trial. In affirming the trial court, the court of appeals pointed out that the defendant had not shown any reason for its failure to demand a jury trial in its prior pleadings. 291 S.C. at 503, 354 S.E.2d at 403 ("The record does not disclose a reason for [defendant's] failure to demand a jury trial prior to serving his last answer and counterclaim and [defendant] concedes this."). King illustrates that a party asking for a trial court to exercise its discretion under Rule 39(b) must show a meaningful reason for the court to do so besides the simple fact the party inadvertently failed to timely request a jury trial as a matter of right under Rule 38(b). Likewise, in Satcher, the court of appeals held that the trial court had properly exercised its discretion to deny the plaintiff's request for a jury trial under Rule 39(b), explaining that transferring the case to the jury docket would not result in the "speedy decision on the issues in the case." 351 S.C. at 490, 570 S.E.2d at 542.

The holdings in King and Satcher are in accord with federal cases. Federal courts grant Rule 39(b) "motions infrequently, and ordinarily only when the moving party presents some exceptional circumstance, beyond mere inadvertence, to justify the original waiver." Gelardi v. Transamerica Occidental Life Ins., 163 F.R.D. 495, 496 (E.D. Va. 1995) (citing cases); see Keatley v. Food Lion, Inc., 715 F. Supp. 1335, 1338 (E.D. Va. 1989) ("The plaintiff has advanced no reason why the Court should exercise its discretion and order a trial by jury. Unless some cause beyond mere inadvertence is shown, untimely requests for jury trials should be denied."); Frankl

Miller Webb & Moyers, LLP v. Crest Ultrasonics Corp., 2019 WL 5566546, at *2 (W.D. Va. Oct. 28, 2019) (“Conspicuously absent from Defendant’s Motion [under Rule 39(b)] is any justification for its delay in making the jury demand. Such a failure has repeatedly been found undeserving of relief.”).

As the Court explained in Seitz v. Hammond, 35 F.R.D. 567 (E.D.S.C. 1964):

The right to trial by jury has ancient origins in Anglo-Saxon jurisprudence. To Blackstone it was ‘The glory of the English law’ and ‘the most transcendent privilege which any subject can enjoy.’ Nevertheless, the Rules provide that this valuable right can be waived, and the matter becomes one of discretion for the Court. *However, this discretion should not be loosely used or applied, because it could so easily take on the character of arbitrariness.*

Accordingly, a party should not be relieved of his waiver of trial by jury ‘unless there are special circumstances excusing the failure to make a timely demand.’ The Court finds that such ‘special circumstances’ do not exist here so as to relieve movant of his waiver.

Id. at 567 (footnotes omitted) (emphasis added).

In this case, Defendant Strobel has not presented any meaningful reason or exceptional circumstance for the court to exercise its discretion and order a jury trial, which pursuant to § 62-1-306(b) and Rule 39(c), would be advisory only. As in King, Defendant Strobel’s motion gives no explanation for why she failed to timely request a jury trial in her previous pleadings. She filed an original Answer and an Answer to Amended Petition before finally making a request for a jury trial for the first time in her Amended Answer to Amended Petition. She has offered no meaningful reason for her failure to do so in any of her prior pleadings. Even if the reason is because she overlooked Rule 38(b)’s requirements or inadvertently neglected to include a demand for a jury trial, case law provides that is not a sufficient reason to grant a motion under Rule 39(b).

Additionally, like the plaintiff in Satcher, Defendant Strobel has made no showing that granting her request for a jury trial will result in a “speedy decision” on the issues in the case. In

fact, a non-jury trial would result in a substantial saving in time and expense for the court and the parties and will reduce the length and complexity of the trial of the case.

The Court finds no compelling reason to impanel an advisory jury in this case, as it would incur unnecessary expenses, and a jury of laypeople is not more qualified than the Court to decide the issues in this case. Defendant Strobel has not justified any benefit or helpfulness of an advisory jury in this matter. Accordingly,

IT IS ORDERED that Defendant Paula M. Strobel's Motion to Amend Answer, which motion was originally filed in the Probate Court on May 13, 2024, and was later refiled in the Circuit Court on June 23, 2025, is hereby DENIED; and

IT IS ORDERED that Defendant Strobel's Motion for Jury Trial, which motion was originally filed in the Probate Court on June 24, 2024, and was later refiled in the Circuit Court on June 23, 2025, is hereby DENIED;⁴ and

IT IS SO ORDERED!

Thomas J. Rode
Presiding Circuit Court Judge
Court of Common Pleas
Ninth Judicial Circuit

This ____ day of _____, 2025.
_____, South Carolina.

⁴ As previously noted, while Plaintiffs separately filed a Motion to Strike Defendant Strobel's demand for a jury trial in the Probate Court on May 2, 2024, and refiled that motion in the Circuit Court on October 15, 2024, that motion was not set for a hearing before the undersigned. Accordingly, this Order does not dispose of that motion even though it addresses the same issues and arguments as those involved in resolving Defendant Strobel's Motion for Jury Trial.



Charleston Common Pleas

Case Caption: Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al
Case Number: 2024CP1004752
Type: Order/Other

So Ordered

s/ T.J. Rode (#2792)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2024-CP-10-04752

IN THE MATTER OF ESTATE OF JAMES
L. STROBEL

DANIEL LLOYD STROBEL; JAMES
ANDREW STROBEL; JOHN ANTHONY
STROBEL; and PETER NICHOLAS
STROBEL

Plaintiffs,

vs.

PAULA M. STROBEL, as Personal
Representative of the Estate of James L.
Strobel and individually; and DOROTHY
ELIZABETH STROBEL BELL, as an
interested person; and ZOIE P. OGLETREE,
as an interested person,

Defendants.



**DEFENDANT STROBEL'S MOTION
TO RECONSIDER ORDER DENYING
DEFENDANT'S MOTION TO AMEND
AND MOTION FOR JURY TRIAL**

Defendant Paula Strobel, as Personal Representative of the Estate of James L. Strobel and individually ("Defendant Strobel"), by and through her undersigned counsel, respectfully moves, pursuant to Rule 59, SCRCF, for reconsideration of the Court's Order dated November 3, 2025 ("Order"). **Defendants respectfully request an in-person hearing on this motion for the reasons stated herein.**

The Order, which was submitted by Plaintiffs' counsel and adopted by the Court in full, resolved (a) a motion to amend a pleading, and (b) a motion for a jury trial. However, a review of the order reveals that it is breathtaking in issues it purports to cover and includes twenty pages of factual findings and legal conclusion by the Court. Significantly, the Order also includes findings that Plaintiff will use to try and establish the law of the case, to seek summary judgment on other

legal and factual issues, and further includes findings on issues that were never briefed or argued, and in some instances, were only addressed in a cursory fashion during oral argument.

Specifically, this matter came before the Court on Defendant Strobel's Motion to Amend to include a claim for civil conspiracy, which the Court did not allow in part because she had not filed a proposed pleading outlining the details of that claim, and further because the claim should not be brought in this Court. Yet the Court made findings of fact and conclusions of law concerning Defendant Strobel's potential claim under the guise of a "futility of amendment" analysis, without even seeing the details of the claim. On the one hand, the Order finds that the claim should be brought in a different court, yet it purports to find that Defendant Strobel cannot bring the claim in that court. Moreover, neither Plaintiffs nor Defendant Strobel submitted any details regarding the potential claim, which is not required under the applicable rule and case law, and counsel was only asked during oral argument what the claim *might* entail. But the Court then used that cursory description to essentially find that such a claim is impossible, and further, to enter a ruling that **any** amendment to include such a claim would be futile in this court or in any other court.

It was not within the purview of the Court to declare, in an order denying the right to amend a pleading, and without knowing the details of the claim or receiving or reviewing any documentary or testimonial evidence, to find that such a claim would be futile. For example, the Court found that "even if the divorce between Decedent and Defendant Ogletree is illegal or void for some reason, the separation agreement is independent and separate from any divorce between them. It is enforceable despite an invalid divorce." (Order at 10.) This declaration from the Court is not only impermissible under the standard for evaluating a motion to amend, but it also contradicts Zoie Ogletree's sworn testimony, misconstrues Defendant Strobel's potential claim, and further was inserted into the Order in an attempt to prevent Defendant Strobel from bringing

the claim in another Court, which the Order concludes Defendant Strobel should have done initially.¹ Moreover, this issue was never briefed, argued, or otherwise discussed during the hearing, and this finding is improper, an abuse of discretion, and is in error as a matter of law.

1. The Court Should Reconsider its Ruling on Defendant Strobel’s Motion to Amend Answer

- The Order repeatedly states that the proposed counterclaim is “unknown given the absence of a proposed amended pleading,” finds that the Court “is left to speculate as to the factual basis for the proposed counterclaim,” and notes that Court have denied motions to amend for the failure to a proposed amended pleading. The Order then cites two federal court cases to support this finding. However, these cases deal with amendments during and after trial (Fed. R. Civ. Pro. 15(b)) and amending a pleading to add a party that was already dismissed (requiring more facts). Yet, the Court relied on these federal court cases to find that “the failure to file a proposed amended pleading . . . compels the denial of her motion.” (Order p. 6–7.) The two federal court cases are neither binding, dispositive, or instructive because they are inapposite.
- The Order also cites an *unpublished* and nonprecedential South Carolina state court case, which is a unique case, and in any event, is clearly distinguishable. In *Pet Helpers, Inc. v. Frisco*, 2025-UP-190 (S.C. Ct. App. June 11, 2025), Pet Helpers sued Frisco for libel and slander after Frisco posted libelous and slanderous comments about Pet Helpers online. Frisco proceeded pro se. Late in the case, Frisco filed *three* motions to amend her answer,

¹ Dominican Republic Law, at the relevant time, required the parties to agree to a written separation agreement as part of its divorce process. Respondent Strobel is informed and believes that her late husband (the Decedent) and Zoie Ogletree agreed to this Separation Agreement as part of the Dominican Republican Divorce. Zoie confirmed in her deposition that the purpose of the Separation Agreement was to get a divorce.

which were denied. Frisco appealed the circuit court’s denial of her “second and third motions to amend” *Pet Helpers, Inc. v. Frisco*, 2025 WL 1650100, at *1 (S.C. Ct. App. June 11, 2025). The Court of Appeals concluded this was proper because the circuit court had previously indicated that a proposed amendment in support of the second and third motion to amend was “necessary to enable the circuit court—and this court—to determine if Pet Helpers would suffer prejudice as a result of the amendment.” *Pet Helpers, Inc. v. Frisco*, 2025 WL 1650100, at *1 (S.C. Ct. App. June 11, 2025). But this Court made no such finding as to prejudice. Moreover, in resolving *Pet Helpers*, the Court of Appeals noted that Circuit courts are permitted to “grant a continuance reasonably necessary to allow the opposing party to meet the amendment.” *Id.* The Order submitted by Plaintiffs’ counsel provided Defendant Strobel with no such opportunity. It denied Defendant Strobel’s first motion to amend on the first day it was heard, gave Defendant Strobel no opportunity to provide the proposed pleading, and then concluded that the proposed pleading the court had never seen would be futile. Justice and fairness require more.²

- Significantly, the Order references and appears to provide deference to a prior order in the case entered by Judge Doby on July 31, 2025. However, Judge Doby denied Defendant Bell’s motion to assert the claim at issue because (a) he believed the claim was properly brought in circuit court, and (b) because the claim truly belong to Defendant Strobel. Yet, this Court ruled that Defendant Strobel’s potential claim would be futile.

² Again, the Court should also be aware that the Court of Appeal held that the Pet Helpers opinion **“HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.”**

- In addition, the Order did not apply the proper standard for futility. A motion to amend should only be denied for futility when the proposed amended pleading is “clearly insufficient or frivolous on its face.” *Crago v. Cap. Advantage Fin. & Dev., Inc.*, 242 F.R.D. 341, 344 (D.S.C. 2007) (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir.1986)); see also *Rambus, Inc. v. Infineon Tech., AG*, 304 F.Supp.2d 812, 819 (E.D.Va.2004) (“Courts generally favor the ‘resolution of cases on their merits’ ... [t]hus the substantive merits of a proposed claim [or defense] are typically best left for later resolution, *e.g.*, under motions to dismiss or for summary judgment, ..., or for resolution at trial.”) (quoting *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980)). But here, the Court has not even seen the “face” of the pleading.
- The Order made additional improper rulings. The Court found that “even if the divorce between Decedent and Defendant Ogletree is illegal or void for some reason, the separation agreement is independent and separate from any divorce between them. It is enforceable despite divorce.” (Order at p. 10.) It is unclear how the Court came to such a drastic legal conclusion without reviewing any evidence whatsoever, and in fact, without even reviewing a pleading it had never seen. Such a “finding” was wholly improper.
- The Order’s reliance upon *Nelson v. Bryant*, 256 S.C. 558, 220 S.E.2d 647 (1975) is also misplaced. In *Nelson v. Bryant*, the court held **after a full trial was conducted** that “the present action involved a transaction separate and independent of the illegal transaction.” *Id.* at 561, 220 S.E.2d at 648. In the present matter, there has been no pleading, much less a trial. This finding is wrong.
- Moreover, Defendant Strobel contends that the separation agreement, followed seven business day later by an illegal Dominican Republic divorce, is part of an illegal scheme

to evade South Carolina law by obtaining an illegal “quicky” divorce. In any event, there has also been **no evidence submitted on this issue** by either party. *See Rambus, Inc. v. Infineon Tech., AG*, 304 F.Supp.2d 812, 819 (E.D. Va. 2004) (“Courts generally favor the ‘resolution of cases on their merits’ . . . [t]hus the substantive merits of a proposed claim [or defense] are typically best left for later resolution, e.g., under motions to dismiss or for summary judgment, . . . , or for resolution at trial.” (quoting *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980))).

- The Order’s reliance on *Graham v. Graham* is also misplaced since it deals with a separate agreement. 276 S.C. 341, 343, 278 S.E.2d 345, 346 (1981). Defendant Strobel would like the opportunity to show the Court the evidence that supports the assertion that Decedent and Zoie agreed to obtain an illegal divorce from the Dominican Republic. As part of the Dominican Republic divorce, Decedent and Zoie entered into the Separation Agreement, which was required by Dominican Republic law. Therefore, the Separation Agreement was a necessary component of an illegal scheme to evade and bypass South Carolina law.
- The Order further cites *Cherry v. Thomasson*, 276 S.C. 524, 527, 280 S.E.2d 541, 542 (1981). In *Cherry v. Thomasson*, the court considered evidence and weighed the facts sitting in equity. Defendant Strobel, however, has not had the opportunity to provide any evidence in support of her claim, not even a pleading outlined the claim, as the Order criticizes her for not doing so. The Court’s reliance on *Cherry* is simply misplaced.
- In summary, the situation presented by Defendant Strobel’s motion is a stark contrast in law or fact from the situations of the cases cited in the Order. Therefore, the Court should grant this Motion to Reconsider.

2. **The Court Should Reconsider its Ruling on Defendant Strobel’s Motion for Jury Trial**

- The Order completely fails to understand that Defendant Strobel timely requested a jury trial in the last pleading she filed on December 18, 2023. Strobel will receive a jury trial as a matter of right. Here is what occurred.
- On September 8, 2023, Petitioners filed and served their Amended Summons and Amended Petition.
- On November 17 2023, after being granted an extension, Defendant Strobel filed her Answer.
- Strobel had thirty days to amend her Answer as a matter of right under Rule 15(a), SCRCP (**“Amendments.** A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served.”)
- Strobel took advantage of this right on December 18, 2023 by filing and Amended Answer and Counterclaim.
- In that pleading, which Strobel was entitled to file as a matter of right, Strobel stated “JURY TRIAL DEMANDED.”
- Strobel also stated: “**DEMAND FOR TRIAL BY JURY** . . . Respondent hereby demands a trial by jury in this action for all issues so triable.”
- Therefore, Strobel timely demanded a jury trial as a matter of right as to her Amended Answer and Counterclaim.
- To be sure that the pleadings were not set, on January 2, 2024, Plaintiffs filed their Reply to Strobel’s December 18, 2023 Counterclaim.

- Therefore, Defendant Strobel timely requested a jury trial. Her Motion for a Jury trial simply sought to confirm that right and in alternative, seek a jury trial if she were not entitled to one (she is).
- The Court's order completely misunderstands these facts and the procedural history.
- Strobel timely and properly requested a jury trial as a matter of right, and the Court's order striking her demand for the same is wholly improper.
- The Court's Order also includes a gross misstatement of the law when it says "even if the Court were inclined to exercise its discretion to grant a jury trial despite Defendant Strobel's waiver of this right, the jury's decision "is advisory only" pursuant to § 62-1-306(b) and Rule 39(b)." The Order itself, as well as the cases cited therein, clearly show that this is a false statement of law. (*See, e.g.*, Order at 18 ("Nevertheless, the Rules provide that this valuable right can be waived, and **the matter becomes one of discretion for the Court.**") (emphasis added)). Both cases cited, *King v. Shorter* and *Satcher v. Satcher*, permit a jury trial under the Court's discretion. In fact, the court in *Satcher* (probate case) granted a jury trial based on the discretionary right pursuant to Rule 39(b). 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002); *see also Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 576, 357 S.E.2d 725, 725 (Ct.App.1987) (explaining that a court can grant a discretionary jury trial under Rule 39(b)).
- The Order's erroneously concludes that there is no basis for a discretionary jury trial right yet did not weigh any of the factors discussed in *Satcher*. In *Satcher*, the court reviewed the issues involved, the potential prejudice to the other party, timeliness of the request, the docket, and the reason for the delayed request. *Satcher v. Satcher*, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002). In this case, the jury trial demand, according to the Order,

was due on November 27, 2023. Defendant Strobel demanded her jury trial on December 18, 2023, a blink of the eye in lawyer time. At the time it was demanded, no discovery had occurred and, since the demand was made in an amended pleading as a matter of right, court administration accepted the jury trial demand. Thus, unlike Satcher, there is no need to add this case to the jury trial docket as it is already set for a jury trial unless the Court strikes the demand. The only prejudice here is to Defendant Strobel who has prepared this case for a jury trial for the last two years to only now be told that her constitutional right to a jury trial which “has ancient origins in Anglo-Saxon jurisprudence” and is “the most transcendent privilege which any subject can enjoy,” will be stricken.

For all these reasons, Defendant Strobel respectfully requests that the Court GRANT her Motion to Reconsider the Order Denying Defendant Strobel’s Motion to Amend and Denying Defendant Strobel’s Motion for Jury Trial. Alternatively, Defendant Strobel respectfully requests that the Court reconsider and clarify its Order as addressed above.

s/ J. Ashley Twombly
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ATTORNEYS FOR DEFENDANT PAULA M.
STROBEL

Beaufort, South Carolina

November 13, 2025

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1004752

Daniel Lloyd Strobel et al
PLAINTIFF(S)

Paula M Strobel et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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



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

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

Pursuant to Rule 59(e) SCRPC, on November 13, 2025, Defendant Paula Strobel filed a motion to alter or amend the order of this Court dated November 3, 2025. Under the applicable standard, this motion is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/31/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al
Case Number: 2024CP1004752
Type: Order/Electronic Form 4

So Ordered

s/ T.J. Rode (#2792)

ROSEN | HAGOOD

DANIEL F. BLANCHARD III
Email: dblankard@rosenhagood.com
Direct dial: (843)266-8123

June 2, 2025



VIA EMAIL ONLY:

The Honorable S. Bryan Doby
Circuit Court Judge
PO Box 93
Bishopville, SC 29010
sdobysc@sccourts.org

Re: *In re: Estate of James L. Strobel*
Probate Court Case No. 2022-ES-10-00235
Circuit Court Case No. 2024-CP-10-04752

Dear Judge Doby:

We're scheduled to have a motions hearing before you in Charleston on Thursday, June 5, at 2:30pm. Please consider this our response to the letter that Ashley Twombly emailed to you this past Friday, May 30, and his Motion to Continue the upcoming hearing and supporting Affidavit that he filed last Wednesday, May 28.

Our firm represents the four sons of James L. Strobel ("Jim"), who died on January 3, 2022. Our clients are Danny Strobel, Jamie Strobel, Tony Strobel, and Nick Strobel. Their mother is Zoie Ogletree, formerly Zoie Strobel ("Zoie"). Along with Andrew Rhea of Evans Carter Kunes & Bennett, PA and Beth Palmer and Bijan Ghom of Saxton & Stump, LLC, Mr. Twombly represents Paula Strobel ("Paula"). Mr. Twombly also represents Dorothy Bell ("Dotty"), who is Paula's and Jim's daughter and our clients' half-sister.

This case originated in the Probate Court on December 6, 2022. Paula claims that she is Jim's surviving spouse and that she is the sole beneficiary of his estate under a Last Will & Testament that Jim signed on March 24, 2003 ("Will"). In 1977, while married to Zoie (our clients' mother), Jim had previously executed a written contract with Zoie agreeing to make an irrevocable will for the benefit of our clients, their four sons. The terms of the agreement required Jim to leave one-half of his real and personal property to our clients in equal shares. Our clients filed this action to enforce their father's succession contract after Paula filed an application in the Probate Court seeking to ignore the succession contract and to devise Jim's entire estate to herself. Supposedly acting on Dotty's behalf, Mr. Twombly removed the case to this Court over our clients' objections on August 16, 2024, after the parties had been litigating in the Probate Court for nearly 1½ years.

Our clients and Paula are the primary litigants to this case. The other parties merely have nominal or potential interests presuming that our clients prevail on their claims. Zoie has not

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asserted any claims in this case. She is being represented by Dan David and Michael DuPree to defend against Crossclaims which Paula and Dotty are now wanting to assert against her. Zoie is not a beneficiary of either the succession contract that our clients seek to enforce or Jim's Will that Paula is seeking to probate. Instead, Zoie was married to Jim and is our clients' mother. If the Court finds that Jim never validly divorced Zoie for the reasons explained below, then she is Jim's surviving spouse. If our clients are successful in enforcing the succession contract and in voiding Jim's Will made in contravention of that contract, then the other one-half of Jim's estate not covered by the succession contract would pass to Zoie (Jim's surviving spouse) and his children (our clients as well as Dotty).

Dotty is a nominal party. We have not asserted any claims against her. She was made a party only because she is considered an interested person under the South Carolina Probate Code based on her relationship to Jim. She is not named as a beneficiary of Jim's succession contract and she is not a beneficiary of his Will. As stated above, Dotty would only receive a portion of Jim's estate if our clients' succeed in enforcing their father's contract and in voiding his Will which violates the contract. Conversely, if Paula prevails, then Dotty will receive nothing from Jim's estate. For these reasons, Paula's and Dotty's interests are not aligned, even though Mr. Twombly represents both of them.

Mr. Twombly's letter argues that this case involves a "factually complex history" and that he needs to conduct more discovery before the Court rules on our clients' Motion for Partial Summary Judgment filed on November 22, 2024, **or over six months ago**. We disagree. In truth, Mr. Twombly simply wants more time to engage in a fishing expedition that will waste time and resources. All of the issues raised in our clients' summary judgment motion are ripe for the Court's adjudication, not simply those few issues which Mr. Twombly has selectively asked the Court to cherry pick.

Mr. Twombly's letter and affidavit omit important information about the procedural status of this case. As stated above, our clients commenced this action in the Probate Court on December 6, 2022, **or 2½ years ago**. On April 25, 2024, over our clients' objection, and despite the fact the case had been pending in the Probate Court for nearly 1½ years, Mr. Twombly moved the Probate Court purportedly on Dotty's behalf to remove the case to this Court. He had to make the motion on Dotty's behalf because Paula's time to seek removal of the case had already expired many months earlier. This removal motion was a transparent maneuver by Mr. Twombly to delay the trial in this case.

Mr. Twombly's letter and affidavit fail to mention the fact that **on September 6, 2023, the Probate Court entered a Scheduling Order requiring that all discovery be completed by March 16, 2024, and that the case be ready for trial on June 6, 2024**. A copy of the order is enclosed. We conducted discovery in compliance with the order and were proceeding to a trial date in the Probate Court. Although we served Dotty with our clients' initial Petition on January 6, 2023, she never answered the Petition or otherwise appeared in the case, presumably because she felt she has

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no real stake in the outcome. Dotty would have been held in default if we had asserted any claims against her. Indeed, we were specifically advised by Mr. Ghom that his firm only represents Paula and does not represent Dotty.

On November 17, 2023, shortly after obtaining Paula's discovery responses, we amended our clients' Petition to add Zoie as a party and to request a ruling that Jim had not validly divorced her, thus she was his surviving spouse when he died. Although this amendment did not affect Dotty at all because she is not a beneficiary of Jim's estate, Mr. Twombly then used that amendment as a pretext to submit belated claims purportedly on Dotty's behalf (who had not previously appeared) and to force the removal of the case to the Circuit Court, which delayed the trial.

At Paula's deposition taken on February 21, 2024, Mr. Twombly volunteered to "accept service" of the Amended Petition for Dotty even though we had not taken any steps to serve her because she had never appeared after being served with the initial Petition and the amendment does not assert any claims against her. We allowed Mr. Twombly to accept service for her. Thereafter, on April 15, 2024, Mr. Twombly then filed Counterclaims and Crossclaims on Dotty's behalf even though our clients and Zoie have not asserted any claims against her. It is evident that Mr. Twombly's real motivation for wanting Dotty to "appear" in this case at this late stage was to have her file claims against our clients and Zoie which could then be used as a basis for removing the case from the Probate Court. Our clients have moved to dismiss the Counterclaims, which is one of the motions pending before you.

On April 25, 2024, based on the filing of these new Counterclaims, Mr. Twombly filed a motion to remove the case from the Probate Court purportedly on Dotty's behalf. The Probate Judge held that he had no discretion to deny the motion. He entered an Order of Removal on August 16, 2024, and no trial was held in the Probate Court. Mr. Twombly successfully engineered a substantial delay of the trial by using Dotty's late appearance as grounds for filing Counterclaims and then removing the case from the Probate Court based on those new Counterclaims.

With respect to the factual background, there are few disputed facts in this case. Those facts that are in dispute are immaterial to a resolution of our clients' summary judgment motion. It is undisputed that James and Zoie were married in 1960 and that they had four sons together (Danny, Jamie, Tony, and Nick). It is also undisputed that in 1976, while James was married to Zoie, he and Paula began a romantic relationship with each other, which lead to James separating from Zoie and filing for a divorce from her. At that time, our clients' ages ranged from six to ten years old.

It is also uncontroverted that on March 4, 1977, Jim and Zoie executed a written Separation Agreement which was filed with the Dorchester County Family Court on April 18, 1977. In the written Separation Agreement, Jim expressly agreed to make an irrevocable will for the benefit of his four sons and to leave half of his real and personal property to his sons in equal shares and to

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keep his real and personal property free of all liens. The Separation Agreement states as follows:

FIFTH: It is agreed by the parties that the Husband [James] will keep at least Twenty-Five Thousand (\$25,000.00) Dollars or Fifty (50%) Per Cent of his estate, whichever is greater, of his estate – for the benefit of his four (4) children – of his personalty and realty free of all liens and Husband further agrees to execute an Irrevocable Will to that effect. Said amount of his estate to be equally divided among his children at his death, namely: Daniel Lloyd Strobel, James Andrew Strobel, Peter Nicholas Strobel and John Anthony Strobel, per stirpes.

....

ELEVENTH: It is agreed by the parties hereto that this Separation Agreement shall be binding upon them individually and upon their Administrators, Executors or Trustees in the event of either party's demise. It is expressly understood that each party's estate is subject to the terms of this Separation Agreement.

Prior to executing this Separation Agreement, Jim had acquired several large tracts of land located in Givhan's, South Carolina, as well as a beach house on Folly Beach. He had also inherited additional tracts of land in Givhans from his uncle. These properties had been in Jim's family for years.

It is further undisputed that on July 17, 1978, Jim and Zoie executed a written amendment to the Separation Agreement which was also filed with the Family Court. The amendment did not alter the Fifth and Eleventh Sections. Indeed, it reaffirmed those provisions. It states that "[i]n all other respects, the Separation Agreement heretofore entered into by the parties on the 4th day of March, 1977 is confirmed."

According to Paula's own deposition testimony, within days following Jim's execution of the Separation Agreement on March 4, 1977, he traveled to the Dominican Republic for a very brief period (few days or week) to try to obtain a "quickie" divorce from his wife, Zoie. Zoie did not go to the Dominican Republic. Neither Jim nor Zoie had ever lived there. While Paula claims that Jim divorced Zoie in the Dominican Republic and that she subsequently married Jim on April 29, 1977, Paula has not been able to produce a divorce decree from the Dominican Republic or any other court showing that Jim and Zoie were ever validly divorced. The Dorchester County Family Court has no record of a divorce decree involving Jim and Zoie. In any event, the so-called quickie divorce is clearly void based on the Uniform Divorce Recognition Act, S.C. CODE ANN. §§ 20-3-210 through 20-3-440, which prohibits South Carolina residents from temporarily traveling to another jurisdiction to obtain a divorce. Of course, because Jim never validly divorced Zoie, Paula's subsequent attempt to marry him was bigamous and their alleged marriage is invalid pursuant to S.C. CODE ANN. § 20-1-80.

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South Carolina has long recognized that one can make an enforceable contract to dispose of his property by will. These contracts are known as succession contracts or contracts of succession. *Brown v. Graham*, 242 S.C. 491, 131 S.E.2d 421 (1963); *Kirkpatrick v. Kirkpatrick*, 223 S.C. 357, 75 S.E.2d 876 (1953); *Baylor v. Bath*, 189 S.C. 269, 1 S.E.2d 139 (1938). “A contract to make a will, like other contracts, is irrevocable.” *Young v. Levy*, 206 S.C. 1, 32 S.E.2d 889, 896 (1945). The usual remedies granted to enforce these contracts is an order for specific performance and the imposition of a constructive trust over the property in the estate. *Wright v. Trask*, 329 S.C. 170, 183, 495 S.E.2d 222, 229 (Ct. App. 1997); *Adams v. Willis*, 225 S.C. 518, 526, 83 S.E.2d 171, 175 (1954); *Shirey v. Bishop*, 431 S.C. 412, 422, 848 S.E.2d 325, 330 (Ct. App. 2020); 1 William J. Bowe & Douglas H. Parker, *Page on the Law of Wills* § 10.30 at 504 (Rev. ed. 1960); Jason T. King, *Lifetime Remedies for Breach of A Contract to Make A Will*, 50 S.C. L. Rev. 965, 971 (1999).

“One who contracts to will property in effect parts with his rights to act inconsistent therewith **and in effect reserves to himself a life interest only.**” *Carmichael v. Heggie*, 332 S.C. 624, 627–28, 506 S.E.2d 308, 310 (Ct. App. 1998) (emphasis added); *Caulder v. Knox*, 251 S.C. 337, 346, 162 S.E.2d 262, 267 (1968) (same). Thus, taking actions inconsistent with the contract constitutes a breach. See *Wright* at 184, 495 S.E.2d at 229. For instance, if in his lifetime the promisor conveys his property to a third person, such conveyance is treated as a breach of the contract. *Harmon v. Aughtry*, 226 S.C. 371, 375, 85 S.E.2d 284, 285-86 (1955); *In re Chayka's Est.*, 176 N.W.2d 561, 564 n.8 (Wis. 1970) (citing 94 C.J.S. *Wills* § 119).

When Jim died on January 3, 2022, he left behind a Will dated March 24, 2003, which directly conflicts with his contractual obligations under the Separation Agreement. Our clients were not privy to this Will until after their father’s death. If the Will is probated, it would leave Jim’s entire estate to Paula and would completely disinherit his sons. It is undisputed that at various times subsequent to the execution of the Separation Agreement, Jim deeded to Paula a one-half undivided interest in several of the real properties that he had owned outright, including the beach house on Folly Beach and a house in Givhan’s. Paula testified at her deposition that she did not give consideration to Jim in exchange for these deeds.

Because Jim’s Will breaches his contractual obligations under the Separation Agreement, the Will is null and of no force or effect. See *Ellisor v. Watts*, 227 S.C. 411, 88 S.E.2d 351 (1955); *Bruce v. Moon*, 57 S.C. 60, 35 S.E. 415, 418 (1900); see also *Coffman v. Woods*, 696 S.W.2d 386 (Tex. Ct. App. 1985) (finding subsequent will in violation of contractual will to be void). Additionally, Jim’s *inter vivos* transfers of his real estate to Paula are further breaches of his obligations under the Separation Agreement and are null and void. See e.g., *Di Lorenzo v. Ciancio*, 49 A.D.2d 756, 757 (N.Y. App. Div. 1975); *Cline v. Graves*, 641 S.W.2d 151 (Mo. Ct. App. 1982); *Margulis v. Teichman*, 479 N.Y.S.2d 953 (N.Y. Sur. Ct. 1984).

On February 11, 2022, Paula was appointed as personal representative of Jim’s estate based solely on her allegations in her informal application that she is Jim’s surviving spouse and that she is the personal representative named in the Will. At her deposition, Paula conceded that she was

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aware of the Separation Agreement by no later than January 2022, which was a month before she filed her application in the Probate Court. She testified that she gave the agreement to her attorney. However, it is uncontroverted that despite knowing of the Separation Agreement, Paula did not submit or disclose the agreement to the Probate Court. She also did not disclose it to our clients. Instead, despite knowing about the agreement, she filed her application in the Probate Court seeking to probate the Will, which would leave Jim's entire estate to herself and would completely disinherit his sons, and she did not mention the Separation Agreement.

Our clients did not learn of the provisions in the Separation Agreement until June 2022 or several months after Paula had filed her application in the Probate Court and had been appointed as personal representative. They never learned of the agreement from Paula. Instead, in June 2022, Danny traveled to the Dorchester County Family Court and asked for copies of the Family Court's file relating to his father and mother. He then discovered the Separation Agreement. On July 29, 2022, he sent an email to Paula asking why she and her attorney had not brought the Separation Agreement to the Probate Court's attention. Paula responded to Danny that he should discuss the matter with her attorney. On December 6, 2022, after obtaining legal counsel, our clients filed their Petition in the Probate Court seeking to enforce the Separation Agreement.

We urge the Court to reject Mr. Twombly's last-minute effort to again delay the Court's disposition of our client's summary judgment motion, which was filed over six months ago. ***Our clients' motion was originally set for a hearing before Judge Courtney Clyburn Pope on March 21, 2025. However, that hearing was continued based on a motion for continuance filed by Mr. Twombly.*** Despite the fact that our clients' motion has been pending for over six months and this case has been pending for over 2½ years, it wasn't until ten days ago that Mr. Twombly just recently attempted to notice several depositions of our clients and Zoie. Mr. Twombly's affidavit nowhere offers a good reason why his clients could not have taken depositions in the 2½ years that this case has been pending.

Paula and Dotty clearly have had a full and fair opportunity to conduct discovery. They simply chose not to engage in discovery for strategic reasons, which is an improper basis for delaying summary judgment or granting a motion pursuant to SCRCP 56(f). Mr. Twombly's affidavit nowhere explains what evidence he likely will obtain in discovery that would make a difference to the outcome of the pending summary judgment motion. The party opposing a summary judgment motion on the basis that the motion is premature "must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a 'fishing expedition.'" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991)); see also *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact."). In *Guinan*, the

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court held the circuit court's grant of summary judgment was not premature because the party opposing summary judgment failed to demonstrate that "further discovery would uncover additional relevant evidence or create a genuine issue of material fact." 383 S.C. at 55, 677 S.E.2d at 36; *see also Wall v. Dye*, No. 2021-001014, 2024 WL 3357621, at *3 (S.C. Ct. App. July 10, 2024) (same).

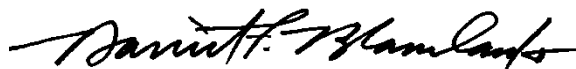
Rule 56(f) is not a license for Mr. Twombly to engage in a fishing expedition in the mere hopes that he may uncover something useful. He has failed to show it is likely that additional discovery will uncover additional relevant evidence that will create a genuine issue of material fact. As discussed above, our clients' motion seeks to enforce a written contract that Jim executed during his lifetime. As a matter of law, the parol evidence rule prevents introduction of extrinsic evidence to contradict the terms of the written contract. *Proffitt v. Sitton*, 244 S.C. 206, 136 S.E.2d 257, 259 (1964); *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577, 581 (1990). Additionally, the Dead Man's Statute would bar testimony of any verbal agreements with Jim that are not in the written contract. *See* S.C. CODE ANN. § 19-11-20; *Nandwani v. Queens Inn Motel*, No. 2012-IP-385, 2012 WL 10844387, at *6 (S.C. Ct. App. June 20, 2012) (citing *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997)).

Additional discovery will not alter the fact that Jim failed to make a will leaving half of his real property and personal property to his four sons. Paula has already testified that there is no other will that Jim executed besides the Will dated March 24, 2003. Additional discovery will also not alter the fact that Jim executed and recorded deeds transferring an interest in some of his real property to Paula during his lifetime for no consideration which operated to circumvent and breach his obligations under the written contract. In short, additional discovery could not lead to any evidence that will matter to the outcome of the pending motions.

We thank you for your consideration of this matter. We look forward to appearing before you on Thursday. With best regards, I am

Sincerely,

ROSEN HAGOOD, LLC



Reviewed and Approved for Electronic Transmission

Daniel F. Blanchard, III

Encl.

Cc: Elizabeth J. Palmer, Esquire/ Bijan K. Ghom, Esquire
J. Ashley Twombly, Esquire/Thomas Iandoli, Esquire
Dan David, Esquire/Michael DuPree, Esquire
Andrew Rhea, Esquire

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF CHARLESTON	)	CASE NO: 2022-ES-10-00235
	)	
IN RE: ESTATE OF	)	
JAMES L. STROBEL, Deceased,	)	
	)	
DANIEL LLOYD STROBEL;	)	
JAMES ANDREW STROBEL; JOHN	)	SCHEDULING ORDER
ANTHONY STROBEL; and	)	
PETER NICHOLAS STROBEL	)	
Petitioners,	)	
	)	
vs.	)	
	)	
PAULA M. STROBEL, as Personal Representative	)	
of the Estate of JAMES L. STROBEL and	)	
individually; and DOROTHY ELIZABETH	)	
STROBEL BELL, as an interested person,	)	
	)	
Respondents.	)	

This matter is before the Court upon consent of the parties to enter a Consent Scheduling Order. Pursuant to the South Carolina Rules of Civil Procedure, the parties request and the Court hereby orders that the following schedule is established for this case:

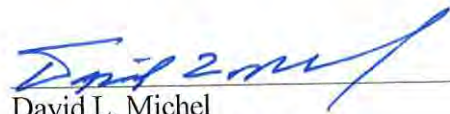
1. Discovery: Subject to there being no additional delays in discovery, discovery and depositions shall be completed no later than **March 16, 2024**. All discovery requests shall be served in time for the responses thereto to be served by this deadline. The parties intend to have all depositions completed before this deadline.

2. Petitioners' Expert(s): Petitioner(s) shall serve a document identifying by full name, address, and telephone number of each person whom Petitioner(s) expects to call as an expert at trial including the expert's report by **January 18, 2024**.

3. Respondents' Experts: Respondent(s) shall serve a document identifying by full name, address, and telephone number of each person whom Respondent(s) expects to call as an expert at trial including the expert's report by **February 19, 2024**.



4. Dispositive Motions: All dispositive motions shall be filed on or before **May 19, 2024**.
5. Mediation: The parties shall conduct mediation on or before **April 18, 2024**.
6. Trial: This matter shall be subject to trial on or after **June 6, 2024**.


David L. Michel
Associate Judge of Probate

September 6, 2023
Charleston, South Carolina

ROSEN | HAGOOD

DANIEL F. BLANCHARD III
Email: dblanchard@rosenhagood.com
Direct dial: (843)266-8123

August 29, 2025



VIA EMAIL ONLY:

The Honorable Jennifer B. McCoy
Chief Administrative Judge
100 Broad Street, Suite 348
Charleston, SC 29401
jmccoyse@sccourts.org

Re: *In re: Estate of James L. Strobel*
Circuit Court Case No. 2024-CP-10-04752
Probate Court Case No. 2022-ES-10-00235

Dear Judge McCoy:

Our firm represents the four adult sons of James L. Strobel (“Jim”), who died on January 3, 2022. Our clients are the Plaintiffs, Danny Strobel, Jamie Strobel, Tony Strobel, and Nick Strobel. Their mother is Zoie Ogletree, formerly Zoie Strobel (“Zoie”). Zoie is represented by Dan David and Michael DuPree.

I am sending this letter in response to the letter that Ashley Twombly sent to you yesterday. Mr. Twombly represents the Defendant, Paula Strobel (“Paula”). Mr. Twombly also represents Dorothy Bell (“Dotty”), who is Paula’s and Jim’s daughter and our clients’ half-sister.

This case originated in the Probate Court. On December 6, 2022, our clients filed a petition there to enforce the provisions of a written Separation Agreement that their late father (Jim) and their mother (Zoie) had executed on March 4, 1977, back when our clients were only children. Jim and Zoie were married in 1960. Jim worked with Paula at Navalex in the same office. In 1977, after Paula and Jim engaged in an extramarital affair, Jim separated from Zoie to live with Paula. Jim and Zoie later entered into a written Separation Agreement that they filed with the Dorchester County Family Court. Under the express terms of the Separation Agreement, Jim agreed to make an irrevocable will leaving \$25,000 or 50% of his estate (real and personal property), whichever is greater, to our clients in equal shares. The Separation Agreement states that it is binding on Jim individually as well as against his estate and his executors and administrators. Despite this agreement, Paula (as Personal Representative of Jim’s estate) filed documents in the Probate Court claiming that she is the sole beneficiary of Jim’s entire estate by virtue of a will that Jim executed in 2003, twenty-six years after the Separation Agreement. Despite Jim’s obligations under the Separation Agreement, Paula has taken the position (which happens to benefit herself) that Jim’s sons do not receive any portion of his estate and that she receives his entire estate.

Dotty and Zoie are nominal parties. They are not beneficiaries under the Separation Agreement or the 2003 will. They were named as parties only because they are considered to be interested persons who are entitled to notice under the South Carolina Probate Code. Despite this status, Mr. Twombly has attempted to assert counterclaims against Zoie, who has not asserted any claims in this case. Judge Doby dismissed those counterclaims by Order filed on July 30, 2025.

Taylor Ambrosius of our office appeared before you last Wednesday, August 20, for the hearing conducted on Paula's Motion to Amend Scheduling Order. She had filed that motion in the Probate Court on June 24, 2024. It was later refiled in the Circuit Court after the Defendant removed the case over our clients' objections. While the case was in the Probate Court, Judge Michel had entered a Scheduling Order setting a discovery cut-off date of March 16, 2024, and a trial not before date of June 6, 2024. However, after the discovery period had expired and we were ready to set a trial date, the Defendant successfully removed the case to this Court over our objection, which has effectively delayed the trial by at least a year and a half if not longer.

On August 19, we filed a response to Defendant's Motion to Amend Scheduling Order and advised the Court that the parties had already agreed upon an Amended Scheduling Order, a copy of which was attached to the response. The agreed-upon Amended Scheduling Order includes a discovery cut-off date of September 19, 2025, and trial not before date of October 20, 2025. However, shortly after we filed our response, Mr. Twombly's office then advised for the first time that he will no longer consent to the agreed-upon Scheduling Order even though he had previously communicated that he consented to it.

While I was not personally present for last week's hearing, my understanding is that you advised those counsel who were present that you did not see a need to take up an Amended Scheduling Order until Judge Rode had conducted a hearing on the motions pending before him (which include Defendant's motion to amend counterclaim and the parties' cross-motions for summary judgment) and ruled on those motions. Those motions were scheduled to be heard by Judge Rode on Wednesday, August 27. They were on the motions roster that the Clerk of Court published on July 25. However, when we appeared before Judge Rode this past Wednesday, Mr. Twombly then suddenly argued to Judge Rode that he could not hear the summary judgment motions. Mr. Twombly had not previously advised us that he would object to Judge Rode hearing the summary judgment motions at yesterday's hearing even though they were properly noticed for a hearing.

Our clients' summary judgment motion was filed on November 22, 2024, or over nine months ago. It was initially scheduled for a hearing before Judge Curtis on January 27, 2025. However, that hearing was postponed because Paula's counsel wanted her own motion for summary judgment (not filed until January 3, 2025) to be heard at the same time as our motion and Paula's motion had not been included on the motions roster published on December 27, 2024, because it had not been filed yet. Both summary judgment motions were then set for a hearing before Judge Pope on March 21, 2025. However, that hearing was continued when Paula's counsel

moved for a continuance. The summary judgment motions were then rescheduled for another hearing before Judge Doby on June 5, 2025. However, that hearing was also postponed because Mr. Twombly moved for another continuance on May 28, 2025. As a result of Mr. Twombly's objections at yesterday's hearing before Judge Rode, he again postponed the hearing on our clients' summary judgment motion. In sum, although our clients' summary judgment motion was filed over nine months ago and has been noticed for a hearing on four separate occasions, it has yet to be heard.

Any supposed "confusion" in this case is not because the facts of this case are overly complicated, but because of the Defendant's repeated maneuvering to obtain continuances and delays of hearings on motions that have been scheduled to be heard on several occasions. Because of the Defendant's relentless requests for continuances and postponements, it has caused some but not all of the motions to actually be heard when they were called for hearings. We disagree that a complex case designation is justified because the Defendant has worked to delay and complicate the proceedings.

Mr. Twombly's letter from yesterday now inexplicably asks you to go ahead and rule "on the complex case designation as soon as practicable." This is truly perplexing because Judge Rode has not yet issued any ruling on the motions that he heard on Wednesday and the pending motions for summary judgment still have not yet been heard (again, due to the Defendant's objections). Additionally, no hearing has been held on any request for a complex case designation. Indeed, the Defendant did not file her Motion for Complex Case Designation until August 12, 2025, about two weeks ago. No hearing has been scheduled or held on that motion. That motion was not before you at last week's hearing. Instead, the only motion heard last week was the Defendants' Motion for Scheduling Order (refiled in Circuit Court on June 23, 2025). Ms. Ambrosius pointed this out at last week's hearing. Nevertheless, Mr. Twombly is now asking you to rule on a motion that has not yet been heard.

To be clear, we oppose the Defendant's Motion for Complex Case Designation and do not agree that it should be ruled upon without any hearing. This case does not need a complex case designation. Mr. Twombly now argues this case is complex. In truth, he simply wants more time to engage in a fishing expedition that will undoubtedly waste time and resources and further delay the resolution of this case. Even though this case was initially filed in the Probate Court and has been pending *for over 2½ years*, it was not until two weeks ago that the Defendant filed her motion seeking a complex case designation. In our view, this is yet another attempt by the Defendant to delay this case. We urge the Court to reject this attempt.

We respectfully submit the Motion for Complex Case Designation should be heard after Judge Rode rules on the motions that he heard on Wednesday (which may or may not result in an amendment of the pleadings and further claims and defenses to be pled) and once the pending cross-motions for summary judgment have been heard and decided. At that point, we can determine if a complex case designation is truly needed.

In closing, Mr. Twombly's letter feigns surprise that I would state a personal opinion that it appears Zoie now has borderline capacity. Zoie is 83 years old and frail. My opinion was based on my personal observations of her during her deposition taken a couple of months ago. It appeared to me during the deposition that she suffers from memory deficits, was confused at times, and did not fully understand questions that were posed to her. I have not interacted with Zoie outside of observing her at the deposition. Of course, Mr. Twombly can reach his own conclusions about her appearance as a witness.

We thank you for your consideration of this matter.

With best regards, I am

Sincerely,

ROSEN HAGOOD, LLC

A handwritten signature in black ink, appearing to read "Daniel F. Blanchard, III".

Reviewed and Approved for Electronic Transmission

Daniel F. Blanchard, III

Cc: Elizabeth J. Palmer, Esquire/ Bijan K. Ghom, Esquire
J. Ashley Twombly, Esquire/Thomas Iandoli, Esquire
Dan David, Esquire/Michael DuPree, Esquire